

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Christine Denise Handel and Alen Vitas v. Joseph B. Edlow and
Kristi Noem**

Handel v. Edlow, No. 1:25-cv-00584-HBK (E.D. Cal. Jan. 12, 2026) · No. 1:25-cv-00584-HBK · Decided
January 12, 2026

OPINION

Handel

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 CHRISTINE DENISE HANDEL and Case No. 1:25-cv-00584-HBK

12 ALLEN VITAS,

13 ORDER GRANTING DEFENDANTS'

14 Plaintiffs, MOTION TO DISMISS1 13 v. (Doc. 10) 14

15 JOSEPH B. EDLOW and KRISTI NOEM,

16 Defendants. 16

17 Pending before the Court is Defendants' Motion to Dismiss for Lack of Subject Matter 18
Jurisdiction and Failure to State a Claim filed August 11, 2025. (Doc. 10). Plaintiffs filed an 19
Opposition and Defendants' filed a Reply. (Docs. 11, 12). The Court heard oral argument on
20 December 19, 2025 and the matter was submitted on the record. (Doc. 24). For the reasons
21 stated below, the Court grants Defendants' Motion.

22 BACKGROUND

23 Plaintiff Christine Denise Handel ("Handel") is a U.S. citizen residing in Bakersfield, 24
California. (Doc. 1, ¶ 12). Plaintiff Alen Vitas ("Vitas") is a citizen of Croatia who currently 25
resides in Zagreb, Croatia. (Id., ¶ 13). Handel and Vitas were married in November 2020. (Id., ¶
26 27 1 All parties have consented to the jurisdiction of a magistrate judge in accordance with 28
U.S.C. §636(c)(1). (Doc. 17). 28 1 5). On January 8, 2021, Plaintiff Handel filed a Form I-1302
visa petition with the United States 2 Citizenship and Immigration Services ("USCIS") for her
husband, Plaintiff Vitas. (Id., ¶ 20). 3 The USCIS approved Plaintiff Vitas's Form I-130 visa
petition on October 9, 2022. (Id., ¶ 21). 4 After Vitas appeared for a consular interview at the U.S.
embassy in Croatia on April 7, 2023, the 5 consular officer found Vitas inadmissible under 8
U.S.C. § 1182(a)(9)(B) for his previous 6 unlawful presence in the United States and refused
Plaintiff Vitas's visa application. (Id., ¶ 24; 7 Exhibit C). On August 8, 2023, Vitas filed a Form I-

601 Application for Waiver of Grounds of 8 Inadmissibility.³ (Id., ¶ 25). Between August 2023 and September 2024, Plaintiffs sent multiple 9 requests to UCSIS to expedite Vitas’s I-601 waiver application. (Id., ¶ 27). 10 Plaintiffs Handel and Vitas filed a Petition for Writ of Mandamus and Complaint for 11 Injunctive Relief to compel Defendants to act on Plaintiff Vitas’s properly filed I-601 Application 12 for Waiver on Grounds of Inadmissibility. (Doc. 1). Plaintiffs claim they are experiencing 13 extreme hardship and Defendants have unreasonably delayed adjudication of Vitas’s Form I-601 14 waiver application. Defendants move to dismiss the complaint under Rule 12(b)(1) for lack of 15 jurisdiction and 12(b)(6) for failure to state claim. (Doc. 10). In the alternative, Defendants 16 claim that Plaintiffs cannot show an unreasonable delay under the TRAC factors.⁴ (Id. at 23-23).

17 LEGAL STANDARD

18 If the court lacks jurisdictional authority to hear the subject-matter of the dispute, the case 19 must be dismissed. Fed. R. Civ. P. 12(b)(1). “A Rule 12(b)(1) jurisdictional attack may be facial 20 or factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Here, 21 Defendants lodge a facial attack, arguing that the allegations in the complaint as insufficient on 22 23 2 Petition for Alien Relative. 3 According to the complaint, Vitas also filed an I-212 Application for Permission to Reapply for 24 Admission to the United States After Deportation or Removal on August 8, 2023, which was approved. (Doc. 1 , ¶26). Defendants dispute that USCIS has approved Plaintiff Vitas’s Form I-212, Application for 25 Permission to Reapply for Admission to the United States after Deportation or Removal citing to the case status online at <https://egov.uscis.gov/>, by entering Plaintiff Vitas’s application number, which shows the 26 request for expedited review was denied. (Doc. No. 12 at 3, fn. 5). At the hearing, Vitas’s counsel confirmed that his I-212 Application has not been approved. 27 4 Where jurisdiction is found, courts utilize the six-factor test articulated in *Telecommunications Research & Action v. F.C.C.*, 750 F.2d 70, 79 (D.C. Cir. 1984) (known as the “TRAC” factors) to determine 28 whether relief under the APA is warranted. 1 their face to invoke federal jurisdiction. If the court determines that it lacks jurisdiction, the court 2 must dismiss the action. Fed. R. Civ. 12(h)(3). See *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) 3 (jurisdiction cannot be waived or forfeited). 4 A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure “tests the 5 legal sufficiency of a claim.” *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 6 2011). “To survive a [Fed. R. Civ. P. 12(b)(6)] motion to dismiss, a complaint must contain 7 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ 8 ” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 9 544, 570 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere 10 conclusory statements, do not suffice.” Id. In considering a motion to dismiss for failure to state 11 a claim, the court accepts as true the well-pleaded factual allegations and any reasonable 12 inferences drawn from them, but legal conclusions are not entitled to the same assumption of 13 truth. Id.

