

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IMMIGRANT ADVOCATES RESPONSE
COLLABORATIVE, et al.,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF
JUSTICE, et al.,

Defendants.

Case No. 25-cv-2279

Hon. Trevor N. McFadden

**PLAINTIFFS' COMBINED REPLY IN SUPPORT OF MOTION TO EXPEDITE
PRODUCTION OF THE ADMINISTRATIVE RECORD AND OPPOSITION TO
DEFENDANTS' CROSS-MOTION TO STAY OBLIGATION TO PRODUCE A
CERTIFIED INDEX**

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ARGUMENT

In recent months, Defendants have transformed immigration courts, which were once forums for the orderly adjudication of claims for immigration relief, into a locus for the denial of process and arbitrary arrest. Some of the policy changes behind the transformation have been publicly announced, but others have been implemented through internal agency directives that the Defendants have refused to disclose. Credible public reporting confirms the existence of the non-public policy directives, describing them in detail. Dkt. No. 1, Compl. ¶¶ 60, 66, 99. And though Plaintiffs have not seen these documents, they have felt their effects, as the individual Plaintiffs' proceedings for immigration relief were dismissed and they were arrested in the very courthouse where they appeared in the expectation that they would have their claims heard. Some now face expedited removal despite the fact that the applicable statute bars application of that summary procedure against them. *See, e.g., id.* ¶ 100. Twelve individual plaintiffs have submitted sworn declarations attesting to the ways that Defendants' policies have adversely affected them. *See* Dkt. Nos. 2-1 to 2-12, Exs. to Mot. to Proceed Under Pseudonym.

Both the Individual and Organizational Plaintiffs are experiencing significant, ongoing harm as a result of Defendants' policy changes. But Plaintiffs cannot be expected to litigate in the dark, challenging the legality of policy documents that they have not even had the opportunity to review or analyze. Accordingly, to facilitate orderly judicial review, including of a possible motion for preliminary relief or expedited summary judgment briefing, Plaintiffs have moved for expedited production of the administrative record. Particularly, Plaintiffs seek prompt production of the challenged policy documents themselves. This request is well supported by the exigencies of the case. And expedited production of the record is appropriate because several (though not all) of Plaintiffs' claims are brought under the expedited removal statute, which mandates that this

matter be “expedite[d] to the greatest possible extent.” 8 U.S.C. § 1252(e)(3)(D).

Defendants do not deny that Section 1252(e)(3)(D) is both applicable and directs maximal expedition. Yet they not only resist expedited production of the record—or even the challenged policy documents—but also ask to be excused from the ordinary requirement to produce the certified index to the record in conjunction with a dispositive motion. *See* Loc. Civ. R. 7(n). That request is unwarranted and will frustrate resolution of the case. When the parties file their anticipated dispositive motions and responses, Plaintiffs’ claims will require reference to the record.

Defendants wave these concerns away, asserting that the case will be promptly resolved if they prevail on their forthcoming motion to dismiss. But this argument relies heavily on the bizarre suggestion that this Court has no need to see the challenged policies to determine whether they are lawful. Dkt. No. 15, Opp’n & Cross-Mot. 5. Defendants otherwise insist that they are likely to prevail in dismissing certain plaintiffs, claims, or forms of relief. Even were it appropriate to pre-judge a forthcoming motion to dismiss—and it is not—these arguments are ultimately beside the point. Even assuming (counterfactually) that Defendants are likely to succeed in limiting the scope of the dispute, it would not end the case or obviate the need for an administrative record.

The government cannot insulate policies from review by implementing them in secret. *See, e.g.,* 5 U.S.C. § 552(a)(2)(B)-(C). And in the specific context of newly adopted but unpublished expedited removal procedures, such obfuscation defies the spirit and letter of a congressional mandate requiring both litigants and courts to proceed as expeditiously as possible. Defendants’ unrealistic suggestion that Plaintiffs ought to have obtained documents under the Freedom of Information Act before filing suit within sixty days of the first implementation of any challenged procedure, *see* 8 U.S.C. § 1252(e)(3)(B), disregards this mandate. Plaintiffs have

brought forward ample plausible allegations reflecting real, ongoing harms caused by dramatic changes to expedited removal procedures. Their case presents precisely the scenario in which Congress mandated maximal expedition.

