

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)

**REPLY IN SUPPORT OF DEFENDANTS' CROSS-MOTION
TO STAY OBLIGATION TO FILE A CERTIFIED INDEX
OF THE ADMINISTRATIVE RECORD**

Defendants respectfully submit this reply in further support of their cross-motion to stay their obligation to file a certified index of the contents of the administrative record pending further order of the Court (ECF No. 16, "Cross-Mot.").

In their Opposition to the government's Cross-Motion, Plaintiffs contend this matter is urgent, Opp'n (ECF No. 21), but they have not moved for any form of preliminary injunctive relief. Plaintiffs argue that the Court must consider an administrative record, *id.* at 2, even if it lacks jurisdiction to entertain their claims. Plaintiffs suggest that hypothesizing about supposed policies they admit they have not seen, *id.* at 1 ("Plaintiffs have not seen these documents"), is enough to state a plausible claim for relief. And Plaintiffs claim that their challenges to policies they have seen that continue a well-established practice of effecting civil immigration arrests for removal proceedings in courthouses fall outside of the barring language of 8 U.S.C. § 1252, *id.* at 3, despite a decision from the D.C. Circuit this very summer holding to the contrary. *N.S. v. Dixon*, 141 F.4th 279, 288–290 (D.C. Cir. 2025) (district court injunction preventing courthouse

arrests for civil immigration violations restrained the operation of INA provisions identified in section 1252(f)).

Stripped of its rhetoric and premature attacks on the government's forthcoming motion to dismiss (which will not be based on an administrative record), Plaintiffs' Opposition is devoid of any reason to depart from the common practice in this Court to stay or excuse the production of a record when the government moves to dismiss based on the content of a plaintiff's pleading. *See* Cross-Mot. (ECF No. 16) at 3–4 (collecting cases). Plaintiffs attempt to shrug aside in a footnote as irrelevant the litany of cases cited by the government where courts in this jurisdiction have dispensed with an administrative record when the government presents a threshold dispositive motion aimed at a plaintiff's pleading. *Opp'n* (ECF No. 21) at 9 n.3. Specifically, Plaintiffs summarily conclude that the "reasoning of those cases is plainly inapplicable here," but they fail to explain why that is so. *Id.* Instead, they suggest that this record-review case is somehow different because it concerns an immigration matter under section 1252(e)(3). *Id.* But that is even more reason for the Court to exercise restraint here given the well-established deference to the Executive in immigration matters and the intent of Congress through section 1252 to cabin the Judiciary's role in these matters. *See generally Colindres v. Dep't of State*, 71 F.4th 1018, 1021 (D.C. Cir. 2023) ("the power to exclude aliens is a power to be exercised exclusively by the political branches, with limited judicial review" (citation modified)); *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) ("this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control" (citation modified)); *cf. Patel v. Garland*, 596 U.S. 328, 346–47 (2022) ("[W]e presume that review is available when a statute is silent. But that presumption may be overcome by specific language in a provision or evidence drawn from

the statutory scheme as a whole. And as we have explained in detail, the text and context of § 1252(a)(2)(B)(i)—which is, after all, a jurisdiction-stripping statute—clearly indicate that judicial review of fact determinations is precluded in the discretionary-relief context.” (citation modified)).

The cases cited by Plaintiffs where courts compelled the production of an administrative record or the government agreed to produce one fail to support Plaintiffs’ cause. For example, Plaintiffs cite *Citizens for Responsibility & Ethics in Washington (“CREW”) v. Federal Election Commission*, Civ. A. No. 22-0035 (CRC), 2025 WL 833075, at *7 (D.D.C. Mar. 17, 2025), for the proposition “producing the administrative record is the rule. It is a routine—indeed, necessary—step in cases challenging agency action.” Opp’n (ECF No. 21) at 8. But *CREW* did not address whether an administrative record should be produced when the government intends to dispose of a complaint based on a plaintiff’s pleading. *CREW* dealt with a completely different topic—whether a plaintiff could recover attorney fees under Federal Rule of Civil Procedure (“Rule”) 37 when an agency produces an administrative record after a motion to compel one was denied by a court. *CREW*, 2025 WL 833075, at 7. The Court included the quote that Plaintiffs cite to distinguish the production of an administrative record from typical discovery governed by Rule 37. *See id.* It did not purport to suggest that a motion to dismiss armed with jurisdictional and pleading defenses requires the production of a record.

The other cases cited by Plaintiffs arise from cases where the government voluntarily agreed to produce administrative records, including as part of overall compromises to provide reasonable periods for expedited summary judgment briefing that required those records. *See* Opp’n (ECF No. 21) at 8–9 (collecting cases). For example, in *Las Americas Immigrant Advocacy Center v. Department of Homeland Security*, Civ. A. No. 24-1702 (RC) (D.D.C.), the

government agreed to produce an administrative record as part of an expedited motion for summary judgment schedule where the parties' briefs depended on that record. *See id.*; *Las Americas Immigr. Advoc. Ctr. v. Dep't of Homeland Sec.*, Civ. A. No. 24-1702 (RC), 2025 WL 1403811, at *19 (D.D.C. May 9, 2025) (addressing merits of record review claims with citations to the administrative record). Contrary to Plaintiffs' suggestions that these cases support requiring the government to produce an administrative record in this matter, the cases instead demonstrate that where the government believes an administrative record will be useful to the resolution of a case, it agrees to produce one. Here, that is not the case. The United States intends to demonstrate that the Court lacks jurisdiction or that Plaintiffs have failed to adequately plead their claims.

Ultimately, no administrative record will be required for the Court to evaluate the government's motion to dismiss. As such, the Court should not compel one at this time. To do so would allow plaintiffs armed with nothing more than bare conclusions of unlawful governmental conduct to consume scarce governmental resources. The Court should decline that approach and avoid foisting administrative burdens on the government until the Court satisfies itself of its jurisdiction and the threshold viability of Plaintiffs' claims as pled.

Dated: August 21, 2025

Respectfully submitted,

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