No. 25-1101

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOZHGAN ASGHARI, *et al.*,
Plaintiffs-Appellants,

v.

MARCO RUBIO, *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California, No. 2:24-cv-06055-MCS-MAR
(Mark C. Scarsi, J.)

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

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The Cato Institute is a nonpartisan public policy research foundation founded in 1977 dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies helps restore the principles of constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual Cato Supreme Court Review, and files *amicus* briefs.

Cato has a strong interest in the accountability of administrative agencies. This case interests Cato because actions for unreasonable delay provide an important check on administrative agencies, help protect the interests of those regulated by agencies, and benefit the public at large. Because the framework applied by the district court here undermines those goals, Cato files this brief to urge the Court to reverse the district court's dismissal and hold that the *TRAC* framework does not govern APA § 706(1) claims.

[1] No counsel for either party authored this brief in whole or in part. No person or entity other than *amicus* made a monetary contribution to its preparation or submission. Fed. R. App. P. 29. Pursuant to Ninth Circuit Local Rule 29-2(a), all parties have been notified and have consented to the filing of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The district court dismissed without prejudice Plaintiffs-Appellants' claims for unreasonable delay in withholding timely action on Plaintiff-Appellant Hosseinzadeh's visa application under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(1) and Mandamus Act, 28 U.S.C. § 1361.[2] In doing so, the court applied to both claims the six-factor test for determining whether to compel agency action from a forty-year old mandamus case, *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) ("*TRAC*").[3] The court erred by applying the *TRAC* factors to the APA claim. The court further erred by applying *TRAC* at the pleading stage. The Court of Appeals should reverse and hold that *TRAC* is not the appropriate framework for evaluating unreasonable delay claims under the APA.[4] The *TRAC* factors vest too much unreviewable power in government agencies, reduce agency accountability, undermine Congress's statutory regime and public trust in agencies, and cause real-world harm to individuals subject to regulation.

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[2] ER14.

[3] ER10-13.

[4] The district court correctly held that it had jurisdiction. ER7-10.

ARGUMENT

I. *TRAC* SHOULD NOT GOVERN APA § 706(1) CLAIMS AT ALL, AND IN ANY EVENT, IS INAPPROPRIATE AT THE PLEADING STAGE

Although the requirements to compel agency action under APA § 706(1) and mandamus differ, courts consistently have held both types of actions to the same legal standard. For reasons described below, the Ninth Circuit should not apply *TRAC* to § 706(1) claims. Alternatively, even if *TRAC* governed § 706(1) actions, its application is premature at the pleading stage. For these reasons, the Ninth Circuit should reverse.

A. *TRAC* Should Not Govern APA § 706(1) Claims

In applying the *TRAC* framework to APA unreasonable delay claims, courts wrongly conflate mandamus and § 706(1) claims. While both seek similar relief, they are distinct means of compelling agency action, subject to differing standards.[5] And the standard for a writ of mandamus is a higher bar for a plaintiff than a § 706(1) claim.

To compel agency action under the Mandamus Act, 28 U.S.C. § 1361, a plaintiff must establish that: (1) the plaintiff has a clear right to the relief requested; (2) the defendant has a clear, nondiscretionary duty to perform the act in question;

[5] While some courts have considered the actions to be "intertwined," *e.g.*, *In re Louisiana Public Service Commission*, 58 F.4th 191, 193 (5th Cir. 2023), the case law has not focused on the textual difference between the relevant standards.

and (3) no other adequate remedy is available. *American Hosp. Ass'n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016). Even when these three requirements are met, "a court may grant relief *only when it finds* '*compelling ... equitable grounds*'"[6] such as establishing that the "agency's delay is *so egregious*" to warrant a mandamus. *TRAC*, 750 F.2d at 79 (emphasis added). This discretion sets mandamus apart from § 706(1). Since mandamus is limited to "extraordinary circumstances," *Will v. United States*, 389 U.S. 90, 108 (1967) (Black, J., concurring), even unreasonable acts may not suffice. Grover & Platt, *Agency Delay and the Courts*, 77 Admin. L. Rev. --- (forthcoming Dec. 2025) (manuscript p.72 (differentiating between mandamus and § 706(1) actions)), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5173042; *see also Independence Min. Co. v. Babbitt*, 105 F.3d 502, 505 (9th Cir. 1997) (The "court retains discretion in ordering mandamus relief … even if all elements are satisfied.").