Plaintiffs' motion should be granted, and Defendants' cross-motion should be denied.

I. Defendants' forthcoming motion to dismiss does not justify a departure from the requirement to produce an administrative record and certified index.

Defendants' opposition and cross-motion principally offers a grab bag of arguments they intend to pursue in a forthcoming motion to dismiss. Of course, Plaintiffs will respond fulsomely to those unavailing arguments in due course. For present purposes, it suffices to show that none should relieve Defendants of the obligation to produce the administrative record as contemplated by Local Civil Rule 7(n). Most notably, Defendants' arguments utterly fail to explain how this Court could adjudicate a dispositive motion without the content of the policies at issue.

First, Defendants incorrectly suggest that Plaintiffs' claims regarding ICE's and EOIR's Courthouse Arrest Guidance are time barred. *See* Opp'n & Cross-Mot. 4. This skeletal argument does not even concern the majority of Plaintiffs' claims, and is therefore irrelevant to whether an administrative record should be produced for the other challenged policies. That aside, the time bar Defendants invoke, 8 U.S.C. § 1252(e)(3)(B), is inapplicable to the Courthouse Arrest claims. That provision governs only challenges to regulations and other written directives issued "to implement" the expedited removal statute, 8 U.S.C. § 1225(b). While some of Plaintiffs' claims do concern expedited removal and are subject to that time limit, the Courthouse Arrest Guidance simply establishes new parameters for when ICE will conduct and EOIR will allow arrests in courthouses. Neither set of guidance so much as mentions "expedited removal" or 8 U.S.C. § 1225(b). *See* Dkt. No. 8, Mot. Exs. A-C.

Second, Defendants baselessly contend that the Complaint fails to allege a final agency

action with respect to the DHS Dismissal Guidance, the Expedited Removal Guidance, and the Concurrent Proceedings Guidance. Opp’n & Cross-Mot. 5. To the contrary, the Complaint clearly alleges that the relevant Defendants have made a final decision with respect to each of these Guidance documents. *See* Compl. ¶ 60 (DHS Dismissal Guidance, citing public reporting); *id.* ¶ 66 (Concurrent Proceedings Guidance issued after the Dismissal Guidance); *id.* ¶¶ 91, 99 (Expedited Removal Guidance issued in late May 2025). The government denigrates these allegations because some are made “on information and belief.” Opp’n & Cross-Mot. 5. But as the D.C. Circuit has recognized, such allegations “are permitted when the necessary information lies within defendants’ control” and the complaint furnishes “the facts upon which the allegations are based.” *Jibril v. Mayorkas*, 20 F.4th 804, 816 (D.C. Cir. 2021) (internal quotation marks omitted). Here, the government has exclusive control over information about these policies because it adopted them without any public notice. And Plaintiffs have more than adequately alleged that DHS and EOIR are carrying out these new policies in a sharp departure from past practice. *See, e.g.*, Compl. ¶¶ 67, 101 (Plaintiffs have been subject to concurrent proceedings); *id.* ¶ 68 (Plaintiffs have had their cases dismissed); *id.* ¶ 91 (Plaintiffs physically present for more than two years have been placed into expedited removal). A “reasonable inference from those facts” is that Defendants have made a final decision to adopt the challenged Guidance modifying or abrogating their prior policies. *Jibril*, 20 F.4th at 816. If Defendants wish to dispute these allegations of final agency action, they must provide the administrative record—particularly the relevant decisional documents. *See, e.g.*, *Gomez v. Trump*, No. 20-cv-1419, 2020 WL 12919371, at *1 (D.D.C. Aug. 13, 2020) (“Defendants appear poised to argue that Plaintiffs have identified no final agency action, and the court cannot resolve any such challenge without an administrative record.” (citation omitted)).

Accepting Defendants’ position would allow them to easily circumvent judicial review.

