NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VINAY YERRAPAREDDYPEDDIREDDY; ANUSHA RATIKRINDI, Plaintiffs-Appellants, v. MATTHEW T. ALBENCE, in his official capacity as Director of U.S. Immigration and Customs Enforcement; et al., Defendants-Appellees.	No. 21-17070 D.C. No. 2:20-cv-01476-DWL MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
Dominic Lanza, District Judge, Presiding

Submitted December 5, 2022[**]
Phoenix, Arizona

Before: WARDLAW and BUMATAY, Circuit Judges, and SCHREIER,[***] District Judge.

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.

Vinay Yerrapareddypeddireddy and Anusha Katikindri (collectively, the Students) appeal the district court's grant of summary judgment to the government. Before the district court, the Students, who are former F-1 student visa holders ensnared in an ICE sting operation, raised claims under the Administrative Procedure Act and Due Process Clause. They asserted that ICE made an "across-the-board fraud finding" for former enrollees at the University of Farmington, a sham university created by ICE to target fraud in the F-1 student visa program.[1] On appeal, the Students argue that the district court granted summary judgment on the basis of an incomplete administrative record and improperly denied their request to supplement that record. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court properly granted summary judgment on jurisdictional grounds, holding that the Students "identified no agency action, much less a final agency action, that is subject to judicial review." As alleged in the Complaint, the Students identify a "finding that [they] engaged in knowing visa fraud" as the final agency action at issue. The Students concede that the administrative record contains no evidence that ICE made a visa fraud

[1] Before the district court, the Students also raised an APA claim challenging ICE's termination of both F-1 status and records kept by the agency attendant to such status. The Students do not appeal the district court's holding on this claim, and we do not reach this issue on appeal.

determination for either Mr. Yerrapareddypeddireddy or Ms. Katikrindi. Such determination might, in theory, constitute a "final agency action" subject to judicial review. 5 U.S.C. § 704. But we need not reach the question of whether such action was final, as the Students failed to show the agency took any such action.[2]

2. The district court did not abuse its discretion in denying the Students' late-breaking request to supplement the administrative record. *Lands Council v. Powell*, 395 F.3d 1019, 1020 n.11 (9th Cir. 2004). "[A]n agency's statement of what is in the record is subject to a presumption of regularity." *Goffney v. Becerra*, 995 F.3d 737, 748 (9th Cir. 2021). This presumption is subject to limited exceptions and the Students fail to argue that any exception applies. *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 992–93 (9th Cir. 2014) (enumerating circumstances in which we may consider extra-record evidence). The government supplied hundreds of pages of non-public documents pertaining to the Students' immigration histories. The Students' bald assertions that documents establishing a fraud determination might exist do not disturb the presumption of regularity we afford to an agency's representation of the administrative record.

[2] The government argues that, as an additional jurisdictional defect, the Students failed to establish Article III standing. Because this court may "choose among threshold grounds for denying audience to a case on the merits," and the district court properly dismissed on a threshold jurisdictional issue regarding final agency action, we do not address whether either Student had Article III standing. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999).

AFFIRMED.