On the other hand, to compel agency action under §706(1), the plaintiff must establish that the agency in question: (1) has "'a clear, certain, and mandatory duty,' and (2) has *unreasonably delayed* in performing such duty." *Vaz v. Neal*, 33 F.4th 1131, 1136 (9th Cir. 2022) (quoting *Plaskett v. Wormuth*, 18 F.4th 1072, 1082 (9th Cir. 2021) (emphasis added)). Unlike mandamus's discretionary nature,

[6] *In re Medicare Reimbursement Litig.*, 414 F.3d 7, 10 (D.C. Cir. 2005) (emphasis added).

if agency action is unreasonably delayed, 5 U.S.C. § 706(1) instructs that "reviewing court[s] shall … compel agency action." *Id.* This Court has recognized "shall" as a "mandatory term." *Id.* (quoting *Natural Res. Def. Council, Inc. v. Perry*, 940 F.3d 1072, 1078 (9th Cir. 2019) (quotation marks omitted)).

The six factors laid out in *TRAC* were originally meant to determine whether an agency's delay is "*so egregious*" to warrant a mandamus. 750 F.2d at 79 (emphasis added). However, by its plain language, an "*unreasonable*" delay, as required in § 706(1) actions, is necessarily a more lenient test. "Unreasonable" delays constitute delays that are "excessive in amount or degree."[7] Meanwhile, "egregious" delays are those which are "[c]onspicuously bad or wrong."[8] "Egregious" also has been defined as "extraordinary in some bad way" or "flagrant."[9] These are not mere linguistic differences. One can easily imagine a delay that is in context "excessive" but not "conspicuously wrong." Put another way, wrongful delays clearly lie along a spectrum, and all points on the spectrum are not the same.

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[7] Oxford English Dictionary, https://www.oed.com/dictionary/unreasonable_adj?tl=true (last visited June 30, 2025).

[8] Oxford English Dictionary, https://www.oed.com/dictionary/egregious_adj (last visited June 30, 2025).

[9] Dictionary.com, https://www.dictionary.com/browse/egregious (last visited June 30, 2025).

Despite the differing standards, and despite *TRAC* itself having been a mandamus action, courts—including the district court here—have incorrectly applied the same framework to assess delay claims under both mandamus and § 706(1). ER10-13; *Ahmed v. Blinken*, 759 F. Supp. 3d 1, 11 (D.D.C. 2024) (stating that "claims under the APA and the Mandamus Act share the same standards for obtaining relief" despite later acknowledging that a mandamus requires inquiry into whether a delay is "egregious"). Conflating the two standards impermissibly raises the bar for § 706(1) claims, and in turn, results in too much deference to administrative agencies when they fail to act. This result runs afoul of Congress's intent, as "the APA neither incorporates nor alludes to the mandamus writ," nor its higher standard of egregious delay. *South Carolina v. United States*, 907 F.3d 742, 758 (4th Cir. 2018). For these reasons, *TRAC* should not apply to § 706(1) claims, and the district court erred in doing so.

B. Even If *TRAC* Governed APA Actions, It Should Not Be Applied at the Pleading Stage

Alternatively, even if *TRAC* governed § 706(1) actions, it was premature for the district court to apply it at the pleading stage. "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." *Gonzalez v. Cuccinelli*, 985 F.3d 357, 375-376 (4th Cir. 2021) (remanding the unreasonable delay claim "for further proceedings—perhaps including limited discovery."). On a Rule

12(b)(6) motion, the court is "confined by the facts contained in the four corners of the complaint." *Americopters, LLC v. FAA*, 441 F.3d 726, 732 n.4 (9th Cir. 2006), *aff'd sub nom. Jan's Helicopter Serv., Inc. v. FAA*, 525 F.3d 1299 (Fed. Cir. 2008). However, the *TRAC* test requires the court to consider factors that typically lie outside of the complaint, such as competing agency priorities and average processing times, making pleading-stage resolution inappropriate.

