No. 26-4124

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUBADRA BUTCHI RAJU PINNAMARAJU, et al.,

Plaintiffs-Appellants,

v.

CARRIE M. SELBY, in her official capacity as Director, U.S. Citizenship and Immigration Services California Service Center, et al.,

Defendants-Appellees.

On Appeal from the U.S. District Court for the Central District of California
Case No. 8:25-cv-02721-KES
Hon. Magistrate Judge Karen E. Scott

CONSENTED TO BRIEF OF AMERICAN IMMIGRATION LAWYERS ASSOCIATION AND AMERICAN IMMIGRATION COUNCIL AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL OF DISMISSAL AS TO ADJUSTMENT OF STATUS APPLICATIONS (FORM I-485s)

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INTEREST OF AMICI CURIAE

The American Immigration Lawyers Association (AILA), founded in 1946, is a national, non-partisan, non-profit association with more than 18,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality law and practice. AILA's members practice regularly before the Department of Homeland Security, immigration courts and the Board of Immigration Appeals, as well as before the federal courts. AILA has participated as amicus curiae in numerous cases before the U.S. Courts of Appeals and the U.S. Supreme Court.1

The American Immigration Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of immigrants

[1] No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money intended to fund preparing or submitting this brief. No person other than *amici* or their counsel, or AILA's members contributed money intended to fund preparing or submitting this brief. Fed. R. App. P. 29(a)(4)(E).

in the United States. The Council regularly litigates and advocates around issues involving access to immigration benefits, including agency delays in adjudication.

SUMMARY OF ARGUMENT

The district court erred in finding that 8 U.S.C. § 1252(a)(2)(b)(ii), which bars judicial review of certain agency "decision[s] or action[s]," applies to a suit challenging U. S. Citizenship and Immigration Services' (USCIS) failure to adjudicate an adjustment application. Courts may not read statutory language to bar judicial review if a reasonable reading supporting review is available—and the failure to engage in adjudication does not fall within the ordinary meaning of "decision or action."` The Administrative Procedure Act (APA) supports that reading, rather than undercutting it. Moreover, the district court erred in dismissing the Pinnamarajus' claim for mandamus relief. Because the district court had jurisdiction, this Court should remand so that it can evaluate the agency's delay with reference to the *TRAC* factors.

ARGUMENT

I. DELAY IN ADJUDICATING ADJUSTMENT APPLICATIONS IS NOT A "DECISION OR ACTION" WITHIN THE MEANING OF 8 U.S.C. § 1252(a)(2)(B)(ii).

A. In Case of Doubt, Statutes Should be Read to Allow Judicial Review.

"Congress rarely intends to prevent courts from enforcing its directives to federal agencies." *Mach Mining, LLC v. E.E.O.C.*, 575 U.S. 480, 486 (2015). "For

that reason, [the Supreme] Court applies a 'strong presumption' favoring judicial review of administrative action." *Id*. (citation omitted).

The Supreme Court "ha[s] consistently applied that interpretive guide to legislation regarding immigration, and particularly to questions concerning the preservation of federal-court jurisdiction." *Kucana v. Holder*, 558 U.S. 233, 251 (2010). "Under that 'well-settled' and 'strong presumption,' when a statutory provision 'is reasonably susceptible to divergent interpretation, we adopt the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review.'" *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (citations omitted). *See also De Martinez v. Lamagno*, 515 U.S. 417, 434 (1995) (where both sides offered "plausible constructions," Supreme Court adopted reading enabling judicial review of executive action).

While the presumption of judicial review "fails when a statute's language or structure demonstrates that Congress wanted an agency to police its own conduct[,] . . . the agency bears a '*heavy burden*' in attempting to show that Congress 'prohibit[ed] all judicial review' of the agency's compliance with a legislative mandate." *Mach Mining*, 575 U.S. at 486. (emphasis added) (alteration in original) (citation omitted).