14 ANALYSIS

15 Plaintiffs assert this court has jurisdiction under the Immigration and Nationality Act 16 (INA),
5 the Declaratory Judgment Act (DJA),⁶ the Administrative Procedures Act (APA),⁷ and 17 the
Mandamus Act⁸ to compel Defendants to adjudicate Vitas’ waiver application. Defendants 18
move to dismiss Plaintiff’s complaint on three grounds: (1) the court lacks jurisdiction under the
19 INA to review a “decision or action” by the USCIS regarding a waiver; (2) waiver applications
20 are committed to the sole discretion of the USCIS, i.e. there is no non-discretionary duty; and,
21 even if there was jurisdiction (not conceded) (3) Plaintiffs have not articulated sufficient facts
to 22 state a plausible claim for unreasonable delay. 23 The Court presumes that Congress
generally does not intend to foreclose judicial review. 24 But this presumption “may be overcome
by specific language in a provision or evidence drawn 25 from the statutory scheme as a whole.”
Patel v. Garland, 142 S. Ct. 1614, 1627 (2022) (cleaned 26 5 8 U.S.C. §1101, et seq.

27 6 28 U.S.C. § 2201

7 5 U.S.C. § 701 et seq. 28 8 28 U.S.C. §§ 1331 and 1361 et seq. 1 up). Here, the relevant statutes
include jurisdiction-stripping language. In relevant part, 8 U.S.C. 2 § 1252 expressly states that
“no court shall have jurisdiction to review ... any other decision or 3 action of the Attorney
General or the Secretary of Homeland Security the authority for which is 4 specified under this
subchapter to be in the discretion of the Attorney General or the Secretary of 5 Homeland
Security.” 8 U.S.C. § 1252(a)(2)(B)(ii). “[T]his subsection” refers to §§ 1151-1382, 6 and thus,
include § 1182, which reads: 7 The Attorney General has sole discretion to waive clause (i) in the
case of an immigrant who is the spouse or son or daughter of a United 8 States citizen or of an
alien lawfully admitted for permanent residence, if it is established to the satisfaction of the
Attorney 9 General that the refusal of admission to such immigrant alien would result in extreme
hardship to the citizen or lawfully resident spouse 10 or parent of such alien. No court shall have
jurisdiction to review a decision or action by the Attorney General regarding a waiver under 11
this clause. 12 8 U.S.C. § 1182(a)(9)(B)(v) (emphasis added). 13 This Court’s analysis is guided
by principles of statutory interpretation. The plain 14 language of the statute is the starting point
for its interpretation. Cmty. for Creative Non-Violence 15 v. Reid, 490 U.S. 730, 739 (1989).
Fundamentally, “unless otherwise defined, words will be 16 interpreted as taking their ordinary,
contemporary, common meaning.” Sandifer v. United States 17 Steel Corp., 571 U.S. 200, 227
(2014) (citation omitted). But often “the ‘meaning – or ambiguity 18 – of certain words or phrases
may only become evident when placed in context.’” King v. 19 Burwell, 576 U.S. 473, 486
(2105). Moreover, it is “a cardinal principle of statutory construction 20 that a statute ought, upon
the whole, to be so construed that, if it can be prevented, no clause, 21 sentence or word shall be
superfluous, void, or insignificant.” TRW Inc. v. Andrews, 534 U.S. 19, 22 31 (2001) (internal
quotation marks omitted) (citing Duncan v. Walker, 533 U.S. 167, 174 23 (2001)); see also Corley
v. United States, 556 U.S. 303, 314 (2009). 24 Plaintiffs argues that § 1182(a)(9)(B)(v) does not
preclude review by this Court because 25 “no decision has been made.” (Doc. 11 at 16).
Essentially, Plaintiff contends that the delay 26 associated with adjudicating Vitas’s Form I-601

