

1 **I. BACKGROUND**

2 Perez was admitted to the United States in 2008 as a non-immigrant K-1 fiancée of a
3 United States citizen, Denn Andrew Dominguez Jose.¹ *Id.* at 9. She filed an application for
4 adjustment of status. *Id.* However, neither Perez nor Jose appeared for the interview that was
5 scheduled in August 2009, so the application was denied. *Id.*

6 Jose filed for divorce in 2010. *Id.* Perez later married Akrhe Perez in February 2014 and
7 filed a second application for adjustment of status based on this second marriage. *Id.* Perez and
8 her second husband appeared for an interview in January 2016. *Id.* The USCIS denied the second
9 application because K-1 visa holders cannot adjust status except through their petitioning spouse
10 (here, Jose). *Id.* The USCIS found that Perez had provided a marriage certificate, thus
11 establishing the first marriage was legal, but concluded that Perez had not presented evidence that
12 the marriage was bona fide or that she was the victim of abuse by her first spouse. *Id.*

13 Perez moved to reopen. *Id.* The USCIS denied the motion to reopen. *Id.* The USCIS
14 concluded that Perez had not submitted any new evidence that was previously unavailable or any
15 evidence that the law was applied incorrectly. *Id.*

16 Perez filed the instant lawsuit under the APA on August 29, 2016. After the motion to
17 dismiss and Perez’s response had been filed, the Department of Homeland Security initiated
18 removal proceedings against Perez. ECF Nos. 11 (motion to dismiss filed February 21, 2017); 14
19 (opposition filed April 7, 2017); 15-1 (notice to appear dated April 12, 2017).

20 **II. ANALYSIS**

21 Because the Department of Homeland Security has initiated removal proceedings against
22 Perez, I lack jurisdiction under the APA to resolve her complaint. As explained in *Cabaccang v.*
23 *U.S. Citizenship & Immigration Services*, agency action is subject to judicial review under the
24 APA “only when it is either: (1) made reviewable by statute; or (2) a ‘final’ action ‘for which
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27 ¹ A K-1 visa holder is a person who “is the fiancée or fiancé of a citizen of the United
28 States . . . and who seeks to enter the United States solely to conclude a valid marriage with [a
United States citizen] within ninety days after admission.” 8 U.S.C. § 1101(a)(15)(K)(i).

1 there is no other adequate remedy in a court.” 627 F.3d 1313, 1315 (9th Cir. 2010) (quoting 5
2 U.S.C. § 704). “No statute authorizes judicial review over denials of status adjustment,” so the
3 question is whether the denial of Perez’s application, and the related motion to reopen, were final
4 agency actions “for which there [is] no other adequate remedy.” *Id.*

5 Here, Perez has another adequate remedy because the immigration judge has “unfettered
6 authority to modify or reverse USCIS’s denial of [her] application[], regardless of USCIS’s prior
7 determination.” *Id.* at 1316 (citing 8 C.F.R. §§ 1240.1(a)(1)(ii), 1245.2(a)(1)(i)). Consequently,
8 Perez’s application for adjustment of status is not final because she can renew it in the removal
9 proceedings. *Id.* Additionally, “the pendency of removal proceedings means [Perez] ha[s] not
10 exhausted [her] administrative remedies.” *Id.* It does not matter that the removal proceedings
11 commenced after Perez filed this lawsuit. *Id.* at 1317 (“Regardless of whether the Cabaccangs’
12 removal proceedings began before this action, the pendency of removal proceedings now means
13 their claims are not ripe for judicial review.”). Consequently, I dismiss this complaint for lack of
14 jurisdiction.

15 **III. CONCLUSION**

16 IT IS THEREFORE ORDERED that defendant Loretta Lynch’s motion to dismiss (**ECF**
17 **No. 11**) is **GRANTED**. The complaint is dismissed for lack of jurisdiction. The clerk of court is
18 instructed to close this case.

19 DATED this 20th day of September, 2017.

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23 ANDREW P. GORDON
24 UNITED STATES DISTRICT JUDGE
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