B. In General, Statutory Terms Should be Given Their Ordinary Meaning.

A court's duty in interpreting a statute "is to interpret the words consistent with their 'ordinary meaning at the time Congress enacted the statute.'" *Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (cleaned up) (citation omitted); *see also United States Postal Serv. v. Konan*, 607 U.S. 391, 399 (2026) ("Absent a reason to think otherwise, we interpret statutory terms according to the ordinary meanings they had when they were enacted."). Courts should be "wary of giving common terms technical meanings." *Mullin v. Doe*, 609 U.S. ___, 146 S. Ct. 2121, 2135 (2026). Rather, they should "assume statutory terms bear their ordinary meaning 'until and unless someone points to evidence suggesting otherwise.'" *Monsalvo v. Bondi*, 604 U.S. 712, 725 (2025) (quoting *Niz-Chavez v. Garland*, 593 U.S. 155, 163 (2021)). Statutory interpretation assumes "those who draft and enact a provision generally intend its terms to mean what they mean in ordinary usage," *Mullin*, 146 S. Ct. at 2135.

This is an important and fundamental first principle of statutory interpretation:

> Without that assumption, the entire endeavor would break down. Ordinary people could not understand what the law requires of them, and every word in a statute could be an unfathomable puzzle. Of course, a statute may provide expressly, or may signal in some other clear way, that it employs a common term in a way that departs from its ordinary meaning, but without *strong proof* of such a departure, commonly used terms should be given their common meaning.

Mullin, 146 S. Ct. at 2135 (emphasis added).

Accordingly, unless there is strong evidence that Congress has "define[d] a word or phrase in a specialized way or employ[ed] a term of art with long-encrusted connotations in a given field . . . those whose lives are governed by law are entitled to rely on its ordinary meaning, not left to speculate about hidden messages." *Feliciano v. Dep't of Transp.*, 605 U.S. 38, 45 (2025); *accord FCC v. AT & T Inc.*, 562 U.S. 397, 403 (2011). *See Delaware v. Pennsylvania*, 598 U.S. 115, 128 (2023) ("The FDA does not define a 'money order,' so the core features of that instrument are gleaned from a consideration of the '"ordinary, contemporary, common meaning"' of the term.") (citations omitted); *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 433–34 (2019) (because "FOIA nowhere defines the term 'confidential[,]' . . . we ask what that term's 'ordinary, contemporary, common meaning' was when Congress enacted FOIA in 1966.") (citations omitted).

This presumption has particular weight in the context of jurisdictional statutes, given "the need for judicial administration of a jurisdictional statute to remain as simple as possible." *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010); *see also id.* at 94 ("Simple jurisdictional rules also promote greater predictability.").

C. The Words "Decision" and "Action" in § 1252(a)(2)(B)(ii) Carry Their Ordinary Meanings, and Do Not Include Failure to Act.

The words "decision" and "action" have no "encrusted connotations," in the immigration field and so must be understood in accordance with their "ordinary

meaning[s].” *Feliciano*, 605 U.S. at 45. In common parlance, the word “action” is an antonym of “inaction.” The two words carry opposite meanings. *See Inaction*, Merriam-Webster Online Thesaurus, https://www.merriam-webster.com/thesaurus/inaction (last visited Sept. 30, 2026). In turn, “decision” is an antonym of “indecision,” which is itself “a state or an instance of temporary *inaction* about the right course of action.” *Indecision*, Merriam-Webster Online Thesaurus, https://www.merriam-webster.com/thesaurus/indecision (last visited Sept. 30, 2026) (emphasis added); *see also Decision*, Merriam-Webster Online Thesaurus, https://www.merriam-webster.com/thesaurus/decision (last visited Sept. 30, 2026)https://www.merriam-webster.com/thesaurus/indecision.

Section 1252(a)(2)(B)(ii) was enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, div. C, § 306(a)(2), 110 Stat. 3009-546, 3009-607 (1996). So, it is appropriate to examine the 1996 understanding of the words “action” and “decision” with reference to legal and ordinary dictionaries from that period. *Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021). Unsurprisingly, they show that in 1996, the words “decision or action” did not include failure to act.

We begin with the following contemporaneous legal definition of the word “action”: “an act or decision by an executive or legislative body of a government (as an administrative agency) or of an organization (as a Board of Directors). . . .”

