

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

M.S., A MINOR, AND CLEANTE	:	No. 3:25-cv-02170(VDO)
STENOR, AS NEXT FRIEND,	:	
Petitioners,	:	
	:	
v.	:	
	:	
ANGIE SALAZAR, ACTING DIRECTOR	:	
OF THE OFFICE OF REFUGEE	:	
RESETTLEMENT, ET AL.,	:	January 16, 2026
Respondents.	:	

RESPONDENTS' SUPPLEMENTAL BRIEF PER ECF NO. 32

Respondents submit this supplemental brief per the Court's Order at ECF No. 32.

A. Scope Of Discovery In This Matter

Petitioners challenge ORR's decision denying C.S.'s application for sponsorship of M.S. Setting aside the manner in which Petitioners' arguments are styled, the substance of their claim is this: Petitioners seek Article III judicial review of a final agency decision. Such action is governed by the APA. Petitioners are not entitled to discovery, and any request for discovery predating production of the certified administrative record is premature.

The APA limits judicial review to the administrative record. 5 U.S.C. § 706. Regardless of the specific arguments advanced in support of a request for judicial review (including constitutional or statutory infirmities), the APA serves as the general basis for an "aggrieved" individual to seek such judicial review of a final agency decision or to compel agency action. *See* 5 U.S.C. § 706(2). As in any APA matter, the Agency will produce a certified administrative record ("CAR" or "record"). The case can and will be adjudicated on that record, once returned. If Petitioners believe there is some defect in the record, then *at that time*, they can raise the issue and seek leave from the Court to conduct limited discovery; Petitioners bear the burden of proving they

are entitled to such discovery. To seek discovery now is premature and without basis in the law.¹ Courts have repeatedly rejected litigants' attempts to circumvent the APA by presenting independent, standalone causes of action to the effect that a particular agency action (or inaction) violated a particular federal statute or constitutional provision. *See, e.g., Chiayu Chang*, 254 F. Supp. 3d 160, 162 (D.D.C. 2017) (disallowing discovery beyond the administrative record); *Lucas R. v. Azar*, No. CV 18-5741-DMG (PLAX), 2018 WL 7200716, at *7 n.12 (C.D. Cal. Dec. 27, 2018) (TVPPRA does not create an independent cause of action separate from the APA).²

B. Scope Of The February 5, 2026 Hearing

The purpose of the hearing is to adjudicate Petitioners' Motion for Preliminary Injunction/Temporary Restraining Order (ECF No. 18) ("Motion"). Petitioners must "show a clear or substantial likelihood of success on the merits" utilizing the relevant standard:

Under the [APA], a reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. . . . The Court's scope of review under the deferential arbitrary and capricious standard is narrow. . . . Agency action is arbitrary and capricious when it fails to examine the relevant data and articulate a satisfactory explanation for its action or when it has entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. . . . The Court thus determine[s] only whether the [agency] examined the relevant data and articulated a satisfactory explanation for [its] decision, including a rational connection between the facts found and the choice made. . . . The Court may not substitute its judgment for that of the agency, [] but must confine itself to determining whether the agency has engaged in reasoned decisionmaking, . . .

¹ See discussion in Respondents' opposition to Petitioners' Motion for Expedited Discovery (ECF No. 33), filed today.

² The TVPPRA does not provide a standalone cause of action because it does not contain an express waiver of the government's sovereign immunity, and the government has not otherwise consented to suit under that statute. *See* 8 U.S.C. § 1232; *Lane v. Pena*, 518 U.S. 187, 192 (1996) ("waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text"). *See also Cooke v. United States*, 918 F.3d 77, 81 (2d Cir. 2019) ("[t]he United States, as sovereign, is immune from suit unless it waives immunity and consents to be sued."); *Stein v. United States Dep't of Educ.*, 450 F. Supp. 3d 273, 275-76 (E.D.N.Y. 2020) ("It is axiomatic 'that federal courts are courts of limited jurisdiction and lack the power to disregard such limits as have been imposed by the Constitution or Congress.' . . . [F]ederal courts lack subject matter jurisdiction over suits brought against the United States unless there exists a specific, express waiver of the government's sovereign immunity.") (quoting *Durant, Nichols Houston, Hodgson & Cortese-Costa P.C. v. Dupont*, 565 F.3d 56, 62 (2d Cir. 2009)).

Rural & Migrant Ministry v. U.S. Env't Prot. Agency, 565 F. Supp. 3d 578, 597-98 (S.D.N.Y. 2020) (citations and internal quotation marks omitted).

Petitioners seek to introduce evidence beyond what was considered by the Agency in rendering its decision. This is not permissible. To allow witness testimony or submission of new evidence beyond what was considered by ORR in making the decision to deny C.S.'s sponsorship application for M.S. – at the February 5 hearing or otherwise – violates the “record rule” and presumption against discovery in APA cases. “The focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 141 (1973). *See also Almaklani v. Trump*, 444 F. Supp. 3d 425, 431 (E.D.N.Y. 2020) (“When a reviewing court considers evidence that was not before the agency, it inevitably leads the reviewing court to substitute its own judgment for that of the agency.”). The APA’s restrictive procedures cannot be cast aside without substantial justification that is not present in this case. *See, e.g., Chiayu Chang*, 254 F. Supp. 3d at 161-62.

This Court can and should order production of the CAR and adjudicate the Motion thereon.

RESPONDENTS,

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