Given that *TRAC* presents a "fact intensive inquiry," *Nio v. U.S. Department of Homeland Security*, 270 F. Supp. 3d 49, 66 (D.D.C. 2017), district courts across the Ninth Circuit have found that § 706(1) actions are better resolved at the summary judgment stage. *See, e.g.*, *Raju v. Cuccinelli*, 2020 WL 4915773, at *1 (N.D. Cal. Aug. 14, 2020) (denying USCIS's Rule 12(b)(6) motion to dismiss "because the grounds for agency delay will often be unknown to plaintiffs at the pleading stage, [making] unreasonable-delay claims … ordinarily best resolved on or after summary judgment"); *see also Gutta v. Renaud*, 2021 WL 533757, at *7 (N.D. Cal. Feb. 12, 2021) (holding the same). For instance, in *Gonzalez v. Paul*, the court found the Fourth Circuit's position in *Gonzalez v. Cuccinelli* compelling, and denied a Rule 12(b)(6) motion to dismiss on the grounds that determining whether a delay is unreasonable "under the *TRAC* factors is premature and its application is not appropriate" for a Rule 12(b)(6) motion. 2021 WL 6119256, at *11 (D. Or. Apr. 8, 2021) (collecting cases from other district courts in the Ninth

Circuit finding the same). The district court here ignored these authorities in deciding the § 706(1) unreasonable delay claim on a motion to dismiss. *See* ER10-14. Should this Court find that the *TRAC* framework applies to § 706(1) actions, it should nonetheless reverse and remand for discovery and further proceedings.

II. *TRAC*'S UNWARRANTED DEFERENCE TO AGENCIES UNDERMINES AGENCY ACCOUNTABILITY AND IS INCONSISTENT WITH CONGRESSIONAL INTENT

As applied, the *TRAC* framework presents various policy concerns when applied in the APA context. For the reasons described below, the Ninth Circuit should hold that *TRAC* does not apply here or in other § 706(1) cases.

A. *TRAC* Undermines Agency Accountability

In practice, the *TRAC* framework gives too much deference to agencies, thus undermining their accountability to the public. "The APA … codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391-392 (2024) (overturning deference to administrative agencies' interpretation of ambiguous legal provisions previously enshrined by *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). Yet, in applying the *TRAC* factors to APA actions, courts give agencies "considerable deference." *Sierra Club v. Thomas*, 828 F.2d 783, 797 (D.C. Cir. 1987) (applying *TRAC* and finding delay was not unreasonable); *see also* Rubin, *Judicial Review of Agency Delay: The District of*

Columbia Circuit Moves Toward a More Deferential Standard—A Survey of Recent Cases, 3 Admin. L.J. 725, 744 (1989) ("the [*Sierra Club*] court clearly indicated that deference to agency discretion is the paramount factor in unreasonable delay cases"). Shortly after the *TRAC* decision, scholars observed that courts were "increasingly reluctant to find unreasonable delays" and the D.C. Circuit, where *TRAC* originated, took "an expanding view of the amount of deference that should be granted to agencies." *Id.* at 729-730. To the extent this deference ever was appropriate, it certainly is not after the Supreme Court's repudiation of the leading case that had enshrined deference to agencies as a guiding principle. *See Loper Bright Enters.*, 603 U.S. at 412 ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires."). This recent judicial disapproval of deference to agencies' determinations of law should apply equally to deferential review of agency inaction. And this recent development warrants this Court's reexamination of its application of *TRAC*. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (Schroeder, C.J., opinion) (acknowledging prior Ninth Circuit precedent is non-binding where a Supreme Court decision

"undercut[s] the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable").

