

Guide to Federal Court Immigration Litigation for Clinical Law Students and New Lawyers

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I. Introduction

Federal court immigration litigation operates at the intersection of administrative law, civil procedure, and immigration law. While most of immigration issues are handled by federal administrative agencies, like U.S. Citizenship and Immigration Services (“USCIS”), the Executive Office for Immigration Review (“EOIR”), or Immigration and Customs Enforcement (“ICE”), federal courts are an avenue for noncitizens to vindicate their rights when the administrative process has failed.

Practicing federal court immigration litigation allows students and new practitioners to delve into several areas of law and procedure. It requires you to analyze statutory schemes, agency regulations, and judicial interpretations. You will also learn how to draft federal court pleadings and navigate the arc of civil litigation case. Federal immigration litigation frequently requires an exploration into jurisdiction, venue, standing, and the scope of judicial review. Accordingly, the skills developed in this practice are valuable for both future immigration lawyers as well as litigators in other areas of civil law, including administrative law, civil rights, and public interest law.

This guide introduces the types of immigration cases in federal court and guides students on how to draft a federal district court complaint.

II. Types of Federal Court Immigration Cases

A. *Petitions for Review* – A petition for review before the courts of appeal is the mechanism to seek judicial review of a final order of removal. *See* 8 U.S.C. § 1252(a)(5). A noncitizen cannot seek review before the court of appeals until the Board of Immigration Appeals (BIA) has affirmed an immigration judge’s removal order. *Nasrallah v. Barr*, 590 U.S. 573 579-80 (2020) (the Supreme Court holding that courts of appeal may review questions of law and fact only after a final removal order from the BIA). After the BIA order, a noncitizen must file a petition for review to the U.S. court of appeals within 30 days in the circuit where the immigration judge completed immigration court proceedings. 8 U.S.C. § 1252(b)(2) (2025). For example, noncitizens in Iowa go to immigration court in Omaha, Nebraska, and their petition for review would be filed in the Eighth Circuit Court of Appeals.

B. Denial Cases Under the Administrative Procedure Act (“APA”) – The APA allows federal courts to review agency actions and decisions. 5 U.S.C. § 702. In the context of immigration cases, noncitizens can seek review of a denial of a petition or application by USCIS or other immigration agencies. *See* 5 U.S.C. § 706(2)(A). The APA grants federal courts the authority to set aside agency action that is:

- Arbitrary and capricious
- An abuse of discretion
- Violates the U.S. Constitution
- Violates federal statutes or regulations
- Is otherwise not in accordance with law

C. Delay Actions – Many immigration applications and petitions can take *years* for the immigration agencies to adjudicate. A noncitizen whose case is outside of regular processing times, or has particularly strong equities for expedited adjudication, they may file a federal district court lawsuit to compel delayed action.

There are two common causes of action in delay lawsuits: the APA and the Mandamus Act. 28 U.S.C. § 1331, 1361; 5 U.S.C. § 706(1). The APA allows a federal court to compel agency action “unlawfully withheld” or “unreasonably delayed.” 5 U.S.C. § 706(1). The Mandamus Act, on the other hand, allows a district court to compel an agency to perform a nondiscretionary ministerial duty. 28 U.S.C. § 1361.

D. Habeas Corpus Petitions – In the immigration context, habeas corpus petitions challenge the legality of a person’s detention by immigration authorities, usually by Immigration and Customs Enforcement (“ICE”). *See* 28 U.S.C. § 2241. A detained person may argue that their detention violates their constitutional or statutory rights, and federal courts have the authority to review these claims. A federal judge can order the noncitizen’s release from detention, but most commonly, judges order the immigration court to give a bond hearing. These actions are filed in the jurisdiction where the noncitizen is detained.

E. Citizenship Claims—The Immigration and Nationality Act includes several provisions that gives federal district courts authority to review U.S. citizenship claims *de novo*:

- a. *Passport or N-600 Denials:* Title 8 U.S.C. § 1503(a) allows for a federal district to determine a person’s citizenship any time they have been denied a right or privilege on account of their nationality. This most frequently arises when either a passport or certificate of citizenship (Form N-600) have been denied. *See Flores v. Pompeo*,

936 F.3d 273 (2019) (5th Circuit holding that while district courts have subject matter jurisdiction to determine a plaintiff's citizenship in an action challenging passport denial, the plaintiff must exhaust administrative remedies under the Immigration and Nationality Act before proceeding under the APA); *See Jaffal v. Dir. Newark N.J. Field Off. Immigr. & Customs Enforcement*, 23 F.4th 275, 281 (3d Cir. 2022) (holding that district courts have jurisdiction to consider plaintiff's claim for citizenship based on certificate of citizenship). (There is a separate statute that grants judicial review when naturalization has been denied. See below.)

