No. 25-1101

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOZHGAN ASGHARI and ASHKAN HAJI HOSSEINZADEH
Plaintiffs-Appellants,

v.

MARCO RUBIO, in his official capacity as Secretary of State of the United States of America, ROBERT JACHIM, in his official capacity as Director of Screening, Analysis and Coordination,
Defendants-Appellees.

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

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS MOZHGAN ASGHARI AND ASHKAN HAJI HOSSEINZADEH BY THE NATIONAL IMMIGRATION PROJECT

[All Parties Have Consented Pursuant to FRAP 29(a)]

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DISCLOSURE STATEMENT

Amicus Curiae states that it is a non-profit that has no parent corporations and no publicly held corporation owns 10% or more of the National Immigration Project.

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STATEMENT OF INTEREST[1]

The National Immigration Project of the National Lawyers Guild (d/b/a/ National Immigration Project) is a non-profit membership organization comprised of immigration attorneys, legal workers, jailhouse lawyers, grassroots advocates, and others working to defend immigrants' rights and to secure a fair administration of immigration laws. The National Immigration Project has extensive experience in immigration law, is involved in counseling and representing immigrants in removal proceedings counseling immigrants and their attorneys in the criminal justice system, and training others for such representation and counseling. The National Immigration Project is especially concerned with immigration policies that disproportionately impact Black, African, Middle Eastern, Muslim, and South Asian ("BAMEMSA") communities. It has a direct interest in addressing the government's repeated use of sweeping immigration bans and prolonged administrative processing to discriminatorily target BAMEMSA community members.

INTRODUCTION

Although the flaws in the American immigration system are well-documented, administrative processing, in many ways, stands alone as a uniquely

[1] No party's counsel authored this brief in whole or in part, nor did a party or its counsel contribute money to fund the brief, nor did a person other than the amicus (or its members or counsel) contribute money to fund the brief.

opaque and unaccountable practice. This case presents the issue of when a court may compel a consulate to adjudicate a visa application languishing in administrative processing, and as explained in Appellants' Opening Brief, the current test prevents all but the most egregious cases from receiving court intervention. Appellants' opening brief lays out compelling reasons why this Court should reverse the district court's dismissal of their Administrative Procedure Act ("APA") claim and reject the application of the factors first outlined in *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) ("*TRAC*"), to visa adjudication delays. Amicus endorses these arguments. This brief accordingly focuses on two complementary reasons why court intervention must remain a viable, and necessary, option for visa applicants delayed by administrative processing

First, the *TRAC* factors ignore key facts relevant to any analysis of what constitutes an "unreasonable delay" due to administrative processing. Under the *TRAC* factors, it is irrelevant that, even though administrative processing subjects all applications to the same indefinite delay, the reasons giving rise to administrative processing vary substantially among applications. State Department guidelines place no meaningful limit on the length of delay from administrative processing. Administrative processing has no deadlines, and consular officers in large part ignore or send perfunctory responses when applicants or even

congressional staff follow up about an application. In fact, consular officers are typically prohibited from explaining what gave rise to administrative processing in the first place, let alone what may be causing a substantial delay in the processing. Without court intervention, visa applicants are stuck with no information and no recourse to end an unreasonable delay. As one court summed up, "the 'administrative processing' designation is a convenient bureaucratic label allowing defendants to place visa applicants . . . in limbo, where their visas are neither refused nor granted, but without any clear explanation as to when the administrative processing or additional security screening will be completed." *Iqbal v. Blinken*, 2024 WL 3904959, at *35 (E.D. Cal. Aug. 21, 2024).

The problematic nature of this indefinite delay is compounded by the broad authority consular officers retain when evaluating visa applicants. Although consular officers have a statutory nondiscretionary duty to adjudicate a visa application, Department of State internal policies largely leave the process by which an application is adjudicated in the hands of the consular officer. And while these officers generally are prohibited from acting in any way unsupported by law or regulation, administrative processing represents a loophole of sorts, as the Department of State policies allow a consular officer to place an application in administrative processing for broad and subjective reasons. Consular officers are also entitled to rely on any information they obtain when determining whether to

place an application in administrative processing, even information received from third parties whether the consular officer has any knowledge about the third parties' motives or not.

