

United States District Court
Eastern District of Michigan

John Doe,

Petitioner-Plaintiff, and

James Smith,

Plaintiff,

Civil No. 25-13124

Honorable Mark A. Goldsmith
Mag. Judge Patricia T. Morris

v.

Kevin Raycraft, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Todd Lyons, in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; Joseph B. Edlow, in his official capacity as Director, U.S. Citizenship and Immigration Services, and Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security,

Respondent-Defendants.

Defendants' Motion to Dismiss

Defendants move to dismiss plaintiffs' Second, Third and Fourth claims for relief, all of which seek relief under the Administrative Procedure Act, under Federal

Rules of Civil Procedure 12(b)(1) and 12(b)(6). As described in the attached brief, defendants respectfully request that the Court dismiss these claims because the Administrative Procedure Act does not provide jurisdiction for plaintiffs' Second Claim and plaintiffs have failed to state a claim on their Third and Fourth Claims.

Pursuant to Local Rule 7.1(a), the undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief; opposing counsel thereafter expressly denied concurrence.

Respectfully submitted,

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Dated: October 22, 2025

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Enforcement and Removal Operations,
Detroit Field Office, Immigration and
Customs Enforcement; et al.,

Respondent-Defendants.

Defendants' Brief in Support of Their Motion to Dismiss

Issues Presented

- I. Does the Court lack jurisdiction to hear plaintiffs' Second Claim for relief under the Administrative Procedure Act when it challenges ICE's discretionary revocation of Doe's parole and the Court lacks jurisdiction to review the agency's discretionary decision to revoke a noncitizen's parole?
- II. Does plaintiffs' Third Claim for relief fail to state a valid claim under the Administrative Procedure Act when it alleges that USCIS unreasonably delayed their applications for immigration benefits but USCIS's consideration of their applications is well within normal processing times?

- III. Does plaintiffs' Fourth Claim for relief fail to state a valid claim under the Administrative Procedure Act when it seeks to compel ICE to request expedited adjudication of plaintiffs' USCIS applications, but the agency has no duty to make such a request?

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Introduction

Plaintiff John Doe is a noncitizen with no lawful immigration status who was initially paroled into the United States during his administrative immigration proceedings, but ICE recently revoked his parole after immigration officials encountered him attempting to unlawfully enter Canada. After Doe was detained, he participated in an online marriage ceremony, then his partner, James Smith, applied to USCIS to designate Doe as the spouse of a U.S. citizen, which would entitle Doe to eventually adjust to a lawful immigration status. Two months later, Doe's attorney emailed ICE asking it to request that USCIS expedite Smith's petition, but ICE declined. In this suit, plaintiffs allege that ICE violated the Administrative Procedure Act by revoking Doe's parole (Count Two), that USCIS unreasonably delayed the adjudication of Smith's petition (Count Three), and that ICE unlawfully refused to request that USCIS expedite Smith's petition (Count Four). The Court should dismiss these claims. First, the Court lacks jurisdiction to review ICE's discretionary revocation of Doe's parole and, even if the Court had jurisdiction, the agency's revocation was proper. Second, USCIS's evaluation of Smith's I-130 petition is well within normal processing times. Third, ICE has no legal duty to request that USCIS expedite Smith's petition, so the APA does not provide plaintiffs a cause of action for that claim.

Background

Plaintiff John Doe is a citizen of Haiti. (2023 I-213, ECF No. 6-3, PageID.144). In 2023, he scheduled an appointment at a port of entry to the United States in Arizona and applied for admission. (*Id.* at PageID.145). However, Doe did not have any valid immigration documents at that time, so CBP officers charged him with inadmissibility, arrested him, initiated removal proceedings against him, then paroled him into the United States under 8 U.S.C. § 1182(d)(5) while his administrative removal proceedings were pending. (*Id.* at PageID.145; NTA, ECF No. 1-2, PageID.43, 46). Doe's parole was scheduled to expire in December 2025. (I-94, ECF No. 1-3, PageID.48).

