District Judge Marsha J. Pechman

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FELIX RUBIO HERNANDEZ, Plaintiff, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; ALEJANDRO MAYORKAS, Secretary of Homeland Security; UR M. JADDOU, Director, U.S. Citizenship and Immigration Services, Defendants.	Case No. 2:22-cv-00904-MJP DEFENDANTS' MOTION TO DISMISS Noted For Consideration: September 30, 2022

United States Citizenship and Immigration Services (USCIS) denied Plaintiff Felix Rubio Hernandez's application to adjust his status to a legal permanent resident. Now he asks this Court to replace USCIS's judgment with its own and grant his application. But the Supreme Court recently held in *Patel v. Garland* that district courts do not have jurisdiction to review *any decision* concerning whether to grant relief under 8 U.S.C. § 1255. Here, Rubio Hernandez requests relief under § 1255(m). Even if this Court found *Patel* inapplicable, courts in the Ninth Circuit have held that decisions to adjust status, including those under § 1255(m), are committed to agency discretion and beyond judicial review. Thus, this Court should dismiss Rubio Hernandez's complaint because it does not have subject-matter jurisdiction over his claims.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

RELEVANT FACTS AS ALLEGED BY PLAINTIFF

The United States provides the following facts as alleged for purposes of this motion. Rubio Hernandez is a native and citizen of Mexico and entered the United States in 1991. Compl., ¶ 21. While present in the United States, Rubio Hernandez assisted law enforcement investigations related to his former wife and her family, which led to charges of assault and domestic violence. *Id.* at ¶ 22. In 2014, USCIS approved an application for a U nonimmigrant status, which grants status for individuals who assist with investigating or prosecuting specified crimes, including domestic violence and assault. *Id.* at ¶ 25.

Then in 2017, Rubio Hernandez requested an adjustment of status under 8 U.S.C. § 1255(m). USCIS is responsible for adjudicating such applications. In December 2018, USCIS asked for evidence related to Rubio Hernandez's multiple arrests and convictions, including:

- a 1991 arrest and conviction for petty theft
- a 2000 arrest for DUI
- a 2001 arrest for assault
- a 2001 arrest for driving with a suspending license
- a 2004 arrest for fourth-degree assault
- a 2012 arrest by Customs and Border Protection for illegal entry
- a 2013 arrest for fourth-degree assault
- a 2013 criminal trespass case.

Compl., ¶27. Rubio Hernandez provided some of the information USCIS sought but not all. *Id.* USCIS also asked why he omitted some of his criminal history from his U nonimmigrant application. *Id.* After reviewing the submissions, USCIS issued a Notice of Intent to Deny for a variety of reasons, including Rubio Hernandez's failure to include police reports for five of his arrests. *Id.* at ¶ 29. Ultimately, USCIS denied Rubio Hernandez's application, finding that while some factors weighed in his favor, ultimately others weighed more heavily against. *Id.* at ¶¶ 30, 34. This denial was based on USCIS's weighing of the "positive equities" against the "negative

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

factors" and USCIS determining that Rubio Hernandez failed to establish an adjustment was warranted on humanitarian grounds, to ensure family unity, or in the public interest, as required by 8 U.S.C. § 1255(m)(1)(B). *Id.* at ¶ 38.

Rubio Hernandez then appealed USCIS's denial to its office of Administrative Appeals (AAO). Compl., ¶39. Mirroring the same issues he raises here, Rubio Hernandez argued that USCIS's decision was arbitrary and capricious in its balancing of the equities, especially because certain police reports were no longer available. *Id.* The AAO dismissed the appeal and also found that the positive factors did not outweigh the negative factors. *Id.* at ¶¶ 40-43.

Now Rubio Hernandez brings claims under the Administrative Procedures Act (APA) alleging that the following USCIS actions were arbitrary and capricious: (1) denial of his application based on a failure to submit evidence, when that evidence no longer existed; (2) consideration of his 2004 arrest for assault when he was found not guilty of that crime; (3) consideration of his 2001 simple assault arrest when that charge was dismissed; and (4) reliance on events that USCIS had already considered when it granted his U-status application.