Action, Merriam-Webster's Dictionary of Law (1996); *see also id*. (also defining "action" as "a voluntary act of will that manifests itself externally: a mode of conduct"). Another contemporaneous legal definition was "[c]onduct; behavior; something done; the condition of acting; an act or serios of acts." *Action*, *Black's Law Dictionary* (6th ed. 1990).[2] And the next edition of Black's defines "action" as: (1) "[t]he process of doing something;" (2) "[a] thing done;" and (3) "[a] civil or criminal judicial proceeding." *Action*, *Black's Law Dictionary* (7th ed. 1999). (The sixth and seventh editions of Black's are the editions closest in time to the 1996 enactment of 8 U.S.C. § 1252(a)(2)(B)(ii).)

Meanwhile, the ordinary legal meaning of the word "decision" is: (1) "an authoritative determination (as a decree of judgment) made after consideration of facts or law;" and (2) "a report or document containing such a determination"—though, "[a] decision, while being an authoritative determination of a disputed issues, does not have to be a final determination closing the case," in that "[s]ome interlocutory decisions may be appealed." *Decision*, Merriam-Webster's Dictionary of Law (1996). In 1990, Black's defined "decision" (with elaboration not included here) as:

> A determination arrived at after consideration of facts, and, in legal context, law. A popular rather than technical or legal word; a

[2] The 6th Edition of Black's goes on to explain the word "action" "in its usual legal sense mean[ing] a lawsuit brought in a court" with further elaboration, but that is not the way the INA is using the term "action" in § 1252(a)(2)(B)(ii).

> comprehensive term having no fixed, legal meaning. It may be employed as referring to ministerial acts as well as to those that are judicial or of a judicial character.

Decision, *Black's Law Dictionary* (6th ed. 1990). As for the next Black's edition, it defined "decision" as "[a] judicial determination of the facts and the law; esp., a ruling, order, or judgment pronounced by a court when considering or disposing of a case." *Decision*, *Black's Law Dictionary* (7th ed. 1999).

If these definitions show anything, they highlight the distinction between action ("doing something") and *in*action, the state of doing nothing. The state of *not* taking any action on an adjustment application is not "action"; it is inaction. The government cannot stretch the "ordinary meaning," *Feliciano*, 605 U.S. at 45, of "decision" and "action" to the point where it includes an agency's *not* deciding and not acting.

Indeed, administrative-law scholars have long recognized that delay of a decision "is not the exercise of discretion or any other type of decisionmaking but rather is the result of agency failures." Koch, 4 Administrative Law and Practice 183, § 11:52[1] (3d ed. 2010). "Such failures should not be perceived as the exercise of discretion." *Id.* at 183, § 11:52[2]. Nor are they "action."

D. The APA's Definition of "Agency Action" Does Not Apply Here.

The government seizes on the fact that 5 U.S.C. § 551(13), part of the APA, defines "agency action" as "the whole or a part of an agency rule, order, license,

sanction, relief, or the equivalent or denial thereof, or *failure to act"* (emphasis added). *See Norton v. S. Utah Wilderness All.* , 542 U.S. 55, 62 (2004). The government argues that "action" in § 1252(a)(2)(b)(ii) must be read the same way. This is misguided. Congress did not intend the §551(13) definition to limit judicial review of an agency's failure to act; on the contrary, it intended to expand it.

When Congress enacted the APA in 1946, it divided 5 U.S.C. § 706, the APA's operative section, into two parts. The first subsection, 5 U.S.C. § 706(1), requires courts to "compel agency action unlawfully withheld or unreasonably delayed," while the second subsection directs a court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious" or otherwise impermissible. 5 U.S.C. § 706(2).

Congress enacted the two parts of § 706 to ensure that *both* agency action and agency inaction were subject to judicial review. It did so intentionally: Among its goals was ensuring that "no agency shall in effect deny relief or fail to conclude a case by mere inaction, or proceed in dilatory fashion to the injury of the persons concerned." H.R. Rep. No. 79-1980, at 264 (1946).[3] Congress thus sought to

[3] The House and Senate Reports describe the version of the APA enacted in 1946. Pub. L. No. 79-404, 60 Stat. 237, 240 (1946). Congress later recodified Title 5 of the U.S. Code, changing some statutory language. That recodification was intended "to restate [prior law] without substantive change." S. Rep. No. 89-1344, at 18 (1966) (Enactment of Title 5, United States Code).