In 2024, Doe applied for asylum in his immigration proceedings, (I-589, ECF No. 1-4, PageID.50), and applied to USCIS for Temporary Protected Status, (I-821, ECF No. 1-5, PageID.52).

In April 2025, Doe traveled to the Canadian border on the Ambassador Bridge in a commercial vehicle. (Compl., ECF No. 1, PageID.10). Canadian officials denied him entry to Canada and returned him to the U.S. Customs and Border Protection station at the bridge. (*See id.*). CBP officials detained Doe and served him with an arrest warrant and a notice that the agency intended to detain him during the remainder of his administrative immigration proceedings. (*See* I-200, ECF No. 6-4, PageID.146; I-286, ECF No. 6-5, PageID.147). Officials read the arrest warrant and

notice of detention to Doe in his native language on that date. (*See id.*). Doe has been detained at an immigration detention center since April 2025. (*See Doe Decl.*, ECF No. 1-15, PageID.100).

On July 3, 2025, Doe participated in a wedding ceremony by videoconference with plaintiff James Smith and an officiant located in Utah. (*See Marriage Lic.*, ECF No. 1-10, PageID.77). A week later, on July 11, 2025, Smith submitted an I-130 petition to USCIS seeking to classify Doe as his immediate relative. (I-130, ECF No. 1-11, PageID.81). The normal processing time for USCIS to adjudicate an I-130 petition is 52 months. (Exhibit 1– I-130 Processing Time at 2).

Later in July 2025, Doe requested that ICE parole him for the remainder of his administrative immigration proceedings. (Parole Request, ECF No. 1-13, PageID.90). ICE denied Doe’s request because he had not sufficiently identified where he would reside if paroled, officers believed he was not honest about his reason for trying to cross the Ambassador Bridge, and officers believed he posed a flight risk. (*See Parole Worksheet*, ECF No. 1-14, PageID.98; *Parole Notice*, ECF No. 1-14, PageID.95).

On August 18, 2025, Doe submitted an application to USCIS seeking to adjust his status to lawful permanent residence. (I-485, ECF No. 1-11, PageID.82). The average processing time for USCIS to adjudicate an I-485 application once the

applicant becomes eligible for adjustment of status is 24 months. (Exhibit 2 – I-485 Processing Time at 2).

On September 5, 2025, plaintiffs’ counsel emailed ICE’s general counsel’s office and asked that ICE request that USCIS expedite plaintiffs’ I-130 and I-485 applications. (Emails, ECF No. 1-12, PageID.87). After reviewing the matter, ICE declined to request that USCIS expedite plaintiffs’ applications. (*Id.* at PageID.85).

On October 16, 2025, USCIS notified plaintiffs that it intended to deny Smith’s I-130 application because Smith and Doe’s virtual marriage ceremony was not sufficient to qualify Doe as Smith’s spouse under 8 U.S.C. § 1101(a)(35). (Exhibit 3 – NOID at 1). Plaintiffs must respond to USCIS’s notice by November 7, 2025. (*Id.* at 2).

The immigration court has scheduled a merits hearing on Doe’s application for asylum for November 14, 2025. (Compl., ECF No. 1, PageID.28).

Plaintiffs filed this suit, which combined a petition for a writ of habeas corpus and claims under the Administrative Procedure Act (APA), on October 3, 2025. (*See* Compl., ECF No. 1, PageID.1). In their complaint, they assert three claims under the APA. (*See id.* at PageID.31–36). In plaintiffs’ second claim for relief, Doe argues that ICE violated the APA when it revoked his parole and arrested him at the Ambassador Bridge. (*See id.* at PageID.31–34). In plaintiffs’ third claim for relief, Smith and Doe allege that USCIS has unreasonably delayed adjudicating their I-130

and I-485 applications, respectively. (*See id.* at PageID.34–36). In their fourth claim for relief, plaintiffs allege that ICE violated the APA when it declined to request that USCIS expedite plaintiffs’ I-130 and I-485 applications. (*See id.* at PageID.36–37).

Standard of Review

Under Federal Rule of Civil Procedure 12(b)(1), parties may move to dismiss when a claim facially lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1); *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). When reviewing a facial attack on subject matter jurisdiction, “the court must take the material allegations of the petition as true and construed in the light most favorable to the nonmoving party.” *Ritchie*, 15 F.3d at 598.