waiver is not a “decision or action” prohibited by 27 the statute. 28 The Court disagrees. Although the Ninth Circuit has not directly addressed this issue, this 1 Court is persuaded by the Seventh Circuit’s reasoning and decision in *Soni v Jaddou*, 103 F.4th 2 1271 (7th Cir. 2024), reh’g denied, No. 23-3220, 2024 WL 3683115 (7th Cir. Aug. 6, 2024). 3 There, the circuit court concluded that § 1182(a)(9)(B)(v), which bars review of “a decision or 4 action by the Attorney General regarding a waiver,” applied to USCIS’ delay in processing Form 5 I-601A applications. *Id.* at 1272–73. The Seventh Circuit concluded that “Setting priorities—for 6 example, how many employees to assign to processing applications under this clause, as opposed 7 to handling other duties—is an ‘action regarding’ waivers.” *Id.* *Soni* made clear — “No review 8 means no review; the statute does not need to list all of the many potential legal theories that are 9 not reviewable.” *Id.* at 1273. Numerous other district courts have similarly concluded that the 10 statute bars review of unreasonable-delay claims like the one brought here. *Ortega v. Miller*, No. 11 2025 WL 3006746, at *2 (E.D. Wash. Oct. 27, 2025); *Singh v. USCIS*, 2023 WL 8359889 (M.D. 12 Penn. Dec. 1, 2023); *Soni v. Jaddou*, — F.Supp.3d —, 2023 WL 8004292 (N.D. Ill. Nov. 17, 13 2023); *Ybarra v. Miller*, 2023 WL 7323365 (D. Neb. Nov. 7, 2023); *Reyes Silva v. Miller*, 2023 14 WL 7042347 (D. Neb. Oct. 26, 2023); *Beltran v. Miller*, 2023 WL 6958622 (D. Neb. Oct. 20, 15 2023); *Vijay v. Garland*, 2023 WL 6064326, at *2 (M.D. Fla. Sept. 18, 2023); *Echeverri v. 16 USCIS*, 2023 WL 5350810, at *3–*4 (S.D. Fla. Aug. 21, 2023); *Mafundu v. Mayorkas*, 2023 WL 17 5036142, at *4–*5 (S.D. Fla. Aug. 8, 2023); *Mercado v. Miller*, 2023 WL 4406292, at *2–*3 (D. 18 Nev. July 7, 2023). 19 This Court agrees that the text of § 1182 requires this conclusion. The statute strips the 20 Court of jurisdiction to review “a decision or action ... regarding a waiver[.]” *Id.* Notably, the 21 text of the statute does not stop at “decision” or “action.” It goes further to bar review of such a 22 decision and action “regarding a waiver under this clause.” 8 U.S.C. § 1182(a)(9)(B)(v) 23 (emphasis added). Recently, the Supreme Court found a similar provision in the INA bars 24 judicial review and arrived at this conclusion in part because “the use of ‘regarding’ in a legal 25 context generally has a broadening effect, ensuring that the scope of a provision covers not only 26 its subjects but also matters relating to that subject.” *Patel*, 142 S. Ct. at 1622 (cleaned up); See 27 also *Bouarfa v. Mayorkas*, 604 U.S. 6, 14 (2024) (“Context reinforces what the text makes 28 plain.”). The same reasoning applies here. Thus, the Court finds the jurisdiction-stripping 1 provision extends to broader matters relating to the process to grant or deny a waiver and bars this 2 Court’s review of the delay in adjudicating *Vitas*’s Form I-601 waiver petition. 3 Plaintiffs’ effort to find subject matter jurisdiction for his delay claim under the 4 Mandamus Act, the APA, of the DJA, fares no better. The Mandamus Act provides that “[t]he 5 district courts shall have original jurisdiction of any action in the nature of mandamus to compel 6 an officer or employee of the United States or any agency thereof to perform a duty owed to the 7 plaintiff.” 28 U.S.C. § 1361. Mandamus is an “extraordinary remedy.” *Pittston Coal Group v. 8 Sebben*, 488 U.S. 105, 121 (1988). It prohibits courts from compelling action unless the plaintiff 9 “has a clear right to relief” and defendants has a “clear duty to act.” *Piledrivers' Local Union No.*

