

Declaratory Actions, Administrative Procedure Act, and Mandamus

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Jurisdiction

- 28 U.S.C. §1331: district courts have original jurisdiction of civil actions “arising under the Constitution, laws, or treaties of the United States”
- INA §242(a)(1): Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 235(b)(1) of this title) is governed only by chapter 158 of title 28 [review in Court of Appeals]

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Proper Plaintiff (Standing)

- Standing requires:
 - a concrete injury,
 - traceable to defendant’s conduct,
 - that can be redressed by the court.

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Proper Plaintiff (Standing) cont.

Do Beneficiaries Have Standing?

- BIA says NO: 8 CFR 103.3(a)(iii)(B) – specifically excludes beneficiaries as “affected party”

Matter of Sano, 19 I&N Dec. 299 (BIA 1985) (no jurisdiction pursuant to the regulation)

- Courts say YES: *Kurapati v. USCIS*, 775 F.3d 1255, 1259-61 (11th Cir. 2014) (finding beneficiary of a revoked I-140 had standing despite the “affected party” regulation)

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Proper Defendants

5 U.S.C. §702: The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance.

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Venue

28 U.S.C. §1391(e): any judicial district where

- (A) a defendant resides,
- (B) a substantial part of the events or omissions giving rise to the claim occurred, or
- (C) the plaintiff resides

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Time to Sue

28 U.S.C. §2401(a): 6 years after the right of action first accrues

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Claims to Present

FRCP 8(a): the complaint must contain

- (1) a short and plain statement of the basis for the court's jurisdiction;
- (2) a short and plain statement of the claim showing that the plaintiff is entitled to relief;
- (3) a demand for relief

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Claims to Present (cont.)

- Complaint must contain sufficient facts to state a claim for relief that is plausible on its face.
- Court must be able to draw reasonable inference from the facts that defendant is liable.

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Scope of Review

- Under “*Chenery* rule,” court may consider only reasons for decision given by agency;
- Court cannot look for other reasons to affirm and cannot accept other reasons advanced by counsel for the agency on appeal.

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Standard of Review

- Under the APA, court shall hold unlawful agency actions that:
 - Are arbitrary or capricious or an abuse of discretion;
 - Not in accordance with the law; or
 - In excess of authority.

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Review of Discretionary Decisions

INA §242(a)(2)(B): no jurisdiction over any other decision or action “which is specified under this title to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 208(a)”

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Discovery

- Discovery in APA cases is generally limited to the administrative record
- Exceptions exist where:
 - Record is insufficient;
 - Agency may not have considered all relevant factors;
 - Agency relied on documents outside of record; or
 - Agency engaged in bad faith.

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Stay of Removal

- INA § 242(g) to be read narrowly
- Applies only to agency decision or action to:
 - Commence proceedings;
 - Adjudicate cases; or
 - Execute removal orders.

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Mandamus

- 28 USC § 1361.
- Provides a remedy for agency delays;
- Court may order agency to take nondiscretionary action;
- Court cannot order agency to exercise discretion in any particular way.

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Mandamus (cont.)

- Elements for mandamus action:
 - Agency must have a clear, nondiscretionary duty to act;
 - Plaintiff must have a clear right to the relief requested;
 - There can be no alternative remedy available.

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**Questions?
Comments?**

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