On a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a district court “construes the complaint in the light most favorable” to the Plaintiffs and determines whether their “complaint ‘contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *See Heinrich v. Waiting Angels Adoption Servs., Inc.*, 668 F.3d 393, 403 (6th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “[T]he court may, in undertaking a 12(b)(6) analysis, take judicial notice of matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint.” *Elec. Merch. Sys. LLC v. Gaal*, 58 F.4th 877, 883 (6th Cir. 2023) (quotations omitted).

Argument

The Court should dismiss plaintiffs' Second, Third, and Fourth Claims for Relief. First, the Court should dismiss plaintiffs' second claim for lack of subject matter jurisdiction because a statute precludes judicial review of the agency's discretionary decision to revoke Doe's parole after Doe was arrested while attempting to unlawfully enter Canada, so the APA cannot grant the Court jurisdiction to hear this claim. Second, the Court should dismiss plaintiffs' third claim because they have not plausibly alleged that USCIS unreasonably delayed the adjudication of their applications for immigration benefits. Third, the Court should dismiss plaintiffs' fourth claim because the APA only authorizes the Court to compel agency action that is required by law and there is no law requiring that ICE request that another agency expedite matters within the other agency's jurisdiction.

I. The Court Lacks Jurisdiction to Review ICE's Revocation of Doe's Parole

"The doctrine of sovereign immunity removes subject matter jurisdiction in lawsuits against the United States unless the government has consented to suit." *Beamon v. Brown*, 125 F.3d 965, 967 (6th Cir. 1997). "Although the APA provides a broad waiver of sovereign immunity, codified at 5 U.S.C. § 702, the waiver is limited by . . . § 701(a)(1) [which] provides that Chapter 7 of the APA, including § 702's waiver of sovereign immunity, does not apply to cases in which 'statutes preclude judicial review.'" *Id.*

A statute precludes APA review ““when Congress has dealt in particularity with a claim and [has] intended a specified remedy’—including its exceptions—to be exclusive.” *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 567 U.S. 209, 216 (2012). When that is the case, “that is the end of the matter; the APA does not undo the judgment.” *Id.* In this way, the provision precluding APA review if another statute precludes review, “prevents plaintiffs from exploiting the APA’s waiver to evade limitations on suit contained in other statutes.” *Id.* at 215.

With respect to many aspects of immigration enforcement, Congress has stripped federal courts “of jurisdiction to review claims that would otherwise fall within [their] purview.” *Hatchet v. Andrade*, 106 F.4th 574, 578 (6th Cir. 2024). One such jurisdiction-stripping statute is 8 U.S.C. § 1252(a)(2)(B)(ii). Under § 1252(a)(2)(B)(ii), “no court shall have jurisdiction to review” a “decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter [8 U.S.C. § 1151 to § 1382] to be in the discretion of the Attorney General or the Secretary of Homeland Security.” *Id.*

Under 8 U.S.C. § 1182(d)(5), the Secretary of Homeland Security has discretion to parole noncitizens who would otherwise be detained during their administrative immigration proceedings. *See* 8 U.S.C. § 1182(d)(5)(A). Specifically, the statute states that the Secretary may “in his discretion parole into the United

States for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.” *Id.* The statute also specifies that “when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody” of the agency. *Id.*

Because ICE has discretion to grant and revoke a noncitizen’s § 1182(d)(5) parole, the agency’s decision is not reviewable in federal court under 8 U.S.C. § 1252(a)(2)(B)(ii). *See Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010); *Samirah v. O’Connell*, 335 F.3d 545, 549 (7th Cir. 2003) (“Because the Attorney General’s decision to grant or revoke parole is squarely within the ambit of § 1252(a)(2)(B)(ii), we hold that the district court lacked jurisdiction to review, much less reverse, the revocation of Samirah’s parole”). For instance, in *Hassan*, a noncitizen obtained parole under § 1182(d)(5) so that he could leave the country while his application to adjust status was pending. *Hassan*, 593 F.3d at 789–90. However, while he was abroad, USCIS adjudicated his application, ICE revoked his parole, and officials would not allow him to re-enter the United States. *Id.* The noncitizen filed suit challenging the agency’s revocation of parole, but the Ninth Circuit found that federal courts lacked jurisdiction to review the agency’s discretionary decision to revoke parole under § 1182(d)(5) because § 1252(a)(2)(B)(ii) stripped federal courts of jurisdiction to hear such claims. *Id.*