In light of administrative processing's indefinite delay and the myriad of reasons giving rise to it, the *TRAC* factors fall woefully short as a check against unreasonable delay from administrative processing. Although all administrative processing applications require further investigation of some sort, the reasons for any given investigation must factor into a court's "unreasonable delay" analysis. Some applicants may be suspected of terrorist activities. Sometimes a consular officer might want to further investigate a Facebook post that makes the officer second guess if the applicant has any intention of abandoning their home country residence, a subjective inquiry. Under the *TRAC* factors, none of this matters. Under any definition of "reasonable," a court must account for both the length of the delay and the reason giving rise to that delay. Because the *TRAC* factors fail to do so, the district court's decision must be overturned.

Second, by limiting court intervention in visa adjudication delays to only the most egregious cases, the *TRAC* factors allow administrative processing to devastate visa applicants via financial, emotional, and physical harm, while undercutting American interests, particularly with respect to Muslim-majority countries, whose applicants face administrative processing at disproportionately

high levels. Applicants' lives can be placed at risk. And families are separated. Court intervention stands as the best hope for any visa application stuck in administrative processing.

ARGUMENT

I. ABSENT COURT INTERVENTION, ADMINISTRATIVE PROCESSING VESTS UNCHECKED POWER IN CONSULAR OFFICERS ENTITLED TO ACT ARBITRARILY AND TO SUBJECT APPLICANTS TO INDEFINITE DELAY.

A. Once placed in administrative processing, applicants face an indefinite delay with no recourse to end an unreasonable delay.

Absent court intervention, visa applicants in administrative processing face an indefinite delay with no hope—outside of court intervention—of ending that delay, regardless of how unreasonable it becomes. Applicants will often have no idea why they have been placed in administrative processing or how long the processing of their visa application will take. As discussed in more detail in Sec. (I)(B), under the Department of States Foreign Affairs Manual ("FAM"), which "articulates" the State Department's "official guidance," 22 C.F.R. § 5.5, the reasons that give rise to administrative processing can vary substantially from applicant to applicant. In some instances, a consular officer will seek additional evidence from the applicant before any final decision can be made. *See* 9 FAM 306.2-2(a)(1). But absent a request for additional information, an applicant is not given information about why their application has been placed in administrative

processing. The Department of State has stated that "[m]any factors can trigger these checks." Gallagher, Anna Marie, *Guiding Your Clients through the Fog*, 13-10 Immigration Briefings 1 (Oct. 2013) (hereinafter "Gallagher, *Guiding Clients*"). And although administrative processing "does not mean" the applicant is a security risk, "[f]or security purposes, the consular officer will not be able to provide specific information regarding what additional checks are to be performed." *Id.*

Further, State Department policies do not limit the length of time that an application can remain in administrative processing. The State Department places no limitation on itself for adjudicating a case in administrative processing. 9 FAM 306.2-2(a)(2). The Department of State merely advises that "processing times can vary based on individual circumstances."[2]

Once an application enters administrative processing, the applicant has no recourse for ending the delay caused by administrative processing. The applicant's best hope is to follow up with the consulate to see if there has been any change with the application. The Department of State recommends waiting at least 60 days before following up, but according to current guidance from at least one U.S. embassy, an applicant should wait six months before even sending the first follow-

[2] *Administrative Processing Information*, U.S. Dep't of State, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html (last visited June 30, 2025).

up to the applicant's consular post.[3] Even after a follow up, however, "[t]he most common response to applicants' inquiries is a brief reply, confirming that the case remains in [administrative processing]."[4] Some organizations go so far as to warn applicants that "Consulates are not always responsive to such inquiries," and "no outside entity has the ability to influence the speed" at which a visa application is adjudicated once placed in administrative processing.[5]

