

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMMIGRANT ADVOCATES RESPONSE
COLLABORATIVE, et al.,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civil Action No. 25-2279 (TNM)

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO
EXPEDITE PRODUCTION OF THE ADMINISITRATIVE RECORD AND
CROSS-MOTION TO STAY OBLIGATION TO FILE A
CERTIFIED INDEX OF THE ADMINISITRATIVE RECORD**

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Defendants respectfully oppose Plaintiffs' motion to expedite production of the administrative record (ECF No. 8) and cross move under Federal Rule of Civil Procedure ("Rule") 6 to stay their obligation to file a certified index of the contents of the administrative record. Government counsel discussed this cross-motion with Plaintiffs' counsel and learned that Plaintiffs oppose the relief sought herein.

In short, Plaintiffs have failed to demonstrate a need for an expedited administrative record in this matter. Moreover, Defendants intend to move to dismiss this case for a lack of jurisdiction and for failure to state a claim upon which relief may be granted under Rules 12(b)(1) and 12(b)(6), respectively. That dispositive motion will not be based on an administrative record, and thus, the government should be relieved of any obligation to index or produce one until the Court resolves that threshold motion.

BACKGROUND

Plaintiffs filed this case on July 16, 2025, Compl. (ECF No. 1), and served the U.S. Attorney's Office under Rule 4(i) on July 24, 2025. Plaintiffs have moved for no emergency or provisional injunctive relief. *See generally* Docket. Nonetheless, the same day that Plaintiffs served the United States, they filed their motion to expedite the administrative record in this case. *See* Pl. Mot. (ECF No. 8). In support of their Motion, Plaintiffs included no affidavits or other evidence purporting to establish any urgency in this matter. *See id.* Instead, they relied on a five-word passage in a Minute Order entered by the Chief Judge in response to their motion to proceed under pseudonyms (which was entered before the government had an opportunity to respond), a general statutory statement promoting alacrity, and the unverified allegations in their complaint. *See* Pl. Mem. (ECF No. 8-1) at 8–11.

Plaintiffs' Motion is also vague. In their complaint, Plaintiffs purport to challenge numerous policy decisions, including:

1. a policy of the Executive Office of Immigration Review (“EOIR”) allegedly promulgated on January 28, 2025, permitting courthouse arrests, which Plaintiffs call the “EOIR Policy Permitting Courthouse Arrests,” *see* Compl. (ECF No. 1) ¶¶ 58, 129–34 (count I);
2. policies of Immigration and Customs Enforcement (“ICE”) allegedly promulgated on (a) January 21, 2025, and (b) May 28, 2025, authorizing courthouse arrests, which Plaintiffs call the “ICE Policies Authorizing Courthouse Arrests,” *see id.* ¶¶ 53, 59, 135–40 (count II);
3. guidance from EOIR allegedly promulgated on May 30, 2025, providing information to Immigration Judges on dismissals of “full” removal proceedings, which Plaintiffs call the “EOIR Dismissal Guidance,” *see id.* ¶¶ 61, 141–46 (count III), 147–52 (count IV) 164–68 (count VII);
4. guidance from the Department of Homeland Security (“DHS”) allegedly promulgated, on “information and belief,” on May 20, 2025, providing information to ICE counsel representing the government in removal proceedings, which Plaintiffs call the “DHS Dismissal Guidance,” *see id.* ¶¶ 60, 153–58 (count V), 159–63 (count VI), 164–68 (count VII);
5. DHS guidance promulgated, on “information and belief,” on May 20, 2025, containing a “new position” on the interpretation of the expedited removal statute, which Plaintiffs call the “DHS Policy Expanding Expedited Removal Beyond 2-Year Statutory Limit,” *see id.* ¶¶ 99–101, 169–77 (count VIII), 178–82 (count IX); and
6. a supposed DHS supplemental policy promulgated, on “information and belief,” after EOIR and DHS guidance on dismissing full removal proceedings that instructs the government to proceed with expedited removal proceedings before final dismissal orders in full removal proceedings, which Plaintiffs call the “Concurrent Proceedings Guidance,” *see id.* ¶¶ 66–67, 183–89 (count X), 190–97 (count XI).