Here, just as in *Hassan*, Doe cannot establish the Court’s jurisdiction to hear his challenge to the Secretary’s discretionary revocation of his parole. ICE exercised its discretion to parole Doe under § 1182(d)(5). (NTA, ECF No. 1-2, PageID.43). And, it further exercised its discretion to revoke his parole when it arrested him after he attempted to enter Canada. (*See* Compl., ECF No. 1, PageID.2). Under the plain language of the statute, the agency’s discretionary decisions regarding Doe’s parole are not reviewable in federal court. 8 U.S.C. § 1252(a)(2)(B)(ii); *Hassan*, 593 F.3d at 789–90; *Samirah*, 335 F.3d at 549. Therefore, the Court lacks jurisdiction to hear Doe’s second claim for relief challenging the agency’s revocation of his parole.

Further, even if the Court had jurisdiction to review the agency’s decision to revoke Doe’s parole, Doe’s challenge is unpersuasive. Doe argues that the agency did not comply with its own regulations because it did not provide him notice that his parole had been revoked. (Compl., ECF No. 1, PageID. 3). Under the agency’s regulations, “parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole.” 8 C.F.R. § 212.5(e)(2)(i). The “written notice” contemplated by the rule is “the charging document” that is served on a noncitizen when they are arrested. *See id.* The term “upon” is undefined, so it must be given its plain meaning, *Vander Boegh v. EnergySolutions, Inc.*, 772 F.3d 1056, 1060 (6th Cir. 2014), and the plain meaning of “upon” is “thereafter” or “thereupon.” OED, <https://www.oed.com/dictionary/>

upon_adv?tl=true (last visited 10/21/2025) (defining “Upon” as “On or upon that (in time or order); thereafter, thereupon.”). Thus, the agency satisfies its obligations under the regulation if it notifies a noncitizen in writing that the noncitizen is being detained and the reasons for detention and provides that writing to the noncitizen at the time of detention or thereafter. *See* 8 C.F.R. § 212.5(e)(2)(i).

Here, the agency provided Doe proper notice that it had revoked his parole. Immigration officials served Doe notice of his arrest and a notice indicating that it intended to detain him for the duration of his administrative immigration proceedings and read those documents to him in his native language on the day he was arrested. (*See* I-200, ECF No. 6-4, PageID.146; I-286, ECF No. 6-5, PageID.147).¹ The regulation does not require any prior notice of a revocation and the written charges provided by the agency satisfy the plain language of the regulation because they clearly notify Doe of his detention and provide him the reason for his detention. (*See id.*); 8 C.F.R. § 212.5(e)(2)(i). Therefore, the regulation does not support Doe’s argument.

Similarly, Doe cannot plausibly argue that the agency did not make an individualized determination when it revoked his parole. As an initial matter, although the statute only allows the Secretary to grant parole on a case-by-case basis,

¹ In addition, the agency issues a notice to appear at the initiation of foral removal proceedings, *see* 8 U.S.C. § 1229(a)(1), and Doe properly received that notice at that time. (NTA, ECF No. 1-2, PageID.43–46).

the statute does not contain the same limitation on the Secretary's discretion to revoke parole. *See* 8 U.S.C. § 1182(d)(5)(A); *Doe v. Noem*, 152 F.4th 272, 286 (1st Cir. 2025) (“the statutory text thus reflects a deliberate choice on the part of Congress to require the Secretary to implement a case-by-case approach to granting parole, but not to end such grants.”).