10 2375 v. Smith, 695 F.2d 390, 392 (9th Cir.1982). Plaintiffs cite to 8 U.S.C. § 1571(b) to argue
11 that 180-days is the time frame for review of the application. (Doc. No. 11 at 19). While 12
Plaintiffs are correct that § 1571(b) provides “[i]t is the sense of Congress that the processing of
13 an immigration benefit application should be completed not later than 180 days after the initial
14 filing of the application,” the statute’s use of “sense” and “should” signals precatory legislative
15 intent but does not compel a compulsory duty. Black’s Law Dictionary defines “should” as “no
16 more than an obligation of propriety or expediency, or a moral obligation [I]t does not 17
ordinarily express certainty as ‘will’ sometimes does.” Black’s Law Dictionary 1379 (6th 18
ed.1990). Courts define “should” as a permissive not a mandatory term. *Lambert v. Austin Ind.*, 19
544 F.3d 1192, 1196 (11th Cir. 2008); *United States v. Messino*, 382 F.3d 704, 711 (7th Cir. 20
2004); *Atla–Medine v. Crompton Corp.*, 2001 WL 1382592 (S.D.N.Y. 2001). Thus, Plaintiffs 21
cannot show that Defendants have a nondiscretionary duty to adjudicate his Form I-601 waiver 22
application within a specified time frame. 23 The APA provides that “within a reasonable time,
each agency shall proceed to conclude a 24 matter presented to it.” 5 U.S.C. § 555(b). Courts may
“compel agency action unlawfully 25 withheld or unreasonably delayed.” *Id* § 706(1). However,
“[t]he APA, [], does not provide an 26 independent jurisdictional basis; it only prescribes the
standards for reviewing agency action once 27 jurisdiction is otherwise established.” *Staacke v.*
U.S. Secretary of Labor, 841 F.2d 278, 282 (9th 28 Cir.1988). Further, the APA expressly provides
that it does not apply where “statutes preclude 1 judicial review” or where “agency action is
committed to agency discretion by law.” 5 U.S.C. §§ 2 701(a)(1), (2). *Supra*, because the Court
finds that decisions regarding waiver applications are 3 committed solely to the discretion of the
Secretary, the Court finds Plaintiffs’ delay review claim 4 not subject to review under the APA. 5
Finally, the DJA does not provide an independent jurisdictional ground. “[T]he operation 6 of the
Declaratory Judgment Act is procedural only. Congress enlarged the range of remedies 7 available
in the federal courts but did not extend their jurisdiction.” *Skelly Oil Co. v. Phillips 8 Petroleum*
Co., 339 U.S. 667, 671–72, (1950). 9 Further, although one other circuit court found § 1182(a)(9)
(B)(v) does not preclude 10 jurisdiction, it nonetheless found jurisdiction lacking under the APA
and Mandamus Act to 11 review a delay claim. *Lovo v. Miller*, 107 F.4th 199 (4th Cir. 2024)
(finding jurisdiction not 12 stripped given ordinary definition of “decision or action” does not
include inaction or delay, but 13 neither APA nor Mandamus Act permitted review of delay claim
because adjudication of the 14 Form I-601 was committed to USCIS’ discretion by law and
USCIS has no clear duty to act); see 15 also *Mashiach v. Mayorkas*, 2023 9787581, at *4 (S.D. Fl.
Nov. 27, 2023) (finding court lacks 16 jurisdiction under the Mandamus Act to compel USCIS to
act); *Letona Garcia v. Edlow*, 2025 17 WL 3899825 (D. Md. Dec. 17, 2025); *Crus v. United States*
Citizenship & Immigr. Servs., 2025 18 WL 840852, at *4-5 (D.N.H. Mar. 17, 2025). But see
Saavedra Estrada v. Mayorkas, 2023 WL 19 8096897 (E.D. Penn. Nov. 21, 2023), *Lara-Esperanza*
v. Mayorkas, 2023 WL 7003418 (D. Col.
20 Oct. 24, 2023); *Granados v. United States*, 2023 WL 5831515, at *3–*5 (D. Col. Aug. 23,

2023);

21 Bamba v. Jaddou, 2023 WL 5839593, at *4 (E.D. Va. Aug. 18, 2023). 22 Finding it lacks
fundamental subject matter jurisdiction; the Court need not address the 23 TRAC factors because
dismissal is mandatory. Fed. R. Civ. P. 12(h)(3). 24 Accordingly, it is hereby ORDERED: 25 1.
Defendants' Motion to Dismiss (Doc. 10) pursuant to Federal Rule of Civil
26 Procedure 12(b)(1) is GRANTED.

27 2. The Court dismisses the Complaint with prejudice for want of subject-matter 28 jurisdiction.
1 3, The Clerk is directed to terminate any deadlines, and close the case. 2 >| Dated: _ January 12,
2026 lew □□□ fareh fackt

4 HELENA M. BARCH-KUCHTA

; UNITED STATES MAGISTRATE JUDGE

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