Alternatively, a noncitizen could seek Congressional assistance. But this course of action (a) requires the applicant to know a U.S. citizen who is willing to contact their Congressional district on the noncitizen's behalf, and (b) still comes with little hope of success: those who have gone the Congressional route often receive "little, if any, information," and have reported that "it is often futile." Gallagher, *Guiding Clients*.[6]

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[3] *See If Your Case Requires Further Administrative Processing*, US Embassy & Consulates in Türkiye, https://tr.usembassy.gov/administrative-process-iv/ (last visited June 30, 2025).

[4] *Administrative Processing and Visa Denials*, Office of International Services University of Pittsburgh, https://www.ois.pitt.edu/sites/default/files/docs/Administrative-Processing-and-Visa-Denials.pdf (last visited June 30, 2025).

[5] *Administrative Processing & Visa Issues*, Office of International Services Johns Hopkins University, https://ois.jhu.edu/travel-information/administrative-processing-and-visa-issues/ (last visited June 30, 2025).

[6] *Administrative Processing and Visa Denials*, Office of International Services University of Pittsburgh, https://www.ois.pitt.edu/sites/default/files/docs/Administrative-Processing-and-

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Congressional assistance has proven futile even under extreme circumstances. For example, a former U.S. military translator from Afghanistan, who began translating for the military when he was 19 years old, remained stuck in administrative processing while members of the Islamic State broke into homes of the translator's relatives looking for the translator. *See* Laird, Lorelei, *Forgotten Allies, Broken Promises*, 103-SEP A.B.A. J. 52 (2017). A veteran who worked with the translator and was attending Stanford Law School organized students from the International Refugee Assistance Project at Stanford to reach out to Congressional representatives, asking for assistance for the translator. *See id.* Despite requesting help on behalf of the translator—whose family was being hunted by the Islamic State—the students' efforts "went nowhere." *Id.* Court intervention remains the sole chance a visa applicant has to avoid an indefinite delay from administrative processing.

B. Under Department of State policies, consular officers have broad and unchecked discretion to place applications in administrative processing.

Administrative processing subjects visa applicants to the whims of whatever particular consular officer is tasked with adjudicating the application. A visa

Visa-Denials.pdf (last visited June 30, 2025) ("[I]n our experience, the congressional inquiry does not expedite the case.").

applicant bears the burden of establishing his or her eligibility for a visa.[7] 8 U.S.C. § 1361 ("Whenever any person makes application for a visa . . . the burden of proof shall be upon such person to establish that he is eligible to receive such visa . . . ."). There are several different classifications of visas (e.g. K-1 fiancé(e) visas, F-1 student visas, and H-1B specialty occupation visas) which each carry their own specific requirements tied to the purpose of the travel that must be met before the visa can be issued.[8] 8 U.S.C. § 1101(a)(15) (defining the various classifications). Despite these different requirements, the process for obtaining a visa is generally the same across the classifications: the applicant must submit an application, submit biometric data and any required documentation, pay a fee, and attend an interview conducted by a consular officer. Upon conclusion of the consular interview, there are generally three possibilities with respect to the application: the visa is issued, the visa is denied, or the visa is placed in administrative processing.

Although consular officers have a statutory nondiscretionary duty to adjudicate a visa, consular officers retain substantial discretion to determine what the adjudication process looks like. That is, a consular officer can determine what

[7] *Administrative Processing Information*, U.S. Dep't of State, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html (last visited June 30, 2025).

[8] *See Directory of Visa Categories*, U.S. Dep't of State, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html (last visited June 30, 2025).

information an applicant must provide during the application process and how that information factors into the adjudication process. By statute, the visa applicant's eligibility for a visa must be established "to the satisfaction of the consular officer." 8 U.S.C. § 1361. The Foreign Affairs FAM double downs on this discretion, allowing a consular officer to determine the extent of his or her investigation, stating only that the investigation be "as complete . . . as is necessary." 9 FAM 301.2-2(b).