In addition, even if the agency could only revoke parole on a case-by-case basis, that is what the agency did in this case. Doe was encountered after attempting to leave the United States a few months before his parole was set to expire and during that encounter he gave inconsistent statements to immigration officials. (I-94, ECF No. 1-3, PageID.48; Parole Worksheet, ECF No. 1-14, PageID.98). Based on these facts, which strongly suggest that Doe was attempting to leave the country before his parole expired, the agency properly concluded he was a flight risk and revoked his parole. (*See id.*). Therefore, even if the statute required the kind of case-by-case analysis Doe suggests, Doe has not shown that the agency's revocation of his parole was arbitrary or capricious because it served the legitimate purpose of ensuring that he would appear for his administrative immigration proceedings. *See Kroger Co. v. Reg'l Airport Auth. of Louisville & Jefferson Cnty.*, 286 F.3d 382, 389 (6th Cir. 2002) (“The arbitrary or capricious standard is the least demanding review of an administrative action.”).

II. USCIS Has Not Unreasonably Delayed Adjudicating Plaintiffs' Requests for Immigration Benefits

A district court may review whether an agency's action is unreasonably delayed under the Administrative Procedure Act on a motion to dismiss. *See Barrios Garcia v. U.S. Dep't of Homeland Sec.*, 25 F.4th 430, 451 (6th Cir. 2022) (reviewing unreasonable delay under Rule 12(b)(6)). When doing so, "the court is not determining whether there has been an unreasonable delay; rather, it is determining whether plaintiffs' complaint has alleged facts sufficient to state a plausible claim for unreasonable administrative delay." *Yafai v. U.S. Dep't of State*, No. 23-13199, 2024 WL 2806948, at *4 (E.D. Mich. May 31, 2024) (quotations and citations omitted).

To state a claim for unreasonable delay, plaintiffs must first allege that the agency "failed to take a discrete agency action that it is required to take," *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis omitted), and, second, they must plead facts demonstrating that the delay was unreasonable, 5 U.S.C. § 706(1). "When resolving whether an agency action has been unreasonably delayed, the federal courts consider six factors from *TRAC v. FCC*, 750 F.2d 70 (D.C. Cir. 1984)." *Barrios Garcia*, 25 F.4th at 451. Those factors are:

- (1) the time agencies take to make decisions must be governed by a rule of reason;

- (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;
- (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;
- (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority;
- (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and
- (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

TRAC, 750 F.2d at 80. As described below, none of these factors favor plaintiffs, therefore, plaintiffs have failed to plead that the agency has unreasonably delayed the adjudication of Doe’s I-485 application.

A. *TRAC Factors 1 & 2*

“The first factor [whether the process is governed by a rule of reason] is the most important *TRAC* factor, and is typically considered together with the second *TRAC* factor [whether Congress has established a statutory deadline].” *Arab v. Blinken*, 600 F. Supp. 3d 59, 69 (D.D.C. 2022) (citations omitted). Whether a “rule of reason” exists for agency action “cannot be decided in the abstract, by reference to some number of months or years beyond which agency action is presumed to be unlawful, but will depend in large part ... upon the complexity of the task at hand, the significant (and permanence) of the outcome, and the resources available to the

agency.” *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1102 (D.C. Cir. 2003). Here, *TRAC* factors 1 and 2 favor USCIS for both Smith’s I-130 petition and Doe’s I-485 petition.

1. Smith’s I-130 Petition

Typically, an otherwise eligible noncitizen seeking to adjust to a lawful immigration status must wait for the Department of State to make a visa available. 8 U.S.C. § 1151(a). There is a significant backlog of applications for immigrant visas and the Department of State has not made visas available for most applications filed within the past five years. (*See* Exhibit 4 – Visa Bulletin).