Turning to the factors themselves, the hexagonal *TRAC* framework instructs courts to consider the following factors:

> (1) the time agencies take to make decisions must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

750 F.2d at 80 (citations omitted). For multiple reasons, this test is far too deferential to agencies. To start, the first factor, which considers whether the agency's timeline is governed by a "rule of reason," and the fourth, which considers the effect of the agency's competing priorities, *see id.*, result in excessive deference to the agency as applied. While these two factors may seem not to be deferential on their face, courts often tie their analysis to the average processing time at the agency. *See, e.g.*, *Sheiner v. Mayorkas*, 2023 WL 2691580 (S.D.N.Y. Mar. 29, 2023) (finding first *TRAC* factor weighed in favor of USCIS where plaintiff's petition was within "average processing times"); *Chuttani v. USCIS*, 2020 WL 7225995, at *4 (N.D. Tex. Dec. 8, 2020) ("The Court is reluctant to hold

unreasonable any delay in adjudicating an … application that's less than the upper limit of [USCIS's] current estimated processing time for that particular application form and will not do so here."). And "[a] court will defer to an agency's statements that it is proceeding at an appropriate pace to fulfill its statutory duties given its other obligations." Biber, *Two Sides of the Same Coin: Judicial Review of Administrative Agency Action and Inaction*, 26 Va. Envtl. L.J. 461, 483 (2008).

Judging the appropriateness of a delay in a given case by comparison to the average agency processing times rewards agency inaction and is not meaningful, independent review. Rather, it is circular and self-fulfilling, finding that delay is not unreasonable so long as it is typical. And it effectively abdicates the court's duty to independently determine the law. *See Loper Bright Enters.*, 603 U.S. at 421. Agencies have little incentive to move expeditiously if they know that the measuring stick for unreasonable delay is their own inaction. This is no theoretical concern. Rather, there has been a cycle of longer and longer agency delays and an increasingly high bar to find unreasonable delay. To give one example, from 2017 to 2025, USCIS's median processing time for an I-601A (Provisional Unlawful Presence Waiver) increased approximately 600%, from 4.6 months to 31.3 months.[10]

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[10] *See* USCIS, *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year, Fiscal Year 2014 to 2019*, https://egov.uscis.gov/processing-times/historic-pt-2 (last visited June 30, 2025);

Meanwhile, *TRAC* factors that tend to favor plaintiffs—for example factors three, whether health and welfare are at stake, and five, which considers the interests prejudiced by the delay—are frequently collapsed into one factor and not given adequate weight. "Deference appears to override the concerns identified in *TRAC* and essentially renders many of the factors outlined in *TRAC* meaningless. The consequences of delay to private parties no longer seem particularly relevant to the analysis." Rubin, 3 Admin. L.J. at 725. Here, for example, the district court lumped factors three and five together. ER12. The court briefly noted that Plaintiffs-Appellants' position was "sympathetic," but in the same sentence, stated that others face similar circumstances awaiting adjudication of their visa applications. *Id.* The court then concluded "the third and fifth *TRAC* factors tip toward neither Plaintiffs nor Defendants." *Id.* Unfortunately, such an outcome is not unique: despite the harms caused by delays in immigrant application adjudications, as discussed in Section III below, courts routinely uphold *years-long* delays for USCIS applications. *See, e.g.*, *Mohammad v. Blinken*, 548 F. Supp. 3d 159, 168-169 (D.D.C. 2021) (dismissing concerns of family separation; reasoning that delay was not unreasonable because "'many others' face similarly difficult

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USCIS, *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year, Fiscal Year 2020 (up to April 30, 2025)*, https://egov.uscis.gov/processing-times/historic-pt (last visited June 30, 2025).

circumstances as they await adjudication of their visa applications.") (quoting *Palakuru v. Renaud*, 521 F. Supp. 3d 46, 53 (D.D.C. 2021)).

TRAC's undue deference to agencies is evidenced by the overall outcomes of unreasonable delay cases. In reviewing courts of appeals decisions for cases in which a claim under § 706(1) was asserted from 1992 to 2022, scholars from the George Washington University Law School found a stark reality: "The plaintiff usually loses." Grover & Platt, 77 Admin. L. Rev. ---, *supra* (manuscript p.53 (collecting outcomes and showing § 706(1) plaintiffs in the Ninth Circuit lost approximately twice as often as they obtained relief and in the D.C. Circuit—where *TRAC* originated—plaintiffs lost in three times the number of cases they won)).