In addition to these principles providing discretion when evaluating visas in general, State Department policies further provide discretion with respect to administrative processing in particular. According to the State Department, an application is placed in "administrative processing" when "a consular officer . . . determine[s] that additional information from sources other than the applicant may help establish an applicant's eligibility for a visa."[9] A consular officer may, if they "have a question about the interpretation or application of law or regulation," request an advisory opinion, and place the application in administrative processing while the officer waits for the opinion. 9 FAM 302.1-8(C).

The State Department's policies also outline several broad circumstances under which an officer can send an application into administrative processing. For

[9] *Administrative Processing Information*, U.S. Dep't of State, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html (last visited June 30, 2025) .

example, the application could be placed in administrative processing due to an incorrect statement on the application even when the misstatement is not material to the applicant's eligibility. 9 FAM 302.1-8(B)(2); 8 U.S.C. § 1182(a)(6)(C). Further, the policies contain a catchall provision which allows a consular officer to place an application in administrative processing if the applicant "otherwise fails to meet specific requirements of law or regulations for reasons for which the applicant is responsible." 9 FAM 302.1-8(B)(6).

This catchall provision presents consular officers with nearly unfettered ability to place visa applications in administrative processing, which as describe above can last indefinitely. Of course, State Department policies require consular officials to refuse or issue visas only when doing so is consistent with the INA itself and its regulations. *See, e.g.*, 9 FAM 301.1-2. But the "specific requirements of law or regulations" which a consular officer may use to justify placing an application in administrative processing, are themselves subjective. For example, an applicant must meet the requirements of whatever classification (e.g. fiancé(e), student, etc.) the applicant seeks. *See* 9 FAM 403.7-2(1)-(3); 8 U.S.C. § 1101(a)(15)(A)-(V) (defining the various visa classifications). Several visa classifications require an applicant to prove that the applicant "has no intention of abandoning" their foreign residence. *See* 8 U.S.C. § 1101(a)(15)(B) (business or tourism visas), (F) (student visa), (H) (temporary worker visas), (J) (student

exchange visa), (M) (vocational student visa), (O) (extraordinary skill visa), (P) (athlete or performer visa), and (Q) (cultural exchange visa). The consular officer retains full discretion to determine an applicant's credibility on this issue. 9 FAM 403.7-2(U)(3).

Further, when exercising this broad discretion, there are few, if any, limits on the type of information a consular officer can use to evaluate an application. The State Department recognizes that information typically comes from three sources: from the applicants themselves via the application form, supporting documents, or interview; from U.S. government sources; or from third parties. 9 FAM 301.5-2(a). With respect to third-party sources, Department of State policies counsel that consular officers may rely on "law enforcement or other officials of the receiving state," "public sources like newspapers or local magazines," or even "information from [third-party] non-official sources." Consular officers may use this last category of information even where the consular officer has no "knowledge of the motivations or circumstances surrounding the provision of such information." 9 FAM 301.5-2(f). The State Department's policies merely encourage an officer "to carefully evaluate all allegations of misconduct or bad intentions" from these sources. *Id.*

On June 18, 2025, the Department of State issued a cable to all diplomatic and consular posts showing the breadth of information sources consular officers

can (and must) rely on.[10] This cable applies to all applications for F, M., and J visas (student visas), and instructs consular officers to conduct intake and interviews with standard procedures.[11] But once an office has determined an applicant is "otherwise eligible for the requested nonimmigrant status," the office must temporarily refuse the case under Section 221(g), and "[i]nform the applicant that his case . . . requires additional administrative processing." *Id.* The officer must then "[r]equest that the applicant set all of his social media accounts to 'public.'" *Id.* The consular officer who conducted the interview must then review the applicant's "entire online presence--not just social media activity-- using any appropriate search engines or other online resources." *Id.* The officer then looks for, among other things, "hostile attitudes toward the citizens, culture, government, institutions, or founding principles of the United States." *Id.*