Under their theory, the government could adopt new policies secretly and then avoid any judicial review by delaying their public release until after the time limit for filing legal challenges has elapsed. It is no answer to suggest that Plaintiffs could seek the decisional documents through requests under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. *See* Opp'n & Cross-Mot. 5, 9-10. As an initial matter, there is no statutory requirement that plaintiffs submit FOIA requests before filing an APA suit—but there is a statutory requirement to produce an administrative record. 5 U.S.C. § 706. Moreover, FOIA requires agencies to publish proactively the type of guidance Plaintiffs challenge here. *See id.* § 552(a)(2)(B)-(C) (requiring agencies to make public “statements of policy and interpretations,” and “administrative staff manuals and instructions to staff that affect a member of the public”). Defendants appear to have flouted that requirement, underscoring the need for them to produce the policy documents at issue. That aside, agencies’ failures to timely respond to and process FOIA requests is a well-known “perennial problem.” James R. McTigue, Jr., *FOIA Backlogs Hinder Government Transparency and Accountability*, Gov’t Accountability Off. (Mar. 14, 2024), <https://perma.cc/VTL2-E5F6>; *see also* *Citizens for Resp. & Ethics in Wash. v. FEC*, 711 F.3d 180, 189 (D.C. Cir. 2013). This Court should not endorse the idea that Plaintiffs must pursue a delay-plagued FOIA process to plausibly allege final agency action, particularly in a context where Defendants simultaneously intend to invoke a 60-day filing deadline for certain claims. *See* 8 U.S.C. § 1252(e)(3)(B).

Third, Defendants argue that Plaintiffs’ contrary-to-law claims can be resolved without the administrative record, while the arbitrary-and-capricious claims are unreviewable. *See* Opp’n & Cross-Mot. 5-6. Neither argument has merit. As to the contrary-to-law claims, the administrative records—or at least the key decisional documents—are necessary to determine the policies’ legality. It is difficult to understand how Defendants propose for the Court to test the legality of a

policy that they refuse to put forward for this Court’s review. *Cf. SEC v. Chenery Corp.*, 332 U.S. 194, 196-97 (1947) (“It will not do for a court to be compelled to guess at the theory underlying the agency’s action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive.”). And the APA itself carves out no exception from the administrative record rule for cases challenging agency action as contrary to law. *See* 5 U.S.C. § 706 (providing for “review [of] the whole record” in determining whether agency action is lawful).

As to the arbitrary-and-capricious claims, Defendants offer no argument that these claims do not require review of the administrative record. Instead, they assert only that judicial review is barred by 8 U.S.C. § 1252(e)(3)(A). *See* Opp’n & Cross-Mot. 6. It is not, for two reasons. As an initial matter, the provision Defendants cite permits judicial review of “a written policy directive, written policy guideline, or written procedure” issued to implement the expedited removal statute to determine whether it is “not consistent with applicable provisions of this subchapter or is otherwise in violation of law.” 8 U.S.C. § 1252(e)(3)(A)(ii).¹ That language “encompasses arbitrary and capricious review”—after all, “the APA is clearly a law that a regulation may violate.” *Las Ams. Immigrant Advoc. Ctr. v. DHS*, No. 24-cv-1702, 2025 WL 1403811, at *13 (D.D.C. May 9, 2025) (rejecting the same argument). But even assuming it were not so, the Courthouse Arrest Guidance and the Dismissal Guidance do not “implement” the expedited removal statute, so the cited provision does not apply to them. As noted, the Courthouse Arrest Guidance does not reference expedited removal. *See supra* p. 3. And the Dismissal Guidance concerns the conduct of government lawyers and immigration judges in formal removal

¹ This statutory provision clearly contemplates review of the written policies at issue, further emphasizing the importance of Defendants’ producing the DHS Dismissal Guidance, the Expedited Removal Guidance, and the Concurrent Proceedings Guidance.

proceedings conducted under 8 U.S.C. § 1229a, not expedited removal proceedings conducted under 8 U.S.C. § 1225.

Fourth, the government suggests that some of Plaintiffs' claims should not be permitted to proceed on a class-wide basis. Opp'n & Cross-Mot. 6-7. That is both wrong and beside the point. The Complaint does not seek class treatment for claims subject to 8 U.S.C. § 1252(e)(1)(B). *See* Compl. ¶¶ 177, 182, 188, 196. But the Court need not decide anything about class treatment at this time. Even if Plaintiffs could not proceed through a class action, that would demonstrate nothing about the necessity of producing the administrative records and key decisional documents to evaluate Plaintiffs' APA claims brought on their own behalf.²