REGULATORY BACKGROUND

The Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101-1503, and its regulations, govern U.S. immigration law. In October 2000, Congress amended the INA to create a new nonimmigrant classification— U nonimmigrant status—for victims of qualifying crimes who cooperate with law enforcement in the investigation or prosecution of those crimes. *See* Victims of Trafficking and Violence Protection Act (VTVPA), Pub. L. 106-386, 114 Stat. 1464; codified at 8 U.S.C. § 1101(a)(15)(U). The Department of Homeland Security (DHS) has promulgated regulations that give USCIS sole jurisdiction over petitions seeking U nonimmigrant status (U visa petitions). 8 C.F.R. § 214.14.

A petitioner is eligible for U nonimmigrant status if the Secretary of Homeland Security, and USCIS as his designee, determines that: (1) he has suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime; (2) he has credible or reliable

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

information about the qualifying crime; (3) he has been helpful, is being helpful, or is likely to be helpful to law enforcement in investigating or prosecuting the qualifying crime; (4) the qualifying crime occurred in the United States, its territories, or possessions or violated a federal law that provides for extraterritorial jurisdiction; and (5) he is admissible to the United States or has had all grounds of inadmissibility waived. 8 C.F.R. § 214.14(b); *see also* 8 U.S.C. §§ 1101(a)(15)(U), 1182(a), 1184(p); 8 C.F.R. §§ 214.1(a)(3)(i), 214.14(c)(2)(iv). These U nonimmigrant eligibility requirements are nondiscretionary, but the determination as to whether to grant a waiver of inadmissibility is committed to USCIS's discretion. *See* 8 U.S.C. §§ 1182(d)(3)(A)(ii), (d)(14); 8 C.F.R. § 212.17. If USCIS approves the U visa petition, and the petitioner is present in the United States, the petitioner receives lawful nonimmigrant status and employment authorization for up to four years. 8 U.S.C. § 1184(p)(6); 8 U.S.C. § 1184(p)(3)(B); 8 C.F.R. § 274a.12(a)(19).

After three years of continuous physical presence in the United States as a U nonimmigrant, a U nonimmigrant may seek to adjust status to that of a permanent resident under 8 U.S.C. § 1255(m). Whether to grant permanent resident status is distinct from the initial U visa determination and is left to the discretion of the DHS Secretary, as delegated to USCIS:

> (1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 1101(a)(15)(U) of this title to that of an alien lawfully admitted for permanent residence…if—
>
> (A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 1101(a)(15)(U) of this title; and
>
> (B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

8 U.S.C. § 1255(m).

The enacting statute, the VTVPA, states that § 1255(m) provides the agency "discretion to convert the status of [U] nonimmigrants to that of permanent residents when doing so is

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

justified on humanitarian grounds, for family unity, or is otherwise in the public interest." Pub. L. 106–386, Sec. 1513(a)(2)(C). The regulations implementing the statute echo this, providing: "The decision to approve or deny a Form I-485 filed under [8 U.S.C. § 1255(m)] is a discretionary determination that lies solely within USCIS's jurisdiction." 8 C.F.R. § 245.24(f).

STANDARD OF REVIEW

A. Motion to Dismiss under 12(b)(1).

A lawsuit should be dismissed under Federal Rule of Civil Procedure 12(b)(1) when the court lacks subject-matter jurisdiction over the claim. "Jurisdiction is a threshold separation of powers issue, and may not be deferred until trial." *PW Arms, Inc. v. United States*, 186 F. Supp. 3d 1137, 1142 (W.D. Wash. 2016) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998)). As a starting point for this analysis, it is assumed that the district court lacks subject-matter jurisdiction, and the party asserting the claim bears the burden of establishing that subject-matter jurisdiction exists. *In re Dynamic Random Access Memory Antitrust Litig.*, 546 F.3d 981, 984 (9th Cir. 2008) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). Dismissal is appropriate if the complaint, considered in its entirety, fails to allege sufficient facts on its face to establish subject-matter jurisdiction. *Id.* at 984–85.[1] The party invoking the Court's jurisdiction bears the burden of proof. *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001).