Even before this cable explicitly endorsed the use of any and all information available to a consular officer on the internet, immigration organizations have

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[10] U.S. Dep't of State, *Announcement of Expanded Screening and Vetting for Visa Applicants* (June 18, 2025), https://www.state.gov/releases/office-of-the-spokesperson/2025/06/announcement-of-expanded-screening-and-vetting-for-visa-applicants/; *see Student and Exchange Visitor Visa Appointment Capacity and DOS Guidance on Expanded Social Media Screening*, NAFSA, https://www.nafsa.org/regulatory-information/student-and-exchange-visitor-visa-appointment-capacity-and-dos-guidance (hereinafter "*DOS Guidance*, NAFSA")(quoting U.S. Dep't of State cable outlining new vetting procedures).

[11] *DOS Guidance*, NAFSA.

found numerous examples of consulates exercising their broad discretion to place applications in administrative processing in arbitrary ways. An 80-year old Latin American woman had received "a number of nonimmigrant visitor visas," using them to visit family members in the United States. Gallagher, *Guiding Clients*. Despite these prior approvals, she was informed her latest visa application was placed in administrative processing "due to the consulate's suspicion that the woman had been involved in a paramilitary group in the 1940s," a fact which had never stopped her from receiving prior visas. *Id.* Her application was ultimately denied under INA § 214(b) (i.e. a failure to convince the consular officer she met the requirements for the visa classification she applied under). *Id.* "[N]o mention was made of suspected terrorism-related grounds." *Id.*

Similarly, a retired army general from a Latin American country had a visa application placed in administrative processing after previously receiving multiple visas. The retired general had worked for his home country in the United States under both an A visa, while employed in the United States, and B-1/B-2 visa post-employment in the United States.[12] *Id.* After those visas expired, he applied for

[12] An A visa is a visa for an applicant who travels to the United States on behalf of their home country. *See Visas for Diplomats and Foreign Government Officials*, U.S. Dep't of State, https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-diplomats.html (last visited June 30, 2025). A B-1/B-2 visa allows an applicant to travel to the United States for a combination of both business and tourism. *See Visitor Visa*, U.S. Dep't of State,

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another visa and was placed in administrative processing. *Id.* Before working in the United States, the retired general had been imprisoned for almost two years in his home country for refusing "to cooperate with a coup." *Id.* When that government's time in power ended and the retired general was released, "he was assigned by the new administration to his post in Washington, D.C." *Id.* After being placed in administrative processing, he learned that his political imprisonment—for refusing to participate in a coup— resulted in his visa application being placed in administrative processing. *Id.*

C. The *TRAC* factors fail to address arbitrary and indefinite delays from administrative processing.

The *TRAC* factors prove incapable of providing the guidance a court needs to determine whether a delay caused by administrative processing is "unreasonable." As the Opening Brief outlines, the APA requires "reasonableness," an objective standard which requires a case-by-case factual inquiry. *See* Opening Br. at 32-36. The Opening Brief further explains how the *TRAC* factors are inadequate for the purposes of assessing reasonableness. That this case arises within the context of an application in administrative processing only magnifies the inadequacies identified in the Opening Brief.

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https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html/visa (last visited June 30, 2025).

The first *TRAC* factor—the "most important" factor—proves particularly inadequate when applied within the context of administrative processing. ER-012. The district court here found that the delay was not unreasonable because other courts had found longer delays than the one here not unreasonable. *See* ER-012. But this comparison to other delays fails to account for why the delay from administrative processing is occurring. And as outlined above, the reasons giving rise to administrative processing vary substantially from application to application. Some applications can be placed in administrative processing because of suspected connections to terrorism,[13] while other applications could be stuck in administrative processing because a consular officer wanted to investigate a Facebook post that made the officer question whether the applicant had any plans to abandon their home country residence. *See supra* Sec. I(A). As the district court's analysis shows, the first *TRAC* factor lumps all applicants together by merely comparing the length of time applicants have been forced to wait. In doing so, the district court, in essence, assumed without justification that it is reasonable for the delay due to an investigation into potential terrorism connections to take as long as the delay due to the investigation of a Facebook post about the applicant's

[13] *See Administrative Processing FAQ*, Penn State The Dickinson School of Law, https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/Administrative-Processing-FAQ.pdf (last visited June 30, 2025).

intent not to abandon their foreign residence. That is incorrect under any definition of "reasonable."