- b. *Naturalization*: Title 8 U.S.C. § 1421(c) allows an individual who has been denied naturalization by the U.S. Citizenship and Immigration Services (USCIS) to seek judicial review of that decision in a federal district court. The applicant can file a lawsuit in the federal district court if their naturalization application is denied, asking the court to review the case and decide whether the denial was justified. *Zayed v. U.S.*, 368 F.3d 902 (6th Cir. 2004) (holding that federal district courts can review denial of a non-citizen's naturalization application while removal proceedings were pending). The court will conduct de novo review, meaning it will examine the facts and law of the case as if it were being heard for the first time, without being bound by the USCIS's decision. *De Lara Bellajaro v. Schiltgen*, 378 F.3d 1042, 1047 (9th Cir. 2004).
- c. *Claim to U.S. Citizenship in a Petition for Review*: When a respondent in a removal proceeding makes a colorable claim to U.S. citizenship during their petition for review (see II.A above), the court of appeals can remand the case to the district court to resolve fact-finding around that petitioner's citizenship. *See* 8 U.S.C. § 1252(b)(5).
- d. *Denaturalization*: The U.S. government may revoke or strip an individual of their U.S. citizenship through denaturalization. *See* 8 U.S.C. § 1451. Common grounds for denaturalization are when a person has obtained their citizenship through fraud, misrepresentation, or concealment of material facts during the naturalization process. *See, e.g., U.S. v. Inocencio*, 328 F.3d 1207 (9th Cir. 2003) (9th Cir.); *U.S. v. Daifullah*, 11 F.4th 888 (8th Cir. 2021); *U.S. v. Tittjung*, 235 F.3d 330 (7th Cir. 2000). Most commonly, citizens are denaturalized for concealing their criminal history. Denaturalization proceedings are conducted in U.S. district court and the burden is on the government to prove the elements of denaturalization by clear, convincing, and unequivocal evidence. *Fedorenko v. U.S.*, 449 U.S. 490 (1981).

F. *Federal Tort Claims Act* – The Federal Tort Claims Act (FTCA) is a process by which any person—including noncitizens—can sue the U.S. government for damages stemming from the commission of negligent or wrongful acts or omissions committed by a government employee acting within the scope of their employment. *See* 28 U.S.C. § 1346. A person must first file an administrative claim, and if the administrative claim is denied, a noncitizen can then file a FTCA lawsuit in federal district court. *See* 28 U.S.C. § 2675 (plaintiff must file claim with federal agency before suing).

G. *Freedom of Information Act* – The Freedom of Information Act (FOIA) is a statute that mandates federal agencies to disclose records. *See* 5 U.S.C. § 552. In the immigration context, it can be used to uncover information about how immigration agencies operate, obtain data, or obtain immigration agencies’ policies or procedures. Like the FTCA, an administrative request must first be filed with the relevant agency. If the agency fails to provide the requested records—or only partially responds—a party can file a federal district court case seeking to compel the production of those records.

III. Elements of a Federal Court Complaint

The components of a federal district court complaint include:

1. **Caption:** The caption includes the name of the court, the names of the parties, the judge’s name and the case number, which will be assigned by the court after you file the complaint. Double check the local rules to see if there are additional requirements.
2. **Introduction:** A complaint should begin with a brief statement *in plain English* that identifies the parties and issues involved in the case. The court should know what this case is about in the first three sentences.
3. **Jurisdictional Statement:** Assert the basis for the court’s jurisdiction and venue, citing relevant statutes. At a minimum, federal question jurisdiction should be asserted. *See* 28 U.S.C. § 1331.
4. **Parties.** List the plaintiffs and defendants individually and why they are parties in the lawsuit. For government officers, explain their role in the legal dispute. For example, did they oversee the office that denied a particular application?
5. **Factual Background:** Provide a concise but thorough factual background of the individual’s history, including, if relevant: the plaintiff’s current immigration status, entry and exit dates, applications and petitions that were filed, length of detention, dates and reasons for which applications and

petitions were approved or denied, and any relevant changes to immigration history.

It's also important here to tell a story about the plaintiff or petitioner. Describe the equities in your client's case—family members, work history, community involvement, and/or harm that will occur if relief is not granted.

6. **Statutory or Regulatory Background:** This section is optional, but highly recommended due to the complex nature of immigration law. Remember that in federal district and appellate courts, federal judges are judges of general jurisdiction and do not typically have immigration expertise. Endeavor to write this section as plainly and succinctly as possible.
7. **Claims for Relief:** In the “claims for relief” section, list each of the causes of action you are suing under. Include here the constitutional, statutory, or regulatory basis for the cause of action, and briefly describe the facts that support that cause of action, referencing the factual basis section above.
8. **Prayer for Relief:** At the end of the complaint, assert what the plaintiff or petitioner seeks. For example, in a habeas case, the petitioner would likely include relief in the form of release from detention or a bond hearing. A FOIA plaintiff would ask for the court to compel an agency to produce documents. A naturalization applicant in a Section 1421(c) case would ask the court to declare eligibility for naturalization.

In addition to the substantive prayers for relief, you should also ask the court to assume jurisdiction over the case and request attorney's fees either under the Equal Access to Justice Act or the FOIA statute.

9. **Supporting Documents:** Check the local rules to determine if you can attach supporting documents to the complaint and then analyze carefully if you *should* attach supporting documents. Any document attached to a complaint is incorporated into the complaint and can be used in the government's motion to dismiss. Examples of documents to consider attaching:
 - The individual's immigration records (e.g., I-862 Notice to Appear, I-213 Record of Deportable Alien, I-485 Application to Adjust Status).
 - Immigration court orders
 - Detention records
 - Any transcripts or relevant filings related to previous immigration hearings.