This level of deference to agencies is unacceptable. Allowing agencies largely unfettered reign to delay and slow-walk cases increases the likelihood that they will infringe on individual rights and liberties. As one scholar put it, "[M]uch of the injustice in our society results from the exercise of administrative discretion." Berger, *Individual Rights, Judicial Deference, and Administrative Law Norms in Constitutional Decision Making*, 91 B.U. L. Rev. 2029, 2033 (2011) (citing Davis, *Discretionary Justice: A Preliminary Inquiry* 4, 25 (1969)); *see also* Tokaji, *First Amendment Equal Protection: On Discretion, Inequality, and Participation*, 101 Mich. L. Rev. 2409, 2409-2410 (2003) ("The considerable

discretion that many official decisionmakers wield raises the spectre that violations of equality norms will sometimes escape detection.").

B. *TRAC* Undermines Congress's Statutory Regime and Public Confidence

By institutionalizing delay, *TRAC*'s application undermines Congress's intent and erodes public confidence in government agencies. Here, for example, Congress provided that: "It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application." 8 U.S.C. § 1571(b). While not binding, this is informative of Congress's intent. Yet here, the court upheld a roughly one-year delay as not unreasonable. ER13. And now, as the case proceeds through the courts, almost two years have passed with no further agency action. Even more egregious, when applying the *TRAC* framework, some courts allow agencies to disregard explicit statutory timetables, finding the timeline for agency action set by Congress to be just one factor in the analysis and not itself dispositive. *See, e.g.*, *Western Coal Traffic League v. STB*, 216 F.3d 1168, 1174 (D.C. Cir. 2000) ("As we first indicated in [*TRAC*], the specificity of the statutory timetable is merely one of six factors we consider when determining whether a protestant is entitled to relief from the agency's delay."). Deferring to an agency that has greatly exceeded

a timeline established by Congress tips the balance too far against Congressional intent and too far in favor of administrative agency discretion.

Furthermore, ongoing delays and uncertainty in administrative actions may lead the public to question the utility or competence of agencies. "Quite simply, excessive delay saps the public confidence in an agency's ability to discharge its responsibilities and creates uncertainty for the parties, who must incorporate the potential effect of possible agency decisionmaking into future plans." *Potomac Elec. Power Co. v. ICC*, 702 F.2d 1026, 1034 (D.C. Cir. 1983). Thus, *TRAC*'s framework unfortunately contributes to increasing distrust of government agencies.

III. AGENCY DELAYS CREATE REAL-WORLD HARM

Administrative agencies were created as instruments of government efficiency—"driven by a practical understanding that in our increasingly complex society … . Congress simply cannot do its job absent an ability to delegate power." *Mistretta v. United States*, 488 U.S. 361, 372 (1989). But efficiency is not achieved through silence or inaction, or by judicial deference to that silence or inaction. As cautioned by Justice Thurgood Marshall, the "dangers of agency inaction are too important, too prevalent, and too multifaceted to … mandat[e] that courts cover their eyes and their reasoning power when asked to review an agency's failure to act." *Heckler v. Chaney*, 470 U.S. 821, 854-855 (1985) (Marshall, J., concurring in judgment); *Id.* at 840 (criticizing the Court's creation

of a presumption against reviewability of nonenforcement decisions, and arguing that such a presumption was "at odds with rule-of law principles").

The unreasonable delay in adjudication for Plaintiff-Appellant Hosseinzadeh's K-1 visa is just one example of the real-world harm that agency inaction creates. Plaintiff-Appellant Asghari is a U.S. citizen; Plaintiff-Appellant Hosseinzadeh is her fiancé and an Iranian national. *See* ER5. They filed a Petition for Alien Fiancé(e) on November 29, 2021. ER168. On October 10, 2023, Mr. Hosseinzadeh attended his visa interview, after which they were informed their petition was refused and placed in administrative processing for reconsideration. *Id.* Since then, Mr. Hosseinzadeh's visa application has remained in administrative limbo, leaving the couple separated, unable to marry and start their lives together. This harm is only compounded by the recently instated travel ban which applies to Iranian citizens, like Mr. Hosseinzadeh,[11] as well as increasing instability in Iran.