Despite purporting to challenge many supposed policies and guidance documents, Plaintiffs’ Motion makes no attempt to explain why there is an urgent need to produce administrative records for any specific policy or guidance. Instead, Plaintiffs argue that “some of the claims in this case are brought pursuant to 8 U.S.C. § 1252(e)(3), and expedition is thus mandated,” Pl. Mem. (ECF No. 8-1) at 8, and ask “that the Court require expedited production of the administrative record,” *id.* at 8–9, without specifying which record or which decision requires expedition.

Lastly, despite filing a complaint challenging supposed policies and guidance, it appears that Plaintiffs are uncertain whether some of those policies and guidance documents actually exist. As noted above, Plaintiffs make many allegations and plead many claims “on information and belief,” and in their Motion, Plaintiffs ask in the alternative for the government to produce certain supposed decisional documents for Plaintiffs’ review. Pl. Mem. (ECF No. 8-1) at 10–11. As discussed below, Plaintiffs are not entitled to records from the government to bolster their allegations when their claims fall outside the jurisdiction of the Court and are not plausibly pled.

ARGUMENT

I. The Court Should Stay the Government’s Obligation to Produce Any Administrative Record Because Its Threshold Dispositive Motion Will Not Be Based on One.

Absent a contrary court order, Local Civil Rule 7(n) requires the government to file “[i]n cases involving the judicial review of administrative agency actions,” a certified index of the administrative record with the government’s dispositive motion or within thirty days of answering a complaint. LCvR 7(n)(1). “This rule is intended to assist the Court in cases involving a voluminous record (e.g., environmental impact statements) by providing the Court with copies of relevant portions of the record relied upon in any dispositive motion.” *Id.* at cmt. As such, when a dispositive motion in an Administrative Procedure Act (“APA”) case does not rely on an administrative record, courts in this district routinely waive compliance with the local rule. *See, e.g., Baygan v. Blinken*, Civ. A. No. 23-2840 (JDB), 2024 WL 3723714, at *3 (D.D.C. Aug. 8, 2024) (“the Court will waive compliance with Rule 7(n) because the administrative record is not necessary for the Court’s decision regarding the motion to dismiss” (citation modified)); *Janay v. Blinken*, 743 F. Supp. 3d 96, 105 (D.D.C. 2024) (Moss, J.) (“Because the administrative record is not necessary for the court’s decision regarding the motion to dismiss, the Court will waive compliance with Local Civil Rule 7(n) and will, accordingly, deny Plaintiffs’ motion to compel

production of the administrative record.” (citation modified)); *Connecticut v. Dep’t of Interior*, 344 F. Supp. 3d 279, 294 (D.D.C. 2018) (Contreras, J.) (waiving compliance “when the administrative record is not necessary for the court’s decision regarding a motion to dismiss” (citation modified)); *Mdewakanton Sioux Indians of Minn. v. Zinke*, 264 F. Supp. 3d 116, 123 n.12 (D.D.C. 2017) (Contreras, J.) (same). Indeed, as this Court has observed, the practice in APA cases, absent a meritorious request for provisional injunctive relief, proceeds in a traditional manner even in cases involving the removal of noncitizens from this country:

This Court’s general practice is to adhere to the traditional civil litigation sequence: the plaintiff files a complaint; then the defendant answers or seeks dismissal of the complaint; then—in APA cases—the Government produce an administrative record; and only then does the Court consider motions for summary judgment. If [plaintiff] does truly face imminent harm, the appropriate procedure would be for [plaintiff] to move for a preliminary injunction, not for the Court to expedite summary judgment briefing with no good cause shown.

G.Y.J.P. v. Wolf, Civ. A. No. 20-1511 (TNM), 2020 WL 4192490, at *2 (D.D.C. July 21, 2020) (citing *Comm. on Ways & Means v. Dep’t of Treasury*, Civ. A. No. 19-1974 (TNM), 2019 WL 4094563, at *2 (D.D.C. Aug. 29, 2019)). Here, the government intends to move to dismiss Plaintiffs’ complaint under Rules 12(b)(1) and 12(b)(6) on several grounds without reference to an administrative record.