Further, at the pleading stage, the first *TRAC* factor will almost never adequately evaluate what constitutes an unreasonable delay in the context of administrative processing. The Department of State prohibits consular officers from informing applicants why an application is placed in administrative processing. *See supra* I(B). Given this policy, an applicant who seeks judicial intervention will rarely be able to plead facts about why they are in administrative processing. This policy thus prevents a court from truly assessing whether an administrative processing delay is "unreasonable." *See also* Opening Br. at 46-52 (arguing that *TRAC* should not apply at the pleading stage).

The district court's analysis further fails because it does not distinguish between applications that are in administrative processing and those that are not. Applications in administrative processing are distinct from those that are not because, "in most cases, administrative processing 'signifies that the applicant has satisfied the statutory requirements for the visa . . . . It also usually means that there is no pre-existing ground of inadmissibility against the applicant.'" *Practice Pointer, Administrative Processing*, American Immigration Lawyers Association Dep't of State Liaison Comm. (posted 06/13/19) (quoting Pattison, Stephen R. and Simkin, Andrew T, *Consular Processing in India*, THE CONSULAR PRACTICE

HANDBOOK, 2012 Ed., AILA, June 2012) (on file with author). Indeed, the State Department has conceded that "[a]dministrative processing does not mean that the U.S. government has identified the applicant as a security risk." Gallagher, *Guiding Clients*. AILA states that "[c]lients should be assured that while administrative processing delays are disruptive and worrisome, the number of visa applicants who are denied visas following administrative processing is very small." *Practice Pointer, Administrative Processing*, American Immigration Lawyers Association Dep't of State Liaison Comm. (posted 06/13/19) (on file with author). Any "unreasonable delay" analysis must account for the fact that (a) the application has already been evaluated and (b) the applicant falls within a category of people who are highly likely to receive their visa. Indeed, that only a very small number of applications put through administrative processing ultimately are denied raises serious questions about the long delays that often arise from administrative processing.

Even when someone is placed in administrative processing for "national security" purposes, it is far from clear that any substantial delay from administrative processing is necessary or reasonable. Any person whose name "is similar to the names of individuals who may be suspected of criminal or terrorism-

related activities" may be placed in administrative processing.[14] Given this broad ability to tag someone as a potential national security risk, it is perhaps unsurprising that "national security" related administrative processing issues do not often require a long wait time. During the Biden Administration, for example, the Department of State announced that due to increased cooperation and use of technology, "most cases that would have previously required additional administrative processing [due to national security issues] were resolved immediately without additional, time-consuming handling."[15]

II. ADMINISTRATIVE PROCESSING DELAYS CAN HAVE DEVASTATING EFFECTS ON VISA APPLICANTS, IMPORTANT INSTITUTIONS, AND AMERICAN BUSINESS.

The delays from administrative processing can have devastating effects. In several circumstances, the delays from administrative processing can place the applicant at risk. As discussed above, the former U.S. military translator whose visa was in administrative processing was hunted by the Islamic State in Afghanistan. Laird, Lorelei, *Forgotten Allies, Broken Promises*, 103-SEP A.B.A. J.

[14] *Administrative Processing FAQ*, Penn State The Dickinson School of Law, https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/Administrative-Processing-FAQ.pdf (last visited June 30, 2025).

[15] *Facilitating Travel and Safeguarding National Security*, Dep't of State (June 8, 2023), https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-news-archive/facilitating-travel-and-safeguarding-national-security.html.

