

APPENDIX A

Ninth Circuit's order granting Respondent's motion for summary affirmance and affirming the district court dismissal of the Petitioner's complaint (March 23, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 23 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SERGEY DONSKOY,

Plaintiff - Appellant,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendant - Appellee.

No. 25-3018

D.C. No.

3:25-cv-00032-CRB

Northern District of California,
San Francisco

ORDER

Before: OWENS, MILLER and BUMATAY, Circuit Judges.

• The motion (Docket Entry No. 28) for summary disposition is granted. *See* 9th Cir. R. 3-6(a) (standard for summary disposition); *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982).

The district court's judgment is affirmed.

All pending motions are denied as moot.

AFFIRMED.

APPENDIX B

District Court's judgment and order (with opinion) dismissing
Petitioner's complaint with prejudice (April 29, 2025)

United States District Court
Northern District of California

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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 SERGEY DONSKOY,
9 Plaintiff,

10 v.

11 UNITED STATES CITIZENSHIP AND
12 IMMIGRATION SERVICES,
13 Defendant.

Case No. 25-cv-00032-CRB

JUDGMENT

14 Having granted Defendant UCSIS's motion to dismiss with prejudice, the Court
15 hereby enters judgment for USCIS and against Plaintiff Sergey Donskoy.

16 **IT IS SO ORDERED.**

17 Dated: April 29, 2025



18 CHARLES R. BREYER
19 United States District Judge
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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 SERGEY DONSKOY,
9 Plaintiff,

10 v.

11 UNITED STATES CITIZENSHIP AND
12 IMMIGRATION SERVICES,
13 Defendant.

Case No. 25-cv-00032-CRB

**ORDER GRANTING MOTION TO
DISMISS**

14 On May 17, 2021, the United States Citizenship and Immigration Services (USCIS)
15 denied Plaintiff Sergey Donskoy's Form I-140 petition, in which Donskoy sought to be
16 classified as an "alien with extraordinary ability." See Compl. (dkt. 1) ¶ 1; Exhibits to
17 MTD (dkt. 13) Ex. 1 at 9–13.¹

18 Donskoy challenged that decision by filing a case in this Court on June 22, 2021
19 under the Administrative Procedure Act (APA). See Exhibits to MTD Ex. 1 at 3–8.² This
20 Court denied Donskoy's motion for summary judgment, and granted USCIS's motion for
21 summary judgment, holding that "Donskoy has not demonstrated that USCIS's decision to
22 deny his petition violated the APA." Exhibits to MTD Ex. 2 at 2. This Court dismissed
23 Donskoy's complaint with prejudice, id. at 13, and entered judgment for USCIS, see
24 Judgment (dkt. 34) in Case No. 21-4757.

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27 ¹ The Court takes judicial notice of the May 2021 decision as a document incorporated by
reference in the complaint. See United States v. Ritchie, 342 F.3d 903, 908 (9th Cir.
2003).

28 ² The Court takes judicial notice of the legal pleadings from Donskoy's earlier lawsuit.
See Kuhn v. Three Bell Capital, 698 F. Supp. 3d 1119, 1123 (N.D. Cal. 2023).

1 Donskoy then brought a new case challenging the same May 17, 2021 USCIS
2 decision denying his Form I-140 petition. See Compl. ¶ 7. In the new case, he again
3 argues that the USCIS decision violated the APA. Id. ¶ 8. USCIS now moves to dismiss
4 the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, arguing
5 that, as Donskoy “realleges virtually identical APA claims in this complaint that
6 challenges the same USCIS decision issued on May 17, 2021,” the case is barred by issue
7 preclusion and/or by claim preclusion. MTD (dkt. 11).³ The Court considers this matter
8 suitable for determination without oral argument, pursuant to Civil Local Rule 7-1(b).

9 I. LEGAL STANDARD

10 Under Rule 12(b)(6), the Court may dismiss a complaint for failure to state a claim
11 upon which relief may be granted. The Court may base dismissal on either “the lack of a
12 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
13 theory.” Godecke v. Kinetic Concepts, Inc., 937 F.3d 1201, 1208 (9th Cir. 2019) (cleaned
14 up). A complaint must plead “sufficient factual matter, accepted as true, to state a claim to
15 relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (cleaned
16 up). A claim is plausible “when the plaintiff pleads factual content that allows the court to
17 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.
18 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
19 statements, do not suffice” to survive a 12(b)(6) motion. Id. (citing Bell Atlantic v.
20 Twombly, 550 U.S. 544, 555 (2007)). When evaluating a motion to dismiss, the Court
21 “must presume all factual allegations of the complaint to be true and draw all reasonable
22 inferences in favor of the nonmoving party.” Usher v. City of Los Angeles, 828 F.2d 556,
23 561 (9th Cir. 1987). “[C]ourts must consider the complaint in its entirety, as well as other
24 sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in
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26 ³ Donskoy subsequently filed a notice of appeal of the order relating the new case to the
27 earlier case, and the order reassigning the new case to this judge. See Notice of Appeal
28 (dkt. 26) (challenging dkt. 17, 19). On April 25, 2025, the Ninth Circuit dismissed that
appeal, holding that the “orders challenged in the notice of appeal are not final or
immediately appealable.” Order of USCA (dkt. 32).