For example, Plaintiffs are time-barred in making challenges to EOIR’s alleged January 27, 2025, policy permitting courthouse arrests for expedited removals and ICE’s alleged January 28, 2025, regarding the same. *See supra* at 2 (claims nos. 1 and 2(a)). The Immigration and Nationality Act (“INA”) requires that challenges to procedures or guidelines regarding expedited removal under 8 U.S.C. § 1225(b) be made within sixty days of when the procedure or guideline is first implemented. 8 U.S.C. § 1252(e)(3)(B). Plaintiffs here filed suit in July 2025, more than sixty days after those challenged policies were first implemented.

Also, Plaintiffs have failed to plausibly allege claims based on the so-called DHS Dismissal Guidance, DHS Policy Expanding Expedited Removal Beyond 2-Year Statutory Limit, and Concurrent Proceedings Guidance because they fail to allege the threshold element of an APA claim—a final agency action. Indeed, through their Motion Plaintiffs seek discovery of (or perhaps propound a Freedom of Information Act (“FOIA”) request for) these policies and guidelines because the best they can muster in their complaint are allegations “on information and belief.” Pl. Mem. (ECF No. 8-1) at 10–11. It is well-established, including in the immigration context, that speculative allegations “on information and belief” generally fail to satisfy the plausible pleading standard set forth in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). *See, e.g., Ghadami v. Dep’t of Homeland Sec.*, Civ. A. No. 19-0397 (ABJ), 2020 WL 1308376, at *6 (D.D.C. Mar. 19, 2020) (dismissing APA claim where plaintiffs merely pled that they were subject to alleged immigration policy “on information and belief”).

Next, Plaintiffs’ allegations that the challenged policies and guidance are “contrary to law” or violate the Constitution (i.e., counts III, V, VII, VIII, X) plainly require no administrative record. Especially in the wake of *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), it is the province of the Court to assess whether the actions of the government violate statutory and constitutional provisions. *Id.* at 412 (“Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires.”). At least in the first instance, the Court need not consider an administrative record to rule that the alleged agency actions (even those speculative ones pled “on information and belief”) conflict with no superior source of law.

Further, Plaintiffs' challenges (including their arbitrary and capricious challenges, i.e., counts I, II, IV, VI, IX, XI) are barred by the limited scope of review authorized by the INA. 8 U.S.C. § 1252(e)(3)(A) cabins the scope of a district court's review of policies and guidelines implementing the INA's expedited review provisions to "(i) whether such section, or any regulation issued to implement such section, is constitutional; or (ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law." 8 U.S.C. § 1252(e)(3)(A). As such, Plaintiffs' contentions that the challenged policies are unsupported by evidence or are unwise (the core of their arbitrary and capricious claims) fall outside the limited scope of review authorized by the INA. Moreover, 8 U.S.C. § 1252(f)(1) strips the Court of "jurisdiction or authority to enjoin or restrain the operation of the" INA's removal provisions "other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." The D.C. Circuit recently interpreted the scope of this provision in *N.S. v. Dixon*, 141 F.4th 279, 289 (D.C. Cir. 2025), and vacated a district court injunction that prohibited generally the Marshals Service from effecting arrests of noncitizens without status in D.C. Superior Court.

Also, Plaintiffs' attempt to make this suit a class action is expressly barred by the INA. 8 U.S.C. § 1252(e)(1)(B) provides in unmistakable terms:

Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection, or

(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

Id. It is thus unclear how Plaintiffs could plead class claims in their complaint—which they note is premised in large part on the exception to this barring language found in section 1252(e)(3), Pl. Mem. (ECF No. 8-1) at 8.

Lastly, the government will move to dismiss the organizational plaintiffs from the suit for a lack of standing and jurisdiction. The organizational plaintiffs have failed to plead a basis for organizational standing under *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 394 (2024), and other sources of controlling law. Moreover, the INA permits only individual noncitizens and groups with associational standing to sue in challenging policies and guidelines implementing the INA’s expedited removal provisions. *Am. Immigr. Laws. Ass’n v. Reno*, 199 F.3d 1352, 1364 (D.C. Cir. 2000) (“we hold that the plaintiff organizations do not have standing to raise claims, whether statutory or constitutional, on behalf of aliens subjected to IIRIRA’s expedited removal system”). But here, the organizational plaintiffs plead no basis for associational standing. Instead, they claim third-party standing, alleging that the challenged policies and guidance injure them directly. Compl. (ECF No. 1) ¶¶ 28–29. That is not allowed under the narrow INA provisions authorizing limited review in this area.