52 (2017). The applicant "lived in constant fear that he'd be recognized and killed," a fear that permeated "every second of [his] life." *Id.* But every time he followed up with the Consulate, he was told "Sir, your visa status is in administrative processing, and you have to wait." *Id.* Fortunately for this man, his visa was granted (more than four years after he first applied) before he or anyone in his family was harmed. *Id.*

Despite this long-delayed happy ending, there are countless families who have been forced into international separation due to administrative processing. Indeed, the forced separation suffered by Appellants here including devastating separation appears to be closer to the rule than the exception for those placed in administrative processing. Federal courts are replete with cases involving families who suffer myriad harms due to administrative processing. Sara Sheikhalizadehjahed, for example, started the process for getting her father, who was in the United Arab Emirates, a visa in 2019. *Sheikhalizadehjahed v. Gaudiosi*, No. 24-cv-1136, 2024 WL 4505648, at *1 (E.D. Cal. Oct. 16, 2024). Her father did not receive an interview for three and a half years, at which time he was placed in administrative processing. *Id.* Despite repeated follow-ups, she and her father "received no meaningful responses," forcing Sheikhalizadehjahed to seek an adjudication via the courts. *Id.* During this period of "physical separation from her family," Sheikhalizadehjahed reported suffering from "significant personal,

financial, and emotional hardship" in the form of "depression, requiring medication and regular mental health services; marital strain, [and] inability to concentrate on work, putting her employment at risk." *Id.* Hadi Ali Moussawi, from Lebanon, sought a visa to be reunited with his wife, but, due to his visa languishing in administrative processing, he missed the birth of his daughter. *Maardani v. Mayorkas*, 24-cv-1325, 2024 WL 4674703, at *2 (E.D. Cal. Oct. 31, 2024).

The case of Nabo Yu stands as a particularly egregious example of the arbitrary nature with which the U.S. government makes use of administrative processing. Yu and his family filed and received approval of an immigrant visa petition. Yu then received an F-1 student visa and attended the University of Pennsylvania as an engineering student. *Yu v. Blinken*, No. 24-6347, 2025 WL 1669055, at *1 (E.D. Pa. June 12, 2025). After completing his first year, he returned to China to apply for another F-1 visa. Within the first two months after his return to China, "his father, mother, and younger brother were all approved for their immigrant visas, entered the U.S., and were issued 'green cards.'" *Id.* Yu, however, saw his F-1 visa application placed into administrative processing. *Id.* While it remained pending, Yu also filed a DS-260 immigrant visa application "based on his father's [lawful permanent resident status]." *Id.* This application was also placed in administrative processing, forcing Yu to resort to litigation. *Id.* As

the district court recognized in denying the government's motion to dismiss, "the consequences of the agency's delay to Nabo have been significant: his course of study has been halted completely, and thus he risks financial loss, job loss, and loss of the credits he has already earned at the University of Pennsylvania," all while being "separated from his entire immediate family, who all reside in the United States." *Id.* at *7.

These devastating impacts extend beyond the applicants themselves to undercut American interests. Administrative processing is so ubiquitous among student visa applicants that colleges and universities have dedicated webpages that prepare international students for the possibility of administrative processing.[16] Further, even in today's world of remote technology, students and schools cannot overcome an application being placed in administrative processing by letting the students "start or continue to study outside the United States, even if remote classes are possible."[17] These universities miss out on well-qualified students, who

[16] *See, e.g.*, *Administrative Processing FAQ*, Harvard International Office, https://www.hio.harvard.edu/sites/default/files/HIOFiles/Administrative%20Processing%20FAQ_0.pdf (last visited June 30, 2025); *Visa Denials, Delays, and Administrative Processing*, International Student and Scholar Services University of Tennessee, https://international.utk.edu/visa-denials-delays-and-administrative-processing (last visited June 30, 2025).

[17] *Administrative Processing and Visa Denials*, Office of International Services University of Pittsburgh, https://www.ois.pitt.edu/sites/default/files/docs/Administrative-Processing-and-Visa-Denials.pdf (last visited June 30, 2025).

