

## Tired of Waiting? Time to File a Mandamus Action!

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## Mandamus Complaint?

- Does the agency have a:
  - Mandatory, nondiscretionary duty to act?
- Has the agency's action been:
  - Unlawfully withheld, or
  - Unreasonably delayed?
- 5 U.S.C. § 706(1)

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## Mandamus Complaint? (cont.)

- Does the Administrative Procedure Act (APA) apply?

“With due regard for the convenience and necessity of the parties or their representative and within a reasonable time, each agency shall proceed to conclude a matter presented to it.”

- 5 U.S.C. § 555(b), 702.

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## Mandamus Plaintiffs Must:

- Demonstrate clear right to requested relief;
- Show defendant has a clear duty to perform act in question; and
- Establish no other adequate remedy is available.

[See, *Iddir v. INS*, 301 F.3d 492,499 (7th Cir. 2002);  
*Anderson v. Bowen*, 881 F.2d 1, 5 (2d Cir. 1989)]

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## Jurisdiction?

- 28 U.S.C. § 1361 (Mandamus Act)
- 28 U.S.C. § 1331 (Federal Question)
- 5 U.S.C. § 555(b), 704, 706 (APA)

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## Venue?

Any jurisdiction in which:

- A defendant in the action resides;
- A substantial part of the events/omissions giving rise to the claim occurred or a substantial part of property that is subject of the action is situated; or
- The plaintiff resides (if no real property involved).
  - 28 U.S.C. §1391(e)(1)

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## What Parties?

The easy part... your clients...

- Plaintiff(s):
  - Applicant for Benefit
  - Petitioner/Beneficiary of a Petition

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## What Parties? (cont.)

The harder part... defendants:

- Secretary-Level head of responsible agency
  - E.g., Secretary of DHS
- Head of Agency Component
  - E.g., Director of USCIS
- Official Directly Responsible for Adjudication
  - E.g., USCIS Field Office Director
- Other Relevant Officials (Case-Specific)
  - E.g., U.S. Attorney General, Director of FBI

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## What is “Unreasonable”?

- Agency Guidance
- Congressional Guidance
- Facts of Case

[See, *Saleem v. Keisler*, 520 F. Supp. 2d 1048, 1058-59 (W.D. Wis. 2007) (a court need not “find any impropriety behind agency lassitude in order to hold that agency action is unreasonably delayed”).]

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## Clear Right to Relief?

- Statutory/Regulatory Deadline?
- Exceeded the "Reasonable Time Period" Stipulated in the APA?
- Applicant/Petitioner Complied with all Statutory/Regulatory Requirements for Benefit?

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## Take it Back Now Y'all

NOTE: A district court may direct agency to take *some* action. It cannot compel the agency to exercise its discretion in a particular manner. It also cannot grant the benefit or relief sought unless it is clear from the evidentiary record a favorable decision is required.

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## Duty to Perform?

- Relevant Agency Regulation?
  - *Manmohanjit Singh v. Still*, 470 F. Supp. 2s 1064 (N.D. Cal. 2007)
- Statutory Provision?
  - *Kim v. Ashcroft*, 340 F. Supp. 2d 384, 393 (S.D.N.Y. 2004)
- The Labor Certification Context?
  - 20 C.F.R. § 656.17(b), 656.24

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## Adequate Alternative?

Mandamus relief not available where:

- An applicant had an adequate alternative remedy
  - E.g., an administrative appeal

Exhaust alternative remedies before going to court!

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## Exceptions?

- Exhaustion merely a possibility?
  - E.g., Agency delay in issuing an appealable decision?
- Exhaustion should not be required before a court will consider a mandamus action

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## Questions? Comments?

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