At bottom, the Court should entertain the government’s threshold dispositive motion before requiring it to expend scarce resources producing administrative records on claims of dubious merit.

II. Plaintiffs Fail to Establish Any Basis to Expedite Administrative Records in this Action.

While the government’s request to stay its Local Civil Rule 7(n) obligations finds support in a wealth of authorities cited above, in contrast, Plaintiffs cite in their Motion no case where a

court in this district has expedited the production of an administrative record. Plaintiffs' failure to cite any supporting case law should doom their Motion at the outset.

Based on government counsel's research without the aid of any case citations from Plaintiffs, granting a request for an expedited administrative record absent the government's consent is rare and nearly unheard of when no motion for provisional injunctive relief has been filed. For example, in *National Association of Mortgage Brokers v. Board of Governors of Federal Reserve System*, 770 F. Supp. 2d 283, 288 (D.D.C. 2011) (Howell, J.), the Court considered a request for expedited discovery and the expedited production of an administrative record. The Court denied the former request based on the general rule that discovery is not permitted in APA cases. As to the latter request, the parties agreed that the case would turn on the Court's consideration of the administrative record and that the challenged policy was clearly identified and set to become effective imminently. *See id.* at 288–29. The government also represented that its efforts to compile the clearly defined record were well underway. *Id.* Under these facts, the Court ordered the government to produce the administrative record on the timetable identified by the government. *Id.*

The circumstances in *Mortgage Brokers* stand in sharp contrast to the situation here. In this case, the government contends this case will be resolved at the threshold based on the allegations in the complaint without the need for an administrative record. Further, because Plaintiffs purport to challenge several policies and guidance, including ones they speculate may exist “on information and belief,” the scope of any administrative records is far from clear. Accordingly, even had Plaintiffs cited supporting caselaw, their request would enjoy no support under it.

Instead of citing caselaw supporting their request for an expedited record, Plaintiffs lean on a general direction in the INA that courts should expedite consideration of challenges to the implementation of the statute's expedited removal provisions. Pl. Mem. (ECF No. 8-1) at 9 (citing 8 U.S.C. § 1252(e)(3)(D) ("It shall be the duty of the District Court, the Court of Appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this paragraph.")). But this general citation makes no reference to the production of an administrative record or the need to produce one when the case should be promptly dismissed at the threshold for a lack of jurisdiction or a failure to state a claim. After all, that route would "expedite to the greatest possible extent the disposition" of this case. Accordingly, the primary basis of Plaintiffs' Motion fails to support a request to expedite here.

Aside from their general citation to the INA, Plaintiffs' Motion is almost entirely based on the theory that the government must open its records at the threshold for Plaintiffs' review to bolster their claims in this case. Pl. Mem. (ECF No. 8-1) at 9–11. That is not the law. The law is just the opposite. Before any plaintiff is entitled to obtain records from any defendant, the plaintiff must demonstrate a court's jurisdiction over the dispute and plead a plausible entitlement to relief. As the Supreme Court held in *Iqbal*, "Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." 556 U.S. at 678–79. It is incumbent on Plaintiffs to plead plausible claims for relief that are clearly defined and based on factual allegations, not speculation about unidentified policies. Unlike a private defendant, the government is subject to FOIA and other open-access provisions, allowing litigants to obtain necessary records in advance of a lawsuit. If Plaintiffs wish to review "the decisional documents

relating to the” so-called by Plaintiffs “Dismissal Guidance, the Expedited Removal Guidance, and the Concurrent Proceedings Guidance,” Pl. Mem. (ECF No. 8-1) at 10, they could have sought those records through FOIA before filing this suit. But Plaintiffs cannot file a complaint with speculative claims arising from allegations made “on information and belief” and then seek to order the government to engage in expedited productions.

Accordingly, the Court should deny Plaintiffs’ request for the government to produce an expedited administrative record before the Court considers the government’s forthcoming motion to dismiss, which is currently due on or before September 22, 2025.

CONCLUSION

For these reasons, the Court should deny Plaintiffs’ motion for the production of an expedited administrative record and grant Defendants’ cross-motion to stay its obligation to file a certified index. A proposed order is enclosed herewith.

Dated: August 7, 2025

Respectfully submitted,

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