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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 AXEL CRESPO-GUTIERREZ,

10 Plaintiff,

11 v.

12 U.S. CITIZENSHIP AND IMMIGRATION
13 SERVICES, *et al.*,

14 Defendant.

Case No. C17-1406RSL

ORDER GRANTING
MOTION TO DISMISS AND
DENYING MOTION FOR
SUMMARY JUDGMENT

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16 This matter comes before the Court on defendants' "Motion to Dismiss," Dkt. # 25, and
17 plaintiff's "Motion for Summary Judgment," Dkt. # 27. The Court has reviewed the motions, the
18 parties' memoranda, and the remainder of the record. For the following reasons, defendants'
19 motion is GRANTED, and plaintiff's motion is DENIED.

20 **I. BACKGROUND**

21 Plaintiff Axel Crespo-Gutierrez is a prisoner in the custody of the Colorado Department
22 of Corrections. His complaint appears to allege the following sequence of events: Plaintiff
23 married a woman named Ana who had come to the United States illegally with her two
24 daughters. Plaintiff began participating in a process to adjust their legal status until Ana revealed
25 she was already married to a man in Mexico. Plaintiff stopped participating in the process and
26 moved to dissolve the marriage. Ana reported to authorities that plaintiff had been sexually
27 abusing her two daughters—an allegation he alleges was false. He was nonetheless convicted
28 and sent to prison for the abuse. She and her daughters meanwhile were issued "U-Visas,"

ORDER GRANTING MOTION TO DISMISS AND
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1 which are nonimmigrant visas considered for persons who are victims of certain criminal abuse
2 or who meaningfully cooperate with law enforcement. See 8 U.S.C. § 1101(a)(15)(U)(i); 8
3 C.F.R. § 214.14(a)(9), (b).

4 Plaintiff filed this complaint against the U.S. Citizenship and Immigration Services
5 (“USCIS”) and the agency’s Director, Francis Cissna, essentially claiming that had defendants
6 not been derelict in their duties, USCIS would have discovered Ana’s previous marriage and
7 other alleged wrongdoing, which would have somehow saved plaintiff from her false
8 accusations. He asserts violations of his rights to substantive and procedural due process under
9 the Fifth and Fourteenth Amendments, and he asserts a third claim of “Dereliction of Duty.”
10 Dkt. # 4. As part of his claims, he invokes various immigration provisions that defendants
11 allegedly failed to enforce. He seeks relief in the form of an injunction or mandamus ordering
12 defendants to investigate and revoke the visas of Ana and her daughters. He also seeks a
13 declaratory judgment finding that the visas were fraudulently obtained and that USCIS failed to
14 perform its statutory duties. Defendants move to dismiss the claims for lack of standing,
15 improper venue, and failure to assert a waiver of sovereign immunity.

16 II. DISCUSSION

17 The Court concludes plaintiff lacks standing to bring these claims.¹ The requirement that
18 a plaintiff have standing to sue proceeds from Article III of the Constitution and the condition
19 that a “case or controversy” must exist in order to invoke a federal court’s jurisdiction. Lujan v.
20 Defenders of Wildlife, 504 U.S. 555, 560–61 (1992). To establish standing, a plaintiff must
21 show (1) a concrete injury that is actual or imminent and not hypothetical; (2) fairly traceable to
22 the defendant’s allegedly wrongful conduct; (3) that is likely to be redressed by a favorable
23 decision. Id.

24 Plaintiff lacks standing because his complaint does not assert an injury that is fairly
25 traceable to the defendants’ allegedly wrongful conduct or that is likely to be redressed by a

27 ¹ Because the Court concludes plaintiff lacks standing, the Court need not address
28 defendants’ other grounds for dismissal.

1 favorable decision.² See id. Plaintiff's alleged injury is his purportedly wrongful conviction. As
2 a threshold matter, plaintiff's complaint in this Court is not an appropriate vehicle for
3 collaterally attacking his state conviction. See Heck v. Humphrey, 512 U.S. 477, 486 (1994).
4 Even if it were, nothing suggests his alleged injury was caused by defendants' conduct. He also
5 fails to sufficiently allege that the relief he seeks could redress that injury. Even were USCIS to
6 revoke the visas, it would not plausibly affect his conviction. He claims USCIS would uncover
7 fraud by Ana in the visa process, which would somehow enable him to successfully challenge
8 his conviction. That is far too speculative to establish standing. See Lujan, 504 U.S. at 561.

9 Plaintiff also filed a motion for summary judgment. Dkt. # 27. For the reasons explained
10 above, summary judgment for plaintiff is not warranted.

11 III. CONCLUSION

12 For the foregoing reasons, plaintiff's motion for summary judgment, Dkt. # 27, is
13 DENIED, and defendants' motion to dismiss, Dkt. # 25, is GRANTED.

14 The Clerk of Court is hereby ORDERED to dismiss the case without prejudice.

15 DATED this 5th day of September, 2018.

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19 Robert S. Lasnik
20 United States District Judge

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27 ² Plaintiff's complaint is also flawed insofar as it seeks to enforce the federal statutes he
28 invokes against defendants. He has not demonstrated that any of those provisions creates a private cause
of action. See Gonzaga Univ. v. Doe, 536 U.S. 273, 287 (2002).