Finally, in an equally irrelevant detour, Defendants suggest they will seek dismissal of the Organizational Plaintiffs for lack of Article III standing. Opp'n & Cross-Mot. 8. That motion will not succeed, as the Organizational Plaintiffs have alleged that Defendants' actions "directly affected and interfered with [their] core business activities." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024); *see* Compl. ¶¶ 110-120. But again, that is beside the point. Defendants unsurprisingly do not dispute that the Individual Plaintiffs have standing, as the Individual Plaintiffs are the very "object of a government regulation" at issue. *Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121, 2135 (2025) (internal quotation marks omitted); *accord Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. 25-5243, concurring stmt. at 16 (D.C. Cir. Aug. 1, 2025) (Millett, J.). And "[i]f at least one plaintiff has standing, the suit may proceed." *Biden v. Nebraska*, 600 U.S. 477, 489 (2023). It follows that even if the Organizational Plaintiffs

² The same is true of Defendants' cursory reliance on *N.S. v. Dixon*, 141 F.4th 279 (D.C. Cir. 2025). *See* Opp'n & Cross-Mot. 6. That decision concerned only the validity of a class-wide injunction under 8 U.S.C. § 1252(f)(1). *N.S.*, 141 F.4th at 282. The scope of relief has nothing to do with the need to produce an administrative record.

were ultimately dismissed, that would not relieve Defendants of the obligation to produce the administrative records and decisional documents as the suit proceeds on the Individual Plaintiffs' claims.

In short, the arguments Defendants intend to offer fall woefully short of justifying a departure from the ordinary rule that they produce an administrative record and file the certified index. They should not be excused from compliance with Local Civil Rule 7(n).

II. Defendants should produce the administrative record expeditiously.

Given that Defendants must produce the administrative record for the reasons set forth above, they should be required to do so promptly. As demonstrated in Plaintiffs' motion, prompt production will facilitate this Court's "duty . . . to advance on the docket and to expedite to the greatest possible extent the disposition" of the case. 8 U.S.C. § 1252(e)(3)(D). Defendants do not meaningfully dispute this point. Instead, they merely advert to their forthcoming arguments in favor of dismissal. *See* Opp'n & Cross-Mot. 9-10. Those arguments are unavailing for the reasons explained.

Defendants also identify no prejudice from an order requiring expedited production of the administrative record. "[P]roducing the administrative record *is* the rule. It is a routine—indeed, necessary—step in cases challenging agency action." *Citizens for Resp. & Ethics in Wash. v. FEC*, No. 22-cv-35, 2025 WL 833075, at *7 (D.D.C. Mar. 17, 2025). Defendants should not be permitted to delay taking that step where, as here, Congress has expressly provided for expedition. Indeed, in other cases implicating Section 1252(e)(3), the government committed to producing the administrative record promptly in conjunction with dispositive motions practice. *See, e.g., Las Ams. Immigrant Advoc. Ctr. v. DHS*, Dkt. No. 10, No. 24-cv-1702 (D.D.C. July 28, 2024); *U.T. v. Barr*, Dkt. No. 19, No. 20-cv-116 (D.D.C. Jan 24, 2020); *O.A. v. Trump*, Dkt. No. 62, No. 18-cv-

2718 (D.D.C. Feb. 1, 2019).³ It is therefore unsurprising that few judicial decisions address motions to expedite the production of an administrative record. *Contra* Opp'n & Cross-Mot. 7-8. As in those prior cases, Defendants should swiftly produce the record—or, at a bare minimum, the decisional documents in issue—to advance this Court's disposition of any dispositive motions or any motion for expedited relief.

CONCLUSION

For the foregoing reasons, the Court should order Defendants to produce the administrative record—or, at a minimum, the decisional documents relating to the Dismissal Guidance, the Expedited Removal Guidance, and the Concurrent Proceedings Guidance—by August 15, 2025.⁴ The Court should deny Defendants' cross-motion to stay their obligation to file a certified index of the administrative record pursuant to Local Civil Rule 7(n).

Dated: August 14, 2025

Respectfully Submitted,

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³ By contrast, Defendants rely on several cases delaying production of the administrative record where Section 1252(e)(3) was not implicated. *See* Opp'n 3-4. The reasoning of those cases is plainly inapplicable here.

⁴ Because Plaintiffs' motion was not fully briefed until August 14, Plaintiffs suggest in the alternative that August 22, 2025, would be an appropriate deadline.

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