ARGUMENT

There are two statutes that prevent jurisdiction here, each for independent reasons. First, § 1252(a) removes any jurisdiction the Court would otherwise have to review any decision made pursuant to § 1255, which this was. Second, as courts in this circuit have held, USCIS's decision to adjust status under § 1255(m) is committed to agency discretion and is therefore not susceptible to attack under the APA. If the Court agrees with either position, it must dismiss this matter for lack of jurisdiction.

[1] A party can also attack subject-matter jurisdiction factually, even at the pleading stage. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). But the government does not do so here.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

A. Congress has removed the Court's jurisdiction over reviewing any judgment made under § 1255.

The Supreme Court recently explained that "Congress has sharply circumscribed judicial review of the discretionary-relief process" in certain immigration matters. *Patel v. Garland*, __ U.S. __, 142 S. Ct. 1614, 1619 (2022). In particular, 8 U.S.C. § 1252(a)(2)(B)(i) prevents judicial review of any agency judgments of whether to grant an adjustment of status application under 8 U.S.C. § 1255. Section 1252(a)(2)(B)(i) provides:

> Notwithstanding any other provision of law (statutory or nonstatutory), including 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, […], no court shall have jurisdiction to review (i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title . . .

8 U.S.C. § 1252(a)(2)(B)(i). Despite the plain language saying that courts do not have "jurisdiction to review any judgment…under section…1255," there has been considerable litigation and confusion over the metes and bounds of this statute, in particular what constitutes a "judgment." *See, e.g., Mamigonian v. Biggs*, 710 F.3d 936, 943-46 (9th Cir. 2013). But the Supreme Court recently provided clarity, finding that the term encompasses *all judgments* related to the denial of adjustment of status under § 1255.

The Court read "judgment" broadly to mean "any judgment regarding the granting of relief under § 1255." *Patel*, 142 S. Ct. at 1622. Determined not to create ambiguity by having the definition turn on whether judgments were or were not discretionary, the Court held that the statutory text does not "restrict itself to certain kinds of decisions;" it explained that the term "any" has an "expansive meaning" and the term "regarding" similarly "has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject." *Id.* (internal quotation marks and citation omitted). "Thus, § 1252(a)(2)(B)(i) encompasses not just 'the granting of relief' but also any judgment *relating* to the granting of relief. That plainly includes factual findings." *Id.* (emphasis in original). Ultimately, the *Patel* Court stated: "Section 1252(a)(2)(B)(i) strips courts of jurisdiction to review any judgment regarding the granting of relief under § 1255" and "judgment" means "any authoritative

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

decision." *Id.* at 1621-22. Here, USCIS issued a decision to not grant relief pursuant to § 1255(m). Thus, § 1252(a)(2)(B)(i) precludes the Court from reviewing that judgment.

Rubio Hernandez might argue, however, that despite this broad enunciation of the rule, the *Patel* Court limited itself to removal orders. It is true that the Court did say that the "reviewability of [USCIS] decisions is not before us, and we do not decide it." *Patel*, 142 S. Ct. at 1626. This merely reiterated that such facts were not before it—not that the same reasoning would not apply. Any finding that § 1252(a)(2)(B)(i) would allow review here cannot be squared with *Patel's* reasoning for the following three reasons.

First, the plain language in the provision's introduction provides that it applies "regardless of whether the judgment, decision, or action is made in removal proceedings." 8 U.S.C. § 1252(a)(2)(B). That, by itself, should foreclose review.

Second, the *Patel* majority indicated in *dicta* a broad understanding of the statute, indicating Congress intended to foreclose judicial review beyond removal proceedings:

> The reviewability of [USCIS] decisions is not before us, and we do not decide it. But it is possible that Congress did, in fact, intend to close that door. The post-*St. Cyr* amendments expressly extended the jurisdictional bar to judgments made outside of removal proceedings at the same time that they preserved review of legal and constitutional questions made within removal proceedings. *See* §§1252(a)(2)(B), (D). And foreclosing judicial review unless and until removal proceedings are initiated would be consistent with Congress' choice to reduce procedural protections in the context of discretionary relief.