"assure the complete coverage of every form of agency power, proceeding, action *or inaction*" (emphasis added). *Id.* at 255; S. Rep. No. 79-752, at 198 (1945).

Congress drafted the definitions section of the Act in order to effectuate that goal of holding agencies to account for inaction and delay. It provided in 5 U.S.C. § 704 that courts could review "agency action." It then defined "agency action," for purposes of the APA, as "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or *failure to act*." 5 U.S.C. § 551(13) (emphasis added). The effect was to "cover comprehensively every manner in which an agency may exercise its power," *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 478 (2001) – both by acting and by failing to act.

By coupling § 706(1)'s direction that courts compel "unreasonably delayed" agency action with the broad § 551(13) definition, Congress ensured the availability of judicial review when an agency "violate[s] the legislative policy and cause[s] harm to private interests by failing to" take action it is required to take. Final Report [to Congress] of Attorney General's Committee on Administrative Procedure 76 (1941), https://www.regulationwriters.com/downloads/apa1941.pdf. It thus vindicated the concern expressed in *ICC v. U.S. ex rel. Humboldt S.S. Co.*, 224 U.S. 474 (1912), cited in *Attorney General's Manual on the Administrative Procedure Act* 108 (1947): Absent judicial review, an agency could through inaction "nullify its most essential duties." 224 U.S. at 484. *See also Am. Broad.*

Co. v. F.C.C., 191 F.2d 492, 501 (D.C. Cir. 1951) ("Agency inaction can be as harmful as wrong action.").

This context explains the APA's idiosyncratic definition of "agency action." It was written to enable litigation involving an ongoing policy or program, "where 'plaintiffs claim that a governmental action was unlawfully withheld or unreasonably delayed.'" It ensures that "agencies cannot 'effectively prevent judicial review of their policy determinations by simply refusing to take final action.'" *U Visa Appellants v. Dir., U.S. Citizenship & Immigr. Servs.*, ___ F.4th ___, No. 24-6824, 2026 WL 2683743, at *11 (9th Cir. Sept. 14, 2026) (citing *Cobell v. Norton*, 240 F.3d 1081, 1095 (D.C. Cir. 2001)). Rather, it transforms that failure to act into final action reviewable via the APA:

> "Finality' is not * * * a principle inflexibly applied.' Delay, so long as it continues and so long as there is any vestige of a right which will suffer further impairment by an extension of the delay, may not be final in the usual sense of that word, but when it amounts to a violation of § 6(a) of the Administrative Procedure Act and to a legal wrong within the meaning of § 10(a) of that Act, it is final action within the meaning of § 10(c).

Deering Milliken, Inc. v. Johnston, 295 F.2d 856, 865 (4th Cir. 1961), *disapproved of on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977) (footnote omitted); *see also Cobell*, 240 F.3d at 1095 ("As this court has noted in the past, where 'an agency is under an unequivocal statutory duty to act, failure so to act constitutes, *in effect*, an affirmative act that triggers final agency action review.'") (emphasis

added) (citations omitted); *Sierra Club v. Thomas*, 828 F.2d 783, 793 (D.C. Cir. 1987) ("As *TRAC* indicates, though, our jurisdiction under a 'final agency action' review provision is not limited to situations in which 'final action,' *as it is commonly understood*, has indeed been taken.") (emphasis added), *partly abrogated by statute on other grounds, Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 554 n.6 (D.C. Cir. 2016).

Congress, in other words, created in 5 U.S.C. § 551(13) a specialized, context-specific definition of "agency action" which includes a "failure to act" "[f]or the purpose of th[e] subchapter" including § 551. It did so for the purpose of carrying over that specialized meaning of agency action into the context of judicial review via § 701(b)(2), and thus ensured a judicial remedy for agency delay and failure to act.

It should be plain, though, that the § 551(13) definition has no applicability to § 1252(a)(2)(B)(ii). The 5 U.S.C. § 551(13) definition applies only to the APA. It is not relevant to interpreting § 1252(a)(2)(B)(ii)—a provision in an entirely different statute serving different purposes. Further, a definition of "agency action" does not control the different phrase "decision or action." But most fundamentally, Congress crafted the language of § 551(13) with the explicit goal of ensuring agencies' accountability for their failures to act. Congress did not intend it as a route to immunizing them for those failures.