"help drive cutting-edge research and development, fill job openings in critical STEM fields, advance national security and bolster the U.S. economy by generating new domestic startups and businesses."[18] As the Association of American Universities has recognized, "[g]iven the increasingly intense global competitions for talent and existing shortages across a variety of STEM fields, the United States cannot afford to drive away international students and workers and must work to maintain international perceptions of the United States as a welcoming destination for talent." *Id.* at 9.

But drive away talented and well-qualified international students and workers is exactly what administrative processing does by frustrating visa applicants due to the arbitrary way in which it is applied and the black box surrounding any information about why it is taking place or how long it will last. Again, there have been countless reported instances of administrative processing having a negative impact. For example, "a rising information technology company" in the United States filed an H-1B petition for a potential employee from Pakistan. Gallagher, *Guiding Clients*. Although the petition was approved quickly, and the company eagerly awaited the arrival of their new employee, the

[18] *International Students and American Competitiveness*, Association of American Universities at 1 (2022), available at https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Immigration/International%20Students%20%26%20American%20Competitiveness%20.%20AAU%20BRT%20Report%20.%20October%202022.pdf

individual was stuck for over a year and half with no decision on his visa application or explanation for the delayed process. *Id.*

These devastating impacts fall disproportionately on visa applicants from Muslim-majority countries. Although the INA technically contains a non-discrimination provision prohibiting discrimination on the basis of nationality, many universities warn students that their citizenship alone can force them into administrative processing. Some even explicitly warn students that citizenship in any one of several Muslim-majority countries could result in an application being placed in administrative processing.[19] Singling out applicants from Muslim-majority countries, "not only affects individuals but also has broader implications for U.S. relations with Muslim-majority countries." Syed, Mo, *The U.S. Immigration System: Challenges for Immigrants from Muslim-Majority Countries and Islamophobia*, 50 Hum. Rts. 8 (Feb. 2025). This recognition is not limited to universities, as other organizations have reported that under policies such as "extreme vetting" put in place during the first Trump Administration, "more applications for Muslims [were] disappearing into" administrative processing.

[19] *See Administrative Processing FAQ*, Penn State The Dickinson School of Law, https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/Administrative-Processing-FAQ.pdf (last visited June 30, 2025); *Administrative Processing and Visa Denials*, Office of International Services University of Pittsburgh, https://www.ois.pitt.edu/sites/default/files/docs/Administrative-Processing-and-Visa-Denials.pdf (last visited June 30, 2025).

Bier, J. David, *Trump Cut Muslim Refugees 91%, Immigrants 30%, Visitors by 18%*, Cato at Liberty, Cato Institute (December 7, 2018). Recently enacted policies threaten to have the same impact. *See Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security And Public Safety Threats*, Proclamation 10949, 90 Fed. Reg. 24497 (2025).

CONCLUSION

Administrative processing all too often devastates families, just as it has devastated Appellants. Absent court intervention, there is nothing standing between a visa applicant and an indefinite delay, a delay that consular officers may impose on almost any visa applicant due to the broad discretion given consular officers. Under the district court's application of the *TRAC* factors, the length of this delay need not bear any rational relationship to the reason giving rise to the delay. That is wrong under any definition of reasonable. For these reasons, the Court should reverse the decision below.

Dated: June 30, 2025

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CERTIFICATE OF SERVICE

I certify that on this 30th day of June 2025, a copy of the foregoing AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS MOZHGAN ASGHARI AND ASHKAN HAJI HOSSEINZADEH BY THE NATIONAL IMMIGRATION PROJECT was filed with the Clerk of the Court of the U.S. Court of Appeals for the Ninth Circuit by using the appellate ACMS system. All counsel of record in this case are registered ACMS users and will be served by the appellate ACMS system.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Circuit Rule 32-1 because it contains 5,325 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32-l(c).

2. This brief complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

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