The harms caused by unreasonable delays are especially stark in the immigration context, where delays can create family separation, job loss, and emotional turmoil. For instance, immigrants waiting for work permit approvals need to rely on savings, if available, to cover living costs. In the absence of a valid

[11] Presidential Proclamation No. 10949, *Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats*, 90 Fed. Reg. 24,497 (June 10, 2025).

work permit, they risk losing their livelihood or facing deportation if they work without authorization.[12] And in moments of humanitarian crisis, where speed translates to survival, delayed processing times can mean people miss their window to evacuate.[13]

As illustrated by decisions like the one below, which found that delays upwards of four years for immigration applications are not unreasonable,[14] the *TRAC* framework is a far cry from the 180-day timeline that Congress considers appropriate. 8 U.S.C. § 1571(b). Years-long delays across various agencies have also been upheld under the *TRAC* regime. *See, e.g.*, *Oil, Chem. & Atomic Workers Union v. OSHA*, 145 F.3d 120, 124 (3d Cir. 1998) (six-year delay for rulemaking under the Occupational Safety and Health Administration was not unreasonable); *In re City of Va. Beach*, 42 F.3d 881, 886 (4th Cir. 1994) (finding a four-and-a-half-year delay for approval of a water pipeline construction project was not unreasonable, despite its impact on "human health and welfare"). These delays are not without consequence.

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[12] *See, e.g.*, Lind, *U.S. Work-Permit Backlog is Costing Immigrants Their Jobs*, Bloomberg (Mar. 15, 2022), https://www.bloomberg.com/news/articles/2022-03-15/u-s-work-permit-backlog-costing-immigrants-their-jobs.

[13] *See* Bier, *CBP Should Grant Parole to Fleeing Ukrainians Using ESTA*, Cato Institute (Mar. 2, 2022), https://tinyurl.com/2bjz6jkt.

[14] ER13 (noting that although twelve months passed by the time the matter at bar was heard by the court, other district courts held that delays of four years were not unreasonable).

For instance, the Department of Defense's (DOD) delays in implementing an updated background check system limit the DOD's ability to ensure the trustworthiness of the government's workforce and those who support it, placing national security at risk.[15] Backlogs also have a negative economic impact that can stifle technological development; for instance, "backlogs in three top patent offices led to more than US$10 billion in reduced global growth each year."[16] Meanwhile, the backlog at the U.S. Department of Veterans Affairs leaves tens of thousands of veterans without critical financial support and medical care, exacerbating their health challenges as they waiting for their disability claims to be processed.[17] A more robust judicial review of agency inaction would mitigate these harms by holding agencies accountable, and in turn, spur changes at the agency level resulting in more expedient action.

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[15] *See* Government Accountability Office, *Personnel Vetting: DOD Needs to Improve Management of the National Background Investigation Services Program*, No. GAO-24-107616 (June 26, 2024), https://www.gao.gov/products/gao-24-107616.

[16] Scialabba et al., *Government Backlog Reduction: Five Ways Government Agencies Can Improve Services and Mission Delivery*, Deloitte Center for Government Insights (June 2019), https://www.deloitte.com/us/en/insights/industry/government-public-sector-services/government-backlog-reduction.html.

[17] U.S. Department of Veterans Affairs, *Veterans Benefits Administration Reports: Claims Backlog* (reporting over 190,000 veterans within its backlog), https://www.benefits.va.gov/reports/mmwr_va_claims_backlog.asp (last updated June 23, 2025).

CONCLUSION

For the foregoing reasons, as well as those presented by Plaintiffs-Appellants, this Court should reverse the district court's ruling and reject *TRAC* as the standard for APA § 706(1) claims.

Respectfully submitted,

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June 30, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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