E. By Referring to "Pace" of Adjudication, the District Court Attributes Deliberateness to USCIS, When the Reality is Inaction.

The district court refers to "agency prioritization of adjustment applications" in concluding that the Pinnamarajus could not challenge the delay relating their adjustment applications. Order, ER-7 (citing *Khachutorov v. Britten*, 792 F. Supp. 3d 1106, 1114 (C.D. Cal. 2025) for the proposition that "government decisions regarding the pace of review of an application are generally discretionary and therefore insulated from judicial review."). But there is no evidence at this stage that the government has developed or applied any prioritization policies and procedures relevant to the Pinnamarajus' applications—and whatever they might be, the Pinnamarajus have not challenged them. Reducing the issue to a dispute about the pace of adjudication or agency prioritization policies and procedures ignores entirely the claim that a specific case is not being adjudicated.

When the actual dispute is whether or not an application is being adjudicated at all, it is the agency's failure to act and not the timeframe in which they do so that is at issue.

If any challenge to agency inaction or unreasonable delay can simply be dismissed as impatience with the pace of agency action, then agency inaction would be completely insulated from review. Several district courts have recognized this danger while still dismissing delay claims they deem not to be "extreme" enough to show agency refusal to act. *Mohsenzadeh v. Kelly*, 276 F. Supp. 3d

1007, 1014 (S.D. Cal. 2017); *see also Khachutorov*, 792 F. Supp. 3d at 1114 (citing same). Those courts suggest there is a point at which a delay becomes significant enough that the circumstances move beyond questions of "pace" and a court can actually address inaction. *Id.* But that is the very question presented in any APA delay case: is the delay unreasonable or has agency action been unlawfully withheld? Courts should address that question by applying the *TRAC* factors, s*ee infra* Part III, not by finding that they lack jurisdiction.

II. THE DISTRICT COURT SHOULD HAVE SEPARATELY CONSIDERED THE PINNAMARAJUS' CLAIMS UNDER THE MANDAMUS ACT.

The district court did not analyze the mandamus claim on its own terms. ER-6-7 (relief under APA and mandamus "in essence" the same, so only analyzed the APA claim). While the APA claim survives, as discussed *supra*, the district court could review the mandamus claim even if it did not.

The district court erred in dismissing the mandamus claim because the Mandamus Act independently provides a basis for compelling action. 28 U.S.C. § 1361. Section 1252(a)(2)(B)(ii) does not apply to lawsuits to compel action under the Mandamus Act at all, because issuing an order in the nature of mandamus does not constitute "review" of a "decision or action of the Attorney General or the Secretary of Homeland Security . . ." "'Judicial review' contemplates that a court will review a decision issued by another tribunal." *Cardiosom, L.L.C. v. United*

States, 115 Fed. Cl. 761, 775 (2014). *See also Yale New Haven Hosp. v. Becerra*, 56 F.4th 9, 19 (2d Cir. 2022) (conducting "judicial review" means to exercise the "power to review the actions of other branches of government," particularly the "power to invalidate executive actions") (citation modified).

Rather than a "review" of an agency or officer's decision, a writ of mandamus is a command:

> Blackstone, in the 3d volume of his commentaries, page 110, defines a mandamus to be, "a command issuing in the king's name from the court of king's bench, and directed to any person, corporation, or inferior court of judicature within the king's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the court of king's bench has previously determined, or at least supposes, to be consonant to right and justice."

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 168 (1803). The Pinnamarajus seek an order requiring the agency to make a decision—and not judicial review of an agency decision. In fact, it is precisely because the agency refuses to make a decision that there is no decision here to review. *Ayala v. Noem*, 781 F. Supp. 3d 1187, 1203 (D.N.M. 2025) ("Failure to act on Plaintiffs' [work authorization] applications, or delaying unreasonably in doing so, is not a decision at all—that is, in fact, the very problem.")

This is not to say that the Mandamus Act may not be used to review agency decisions. For example, in *Perry v. Schwarzenegger*, this Court relied "on mandamus to review the district court's rulings." 591 F.3d 1147, 1154 (9th Cir.