Patel, 142 S. Ct. at 1626–27. Even the *Patel* dissent recognized the breadth of the majority's holding and interpreted it as also barring review of USCIS' decisions. "The majority's interpretation has the further consequence of denying *any* chance to correct agency errors in processing green-card applications outside the removal context." *Id.* at 1637 (emphasis in original).

Third, many courts, including the Ninth Circuit and district courts in this circuit, have already applied § 1252(a)(2)(B)(i) to USCIS decisions. For example, in *Hassan v. Chertoff*, the plaintiff had a claim, among other things, that then-INS improperly denied his adjustment of

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

status under 8 U.S.C. § 1255(a). *See, e.g.*, *Hassan v. Chertoff*, 593 F.3d 785, 788 (9th Cir. 2010). But the Ninth Circuit held that 8 U.S.C. § 1252(a)(2)(B)(i) stripped district courts of jurisdiction to review discretionary decisions involving adjustment of status:

> As the district court correctly noted, judicial review of the denial of an adjustment of status application—a decision governed by 8 U.S.C. § 1255—is expressly precluded by 8 U.S.C. § 1252(a)(2)(B)(i). Moreover, judicial review of a discretionary determination is also expressly precluded by 8 U.S.C. § 1252(a)(2)(B)(ii). The denial of Hassan's adjustment of status application on the basis that he poses a threat to national security is a determination committed to the discretion of the Attorney General or the Secretary of Homeland Security.

Id. at 788-89; *see J.M.O. v. Holder*, 3 F.4th 1061, 1064 (8th Cir. 2021) ("We conclude the statutory substantive ground on which USCIS based its denial of J.M.O.'s I-485 application—his failure to establish that adjustment of status 'is warranted on humanitarian grounds, to ensure family unity, or is otherwise in the public interest'—is a discretionary determination governed by § 1252(a)(2)(B)(i)…"); *Ahmed v. Mayorkas*, 2022 WL 2032301, at *4 (S.D. Fla. Mar. 28, 2022). The Ninth Circuit noted it retained jurisdiction over constitutional claims, but none are alleged here. *See also Bazua–Cota v. Gonzales*, 466 F.3d 747, 748 (9th Cir. 2006) (per curiam) (generally, decisions involving adjustment of status are not reviewable by district courts under 8 U.S.C. § 1252(a)(2)(B)(i)). The Ninth Circuit held that in other instances, it had jurisdiction to review because some decisions were not discretionary. *See Hernandez v. Ashcroft*, 345 F.3d 824, 833 (9th Cir. 2003) (discussing how an eligibility determination is reviewable, but that a court does not have "jurisdiction to review the discretionary aspect of a decision to deny an application for adjustment of status."); *Abdur-Rahman v. Napolitano*, 814 F. Supp. 2d 1087, 1094-95 (W.D. Wash. 2010) (discussing distinction between discretionary and non-discretionary review, while ultimately deciding the issue on Constitutional grounds).

Nor has this Court limited *Hassan's* reasoning to only § 1255(a). In *Xinyi Jiang v. USCIS*, the plaintiff claimed that USCIS violated the APA when it denied her application for adjustment of status that she made under 8 U.S.C. § 1258. *Xinyi Jiang v. USCIS*, No. 20-cv-

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

1693-TSZ, 2021 WL 764264, at *1 (W.D. Wash. Feb. 26, 2021).[2] This Court found that § 1252(a)(2)(B)(i) applied to § 1258 just as it applied to § 1255: "Indeed, it would be odd to conclude that the Court has jurisdiction to review discretionary denials of a change of status, when it unambiguously lacks jurisdiction to review discretionary denials of an adjustment of status to lawful permanent resident, which is governed by § 1255(a)." *Id.* at *2. Thus even before *Patel* removed the distinction between discretionary and non-discretionary judgments, courts in this district relied on Ninth Circuit law to find that § 1252(a)(2)(B)(i) foreclosed jurisdiction over decisions of a similar nature as the one at issue here.