1 particular, documents incorporated into the complaint by reference, and matters of which a
 2 court may take judicial notice.” Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S.
 3 308, 322 (2007).

4 If a court dismisses a complaint for failure to state a claim, it should “freely give
 5 leave” to amend “when justice so requires.” Fed. R. Civ. Proc. 15(a)(2). A court may
 6 deny leave to amend due to “undue delay, bad faith or dilatory motive on the part of the
 7 movant, repeated failure to cure deficiencies by amendment previously allowed, undue
 8 prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of
 9 amendment.” Leadsinger, Inc. v. BMG Music Pub., 512 F.3d 522, 532 (9th Cir. 2008).

10 Courts must construe pro se pleadings liberally and hold such pleadings to a less
 11 stringent standard than those drafted by attorneys. Boag v. MacDougall, 454 U.S. 364,
 12 365 (1982) (per curiam); Hughes v. Rowe, 449 U.S. 5, 9 (1980) (“It is settled law that the
 13 allegations of [a pro se litigant’s complaint] ‘however inartfully pleaded’ are held ‘to less
 14 stringent standards than formal pleadings drafted by lawyers’”) (quoting Haines v.
 15 Kerner, 404 U.S. 519, 520 (1972)). A court should dismiss a pro se complaint if “it is
 16 absolutely clear that the deficiencies of the complaint could not be cured by
 17 amendment.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012).

18 II. DISCUSSION

19 The only issue for the Court to decide in connection with this motion is whether
 20 Donskoy’s current case is barred by claim preclusion.⁴

21 “Res judicata, or claim preclusion, prohibits lawsuits on ‘any claims that were
 22 raised or could have been raised’ in a prior action.” Stewart v. United States Bancorp, 297
 23 F.3d 953, 959 (9th Cir. 2002) (quoting Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d
 24 708, 713 (9th Cir. 2001)). “Res judicata applies when there is: ‘(1) an identity of claims;
 25 (2) a final judgment on the merits; and (3) identity or privity between parties.’” Id. All
 26 three are met here.

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 28 ⁴ The Court does not reach the issue of issue preclusion.

1 First, there is an identity of claims. The earlier case raised a single APA claim,
 2 arguing that USCIS had wrongly concluded in its May 17, 2021 decision that Donskoy
 3 was not eligible for the immigration relief he sought: classification as an alien with
 4 extraordinary ability. See Exhibits to MTD Ex. 1 (identifying six “aspects” of the USCIS
 5 decision that are allegedly unlawful under the APA). That is precisely the same claim
 6 raised in his current case. See Compl. (identifying four “aspects” of the USCIS decision
 7 that are allegedly unlawful under the APA). Some “aspects” in the two cases are identical,
 8 such as USCIS’s treatment of Donskoy’s Fulbright award. Compare id. ¶ 9 with Exhibits
 9 to MTD Ex. 2 at 8–9. Other “aspects” differ in insignificant ways. For example, Donskoy
 10 argues in this case that the USCIS decision failed to adjudicate “whether [Donskoy] has
 11 demonstrated a potential for extraordinary achievement in his chosen field or whether he
 12 will substantially benefit prospectively the United States.” Compl. ¶ 11. But that
 13 argument is both similar to arguments Donskoy made in the earlier case, see Exhibits to
 14 MTD Ex. 1 ¶ 10 (arguing that USCIS “incorrectly interpreted the law and created a
 15 fallacious administrative construction used in invalid reasoning and arising to absurd”),
 16 and makes no difference if Donskoy failed to achieve extraordinary ability, see 8 U.S.C. §
 17 1153(b)(1)(A) (requiring extraordinary ability, that the alien seeks to enter the United
 18 States to continue to work in the area of extraordinary ability, and that the alien’s entry
 19 “will substantially benefit prospectively the United States”). Moreover, nothing prevented
 20 Donskoy from making the same arguments that he is making now in his earlier case. The
 21 two cases involve the same interests, evidence, and right, and—most important—the same
 22 transactional nucleus of facts. See GP Vincent II v. Estate of Beard, 68 F.4th 508, 515 (9th
 23 Cir. 2023).

24 Second, the Court’s grant of summary judgment in favor of USCIS in the earlier
 25 case, along with its dismissal with prejudice of that case, was a final judgment for the
 26 purposes of res judicata. See Bullard v. Blue Hills Bank, 575 U.S. 496, 506 (2015) (order
 27 granting summary judgment is final); Stewart, 297 F.3d at 956 (dismissal with prejudice is
 28 final).

1 Third, there is identity between the parties. Donskoy is the plaintiff in this case and
2 the earlier case, and USCIS is the defendant in this case and the earlier case. Compare
3 Compl. with Exhibits to MTD Ex. 1.

4 Accordingly, claim preclusion bars the current case.

5 **III. CONCLUSION**

6 For the foregoing reasons, the Court GRANTS the motion to dismiss pursuant to
7 Rule 12(b)(6). The Court further concludes that amendment would be futile. See
8 Leadsinger, 512 F.3d at 532.

9 **IT IS SO ORDERED.**

10 Dated: April 29, 2025



CHARLES R. BREYER
United States District Judge

APPENDIX C

Ninth Circuit's order granting the fourth extension of time
for filing Respondent's answering brief on appeal

**Additional material
from this filing is
available in the
Clerk's Office.**