2010). But in that and similar cases this Court was clearly *reviewing* a district court, or agency, decision and using the Mandamus Act to order the doing of something that was not done.

Accordingly, inasmuch as the Pinnamarajus' mandamus claim does not seek a review of an agency's decision, but rather asks the court to order it to do something which the agency (or one of its officers) has not done, it is not subject to 8 U.S.C. § 1252(a)(2)(B)(ii)'s bar on "review" by the courts.

III. THE DISTRICT COURT SHOULD DECIDE THE CASE ON THE MERITS BY APPLYING THE TRAC FACTORS

The government protests that courts should not lightly interfere with the pace of agency adjudication. The mechanism that administrative law has developed to address that concern is *TRAC*-factor analysis, developed by the D.C. Circuit to determine whether agency delay is unreasonable in violation of the APA. *See Vaz v. Neal*, 33 F.4th 1131, 1137 (9th Cir. 2022) (citing *Telecomms. Rsch. & Action Ctr. v. FCC* (*TRAC*), 750 F.2d 70, 80 (D.C. Circ. 1984)). The Court should remand so that the district court can engage in that analysis.

In this case, application of the *TRAC* factors will have to await discovery. *See, e.g.*, *Vemula v. Tarango*, No. 2-26-cv-00652-ODW (SKx), 2026 WL 2227811, at *3 (C.D. Cal. July 30, 2026) (inappropriate and premature to apply at motion to dismiss stage and collecting cases pro and contra dismissal); *Niyomwungere v.*

Mayorkas, No. CV-24-02809-PHX-DJH, 2025 WL 1865810, at *5 (D. Ariz. July 7, 2025) (TRAC factors not addressed at motion to dismiss stage because they require fact-dependent "intensive balancing of factors").

Some courts have granted motions to dismiss on the basis of the *TRAC* factors when a plaintiff did not allege any fact as to delay other than the length of delay. *E.g.*, *Monick v. Su*, No. 2:24-cv-03052-AB-AGR, 2024 WL 4206115, at *3 (C.D. Cal. Sept. 6, 2024); *Baizakova v. Jaddou*, No. SA CV 24-201-JFW (DFMx), 2024 WL 3063227, at *5 (C.D. Cal. June 14, 2024); *Varzaghani v. Mayorkas*, No. CV-23-1876-DMG (KESx), 2024 WL 2952141, at *3 (C.D. Cal. June 5, 2024). These decisions, and others like them, assessed whether the complaint stated sufficient facts to support a claim for the relief sought. *See id*.

But that is not this case. Unlike those decisions, the Pinnamarajus have stated facts sufficient to demonstrate that the delay is unreasonable: "The Agency's failure to act has not been tied to resource constraints or an identifiable queue; similarly-situated applicants continue to receive action while Plaintiffs' applications remain untouched. There is no indication that processing these applications would divert attention from higher-priority matters." Complaint, ¶48, ER-146. Discovery is needed to provide the details unavailable at the motion to dismiss stage—so long as the allegations of unreasonable delay are sufficient to support a plausible claim, the *TRAC* factor analysis should only be undertaken after

the record is developed further. *E.g.*, *Vemula*, 2026 WL 2227811, at *3 (complaint adequately addresses unreasonable delay; "*TRAC* test" is fact-intensive and court will not apply at motion to dismiss stage); *Alekperov v. U.S. Dep't of Homeland Sec.*, No. 2:24-cv-02704-SPG-KS, 2024 WL 5441943, at *4 (C.D. Cal. Dec. 12, 2024) (*TRAC* factors analysis "necessarily fact-intensive" so "generally more appropriately applied after the parties have conducted at least some discovery"). *See also Gonzalez v. Cuccinelli,* 985 F.3d 357, 375 (4th Cir. 2021) ("A claim of unreasonable delay is necessarily fact dependent and thus sits uncomfortably at the motion to dismiss stage and should not typically be resolved at that stage.")

CONCLUSION

For the foregoing reasons, the decision of the district court should be reversed.

Dated: October 1, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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I hereby certify, pursuant to Fed. R. App. P. 29(a)(2) and Circuit Rule 29-1(a), that counsel for Appellants and counsel for Appellees consented to *amicus curiae* filing a brief in this matter.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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