Immediate relatives of U.S. citizens are an exception to this rule. *See* 8 U.S.C. § 1151(b)(2)(A)(i). Immediate relatives are not subject to the numerical limits on visas, so they can seek to adjust their immigration status to lawful permanent residence without waiting for the Department of State to issue them an immigrant visa. *See id.* A spouse is considered an immediate relative. *See id.*

To prove that a noncitizen spouse is an immediate relative of a U.S. citizen (which would allow them to adjust status without waiting for an immigrant visa), a U.S. citizen must submit an I-130 petition to USCIS to establish that the petitioner and beneficiary are, in fact, immediate relatives. *See* 8 U.S.C. § 1154(a)(1)(A); 8 C.F.R. § 204.2. With respect to I-130 applications for spouses, some noncitizens illegally attempt to obtain the immigration benefits reserved for the immediate

relatives of U.S. citizens by committing marriage fraud. *See, e.g., Sholanke v. USCIS*, 854 F. Appx 23, 24 (6th Cir. 2021); 8 U.S.C. § 1154(c); 8 C.F.R. § 204.2(a)(1)(ii). Therefore, the I-130 petition must include sufficient information about the U.S. citizen sponsor and the noncitizen beneficiary spouse to allow the agency to confirm that the beneficiary is the sponsor's legitimate spouse. *See* 8 C.F.R. § 240.2; (Exhibit 5 – I-130 Application Form). USCIS generally adjudicates I-130 petitions in the order they are received and, due to the high volume of I-130 petitions USCIS receives each year, it usually takes the agency more than four years to adjudicate an I-130 petition. (*See* Exhibit 1 – I-130 Processing Times at 1–2).

USCIS's approval of an I-130 petition establishes that the beneficiary is properly classified as an immediate relative, but it does not automatically grant the beneficiary lawful immigration status. *See* 8 U.S.C. § 1255(a); 8 C.F.R. §§ 245.1, 245.2; *see also Cika v. Holder*, 344 F. App'x 208, 216 n.9 (6th Cir. 2009) (acknowledging that an approved I-130 does not automatically entitle the beneficiary to adjust status); (Exhibit 6 – I-130 Instructions).

Here, *TRAC* factors 1 and 2 weigh in the agency's favor for Smith's I-130 petition. The agency operates based on a rule of reason by adjudicating applications in the order they are received, Congress has not set a deadline for the agency to adjudicate I-130 petitions, and the alleged unreasonable delay in this case, which is from July 11, 2025 until October 16, 2025 (a period of less than six months) is well

within the normal processing time of 52 months for I-130 petitions. *See, e.g., Arab*, 600 F. Supp. 3d at 68 n.7 (calculating delay of thirty months based on time between “[t]he last government action on this matter” and the date of the complaint); *see also Isse v. Whitman*, No. 22-3114, 2023 WL 4174357, at *6 (D.D.C. June 26, 2023). Therefore, plaintiffs have not plausibly alleged that the agency’s review of Smith’s I-130 petition lacks a rule of reason or violates a Congressional deadline. *See Mashpee*, 336 F.3d at 1102.

2. Doe’s I-485 Application

In order to adjust status to lawful permanent residence, the beneficiary of an approved I-130 must submit an I-485 application and meet the other requirements contained in the Code of Federal Regulations, such as demonstrating their admissibility, their eligibility, undergoing a medical examination in some circumstances, and demonstrating that they merit adjustment of status as a matter of the agency’s discretion. *See* 8 C.F.R. §§ 245.1, 245.2; *see also Chan v. Immigration and Naturalization Service*, 631 F.2d 978, 980 (D.C. Cir. 1980), *cert. denied*, 450 U.S. 921, 101 S.Ct. 1371 (1981).

Lawful permanent resident status allows a noncitizen to permanently live and work in the United States, receive public benefits, and serve in some branches of the

benefits, there are rigorous requirements for applying for permanent residence. *See* 8 C.F.R. §§ 245.1, 245.2.

Here, USCIS has not unreasonably delayed adjudicating Doe's I-485 application. A noncitizen is not eligible to apply for adjustment of status (by submitting an I-485 application) until an immigrant visa becomes available or they establish that they are exempt from the numerical limits on immigrant visas by, for example, establishing that they are an immediate relative of a U.S. citizen with an approved I-130 petition. *See* 8 C.F.R. §§ 103.2(b)(1), 245.1(a). Doe does not have a visa and he has not been designated an immediate relative of a U.S. citizen. (*See* Exhibit 3 – NOID at 1). Therefore, he cannot plausibly allege that USCIS has unreasonably delayed adjudicating his application for benefits he is not entitled to.