This Court has treated determinations to adjust status as "judgments" for purposes of § 1252(a)(2)(B)(i). Doubtless now, under *Patel's* broad reasoning, no aspect of a USCIS decision to deny adjustment of status pursuant to § 1255(m)(1) is judicially reviewable.

B. USCIS's decision was committed to the agency's discretion by law and thus outside the scope of the APA.

Independent of the recent *Patel* decision, the Court lacks jurisdiction here because USCIS's denial of Rubio Hernandez's adjustment of status was "committed to agency discretion by law." 5 U.S.C. § 702(a).

Agency actions are presumed reviewable under the APA, including under immigration statutes. *Guerrero-Lasprilla v. Barr*, __ U.S.__, 140 S. Ct. 1062, 1069 (2020); *ANA Int'l, Inc. v. Way*, 393 F.3d 886, 890 (9th Cir. 2004). This presumption is overcome, however, when "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(2); *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 719 (9th Cir. 2011). This provision applies where "the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Heckler v. Chaney*, 470 U.S. 821, 830 (1985); *Perez Perez v. Wolf*, 943 F.3d 853, 860 (9th Cir. 2019). While the Ninth Circuit applies this exception narrowly, there is

[2] This case is currently on appeal.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

no meaningful standard by which to review USCIS's judgment under § 1255(m). And Rubio Hernandez is only challenging how USCIS exercised its authority.

The relevant statutory language states that USCIS "*may* adjust the status of [a noncitizen if] *in the opinion of the [agency]*, the [noncitizen's] continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." 8 U.S.C. § 1255(m)(1) (emphasis added). Terms such as "may adjust" or "in the opinion" of USCIS speak in generalities. When there is no statute, regulation, or controlling case law that defines the key terms applicable to the particular decision at issue, there is no meaningful standard by which to judge that decision. *See Ekimian v. INS*, 303 F.3d 1153, 1159-1560 (9th Cir. 2002). The government is not aware of any statute, regulation, or case in this context that would provide this Court a meaningful standard by which to review USCIS's determination—neither the statute nor the regulations define the terms: "humanitarian grounds," "family unity," or "the public interest."

District courts within this circuit have already found they lack jurisdiction to review USCIS's judgments under § 1255 under the APA. First, a case with identical issues is now before the Ninth Circuit. The plaintiff in *Molina Herrera v. Garland*, 570 F. Supp. 3d 750, 756 (N.D. Cal. 2021), also sought judicial relief to undo USCIS's decision to deny his request to adjust status pursuant to § 1255(m) after holding a U-visa. The court held that it had no jurisdiction for both of the reasons laid out here: "USCIS's ultimate decision and weighing of the factors in granting or denying Plaintiff's status adjustment application [under § 1255(m)] is a discretionary determination. Thus, Plaintiff is not entitled to judicial review of USCIS's discretionary determinations regarding his status adjustment application under the APA's presumption of reviewability." *Id.* at 755-757.[3]

Another district court in this Circuit had also determined that USCIS decisions under § 1255(m) are discretionary. In *Catholic Charities C.Y.O. v. Chertoff*, the district court found the

[3] An appeal of that case is now pending.

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

plaintiff lacked standing to assert a claim for issuance of a U visa or to grant a legal permanent resident (LPR) status adjustment as "the applicable statutes do not mandate a particular outcome or confer any established or protected interest." *Cath. Charities CYO v. Chertoff*, 622 F. Supp. 2d 865, 880 (N.D. Cal. 2008), *aff'd sub nom.*, 368 F. App'x 750 (9th Cir. 2010). In so finding, the court elaborated that these were discretionary decisions: "The VTVPA vests the Secretary with discretion to determine eligibility for 'U' visas, and also whether to adjust the status of the immigrant applicants, and the applicable statutes do not mandate a particular outcome or confer any established or protected interest in the grant of a 'U' visa or LPR status." *Id.*; *see also Kucana v. Holder*, 558 U.S. 233, 247-248 (2010) (recognizing that decisions made pursuant to § 1255 are made by the Executive as "a matter of grace" and thus discretionary); *but see Perez-Perez*, 943 F.3d at 860 (finding that a district court has a meaningful standard to evaluate USCIS's decision to deny U-visa status on eligibility grounds).

Even if there were some non-discretionary aspect to this process, that is not what is at issue here. Rubio Hernandez is challenging how USCIS exercised its discretion. *See* Compl., ¶ 19 ("In exercising its discretion, USCIS may take into account all factors…."); *id.* at ¶ 27 (alleging that USCIS "requested additional evidence to establish positive equities demonstrating why a favorable exercise of discretion was warranted"); *id.* at ¶¶ 30-36 (discussing USCIS's discretionary decision); ¶¶ *id.* at 39-43 (discussing Administrative Appeals Office determination of the "balance of the equities" when denying his administrative appeal). Here, USCIS denied Rubio Hernandez's adjustment of status application based on its weighing of the positive and negative factors to determine whether a favorable exercise of discretion was warranted. When it found that the positive factors did not outweigh the negative equities, it did so as a matter of discretion. All of the issues he raises in his cause of action—weighing a failure to submit evidence, relying on arrests for dismissed charges, or considering previously known events—are nothing more than arguments that USCIS incorrectly weighed the evidence—that is, erroneously applied its discretion. *See Bazua-Cota v. Gonzales*, 466 F.3d 747, 749 (9th Cir. 2006) ("In an

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

attempt to invoke our jurisdiction over this petition for review, Petitioner contends that the BIA and [immigration judge] violated his right to due process by failing to properly weigh the equities and hardship before denying his application for adjustment of status. This argument is an abuse of discretion challenge re-characterized as an alleged due process violation.").

At bottom, Rubio Hernandez claims that USCIS's determination was arbitrary and capricious in how it weighed the evidence. Such a searching factual analysis, however, exemplifies why this review is discretionary: "A fact-intensive determination in which the equities must be weighed in reaching a conclusion is a prototypical example of a discretionary decision." *Torres-Valdivias v. Lynch*, 786 F.3d 1147, 1153 (9th Cir. 2015). Without some guideline or signpost to understand "humanitarian grounds," "family unity," or the "public interest" in this context, there is no meaningful standard that would allow for court review. *See Ekimian v. INS*, 303 F.3d 1153, 1159-1560 (9th Cir. 2002). Nor does Rubio Hernandez point to any authority concluding that the government was legally prohibited from relying on the evidence (or lack of evidence) here or otherwise suggesting that it was impermissible for USCIS to ask him to provide information about his prior involvement with law enforcement. Instead, he argues that such issues should not have weighed so heavily on USCIS's judgment. Without some constitutional, statutory, or regulatory basis to prohibit USCIS from considering these equities, Rubio Hernandez's complaint is a pure challenge to USCIS exercising its discretion.

Thus, USCIS's decision to deny relief under § 1255(m) is committed to agency discretion by law and beyond judicial review under the APA.

CONCLUSION

Rubio Hernandez applied to USCIS to alter his status to a legal permanent resident pursuant to 8 U.S.C. § 1255(m). He disagrees with how USCIS made its determination. But § 1252(a)(2)(B)(i) prevents a district court from reviewing USCIS's judgment regarding the granting of relief under § 1255. And separately, the APA does not allow for judicial review of matters committed to an agency's discretion. Section 1255(m) does not provide a meaningful

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

standard for the Court to review, and USCIS's denial of Rubio Hernandez's application was thus committed the agency's discretion.

For the reasons set forth above, the United States requests that the Court dismiss the complaint for lack of subject-matter jurisdiction

DATED this 6th day of September, 2022.

Respectfully submitted,

NICHOLAS W. BROWN
United States Attorney

s/ Nickolas Bohl
NICKOLAS BOHL, WSBA No. 48978
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4067
Email: nickolas.bohl@usdoj.gov

Attorney for Defendants