B. TRAC Factors 3 & 5

The third factor considers whether “human health and welfare are at stake.” *TRAC*, 750 F.2d at 80. The fifth factor considers “the nature and extent of the interests prejudiced by delay.” *Id.* A plaintiff must demonstrate more than merely suffering the natural consequences of the “uncertainty that results any time an individual must continue to wait to secure a benefit.” *Da Costa v. Immigr. Inv. Program Off.*, 80 F.4th 330, 344–45 (D.C. Cir. 2023).

Here, Factors 3 & 5 do not favor plaintiffs. Plaintiffs allege that the agency's alleged delay has prolonged Doe's detention. (Compl., ECF No. 1, PageID.34).

While prolonged detention would typically weigh in plaintiffs favor on this factor, they do not in this case because USCIS has determined that Doe is not eligible for the benefits he seeks. (*See* Exhibit 3 – NOID at 1–2). Therefore, USCIS’s adjudication of plaintiffs’ applications, even if expedited, will not grant Doe any relief from his detention or removal. (*See id.*).

C. TRAC Factor 4

The fourth *TRAC* factor focuses on “the effect of expediting delayed action on agency activities of a higher or competing priority.” *TRAC*, 750 F.2d at 80. Courts recognize that judicial orders placing the plaintiff at the head of the line to the detriment of others who have been waiting longer, as plaintiffs request in this case, are discouraged in most circumstances. *See, e.g., Da Costa*, 80 F.4th at 343–44; *Mashpee*, 336 F.3d at 1100–02. However, that presumption may be overcome if the other *TRAC* factors weigh strongly in the plaintiffs’ favor. *See Barrios Garcia*, 25 F.4th at 451–55.

Here, the fourth factor weighs in favor of defendants. USCIS has notified plaintiffs that it intends to finally deny Smith’s I-130 petition within two weeks, which will negate Doe’s I-485 petition. (*See* Exhibit 3 – NOID at 1). USCIS has limited resources to review and adjudicate applications and any order compelling the agency to adjudicate plaintiffs’ applications on a faster timeline is unlikely to benefit plaintiffs in any meaningful way and will only disadvantage other worthy

applicants who have been waiting longer. (*See id.*); *see also Ahmed v. Blinken*, No. 23-11860, 2024 WL 4172525, at *6 (E.D. Mich. Sept. 12, 2024); *Yafai*, 2024 WL 2806948, at *5.

D. TRAC Factor 6

Under the sixth *TRAC* factor “the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.” *TRAC*, 750 F.2d at 80 (internal quotation marks omitted). Plaintiffs do not allege that USCIS acted in bad faith. As a result, this factor does not favor Plaintiffs.

III. ICE Has No Duty to Request that USCIS Expedite Plaintiffs’ Applications for Immigration Benefits

The Administrative Procedure Act allows suits against federal agencies if the complaint “stat[es] a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity” and authorizes courts to compel “agency action unlawfully withheld.” 5 U.S.C. §§ 702, 706(1). Therefore, “the only agency action that can be compelled under the APA is action legally *required*” and “a claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*.” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63–64 (2004) (emphasis in original).

Here, plaintiff has not plausibly alleged that ICE violated the APA when it

request, (*see* Compl., ECF No. 1, PageID.23–25, 36), because there is none. In any event, this issue is likely moot because USCIS has indicated that it intends to deny Smith’s petition long before the normal processing time for such applications, even though ICE did not request that USCIS expedite its review. (*See* Exhibit 3 – NOID). Therefore, plaintiffs have no cause of action under the APA for their Fourth Claim for relief.

Conclusion

Respondents respectfully request that the Court dismiss plaintiffs’ Second Claim for Relief because the Court lacks jurisdiction to hear that claim and dismiss plaintiffs’ Third and Fourth Claims for relief because plaintiffs have not stated a plausible claim for relief under the APA on those claims.

Respectfully submitted,

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Dated: October 22, 2025

Certificate of Service

I hereby certify that on October 22, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey

Zak Toomey
Assistant U.S. Attorney