

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jammu v. Bardini

Jammu · No. 2:24-cv-02063 CSK · Decided July 8, 2025

OPINION

Jammu v. Bardini

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 BALWINDER JAMMU, et al., No. 2:24-cv-02063 CSK 12 Plaintiffs,

13 . ORDER GRANTING MOTION FOR

SUMMARY JUDGMENT

14 EMILIA BARDINI, et al., 15 Defendants. 16 17 Plaintiff Balwinder Jammu and derivative
applicants, Plaintiffs Manjinder Kaur and 18 Abhiraj Jammu, proceed on a complaint for a writ of
mandamus.1 Compl. (ECF No. 1.) 19 Defendants Emilia Bardini, Ur M. Jaddou, Alejandro
Mayorkas, and Merrick Garland, 20 federal officials sued in their official capacity, seek to dismiss
the complaint under Rule 21 12(b)(6) of the Federal Rules of Civil Procedure. Defs. Mot. (ECF
No. 13). In the 22 alternative, Defendants seek summary judgment under Rule 56 of the Federal
Rules of 23 Civil Procedure. (Id.) Plaintiffs failed to file an opposition. See Docket. After
reviewing the 24 filings, on January 3, 2025, the Court found the matter suitable for decision
without oral 25 argument and vacated the hearing date of February 11, 2025. (ECF No. 15.) For
the 26 27 1 This case proceeds before the undersigned pursuant to 28 U.S.C. § 636(c) for all
purposes, including the entry of judgment, pursuant to the consent of all parties. (ECF
28 Nos. 4, 7, 8.)

1 reasons set forth below, Defendants’ motion for summary judgment is granted.

2 I. BACKGROUND

3 Under the Immigration and Nationality Act (“INA”), non-citizens who are physically 4 present
in the United States may apply for asylum. 8 U.S.C. § 1158(a). Non-citizens 5 seeking asylum
affirmatively, as Plaintiffs are here, file a Form I-589 with United States 6 Citizenship and
Immigration Services (“USCIS”). See 8 C.F.R. § 208.3. Filing the 7 Form I-89 initiates the
procedures outlined in 8 U.S.C. § 1158(d). See 8 C.F.R. § 208.3.

8 Section 1158(d)(5)(A) lays out certain guidelines USCIS must follow when considering
9 asylum applications, including requirements that “the initial interview or hearing on the 10
asylum application shall commence not later than 45 days after the date an application is 11 filed”

and that “final administrative adjudication of the asylum application, not including 12 administrative appeal, shall be completed within 180 days after the date an application is 13 filed[.]” 8 U.S.C. § 1158(d)(5)(A)(ii)–(iii). Both deadlines include “exceptional 14 circumstances” exceptions. Id. 15 Plaintiffs are non-citizens who entered the United States on or about February 15, 16 2022. Compl. ¶ 8. Plaintiff Balwinder Jammu (“Jammu”) submitted an Application for 17 Asylum and for Withholding of Removal (“I-589 application”) with the San Francisco 18 Asylum Office on or about June 23, 2022. Compl. ¶ 9; Exh. 1. Plaintiffs Manjinder Kaur 19 and Abhiraj Jammu were included as derivative applicants to Plaintiff Jammu’s I-589 20 application. Compl. ¶ 9. As of the filing of Plaintiffs’ Complaint, Defendants have not 21 scheduled an asylum office interview or any decision on Plaintiff Jammu’s I-589 22 application. Id. ¶ 11. Plaintiffs allege Plaintiff Jammu’s asylum application has been 23 pending for two years. Id. ¶ 25. Plaintiff Jammu currently has Employment Authorization 24 Documents (“EAD”) permitting him to work during the pendency of the asylum 25 application. Defs. Mot. at 2. Defendants claim Plaintiffs have not requested expedited 26 processing or have requested to be placed on a short notice interview list. Id. 27 Defendants also claim Plaintiffs have not made any request for parole to seek 28 permission to return to the United States after travel abroad. Id. 1 Plaintiffs filed their Complaint on July 29, 2024, seeking to compel Defendants to 2 schedule an asylum office interview and to adjudicate Plaintiff Jammu’s I-589 3 application. See Compl. Although Plaintiffs do not clearly identify their causes of action, 4 Plaintiffs cite to both the Administrative Procedure Act (“APA”) pursuant to 5 U.S.C. 5 § 555(b), and the Mandamus Act pursuant to 28 U.S.C. § 1361. Compl. ¶¶ 16-20. 6 On December 11, 2024, Defendants filed the motion presently before the Court, 7 seeking dismissal of the complaint or, in the alternative, summary judgment on the 8 following grounds: (1) Plaintiffs lack a clear right to relief sought; and (2) there has been 9 no unreasonable delay in adjudicating Plaintiffs’ asylum application. Defs. Mot. Plaintiffs 10 did not file an opposition to the motion. See Docket. Defendants filed a reply requesting 11 the Court construe Plaintiffs’ failure to file an opposition as a non-opposition and grant 12 Defendants’ motion pursuant to Local Rule 230(c). Defs. Reply at 2 (ECF No. 14).

13 II. LEGAL STANDARDS

14 A. Rule 12(b)(6) 15 Dismissal under Rule 12(b)(6) may be warranted for “the lack of a cognizable 16 legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” 17 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). In evaluating 18 whether a complaint states a claim on which relief may be granted, the court accepts as 19 true the allegations in the complaint and construes the allegations in the light most 20 favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v. 21 United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). 22 In ruling on a motion to dismiss brought under Rule 12(b)(6), the court may 23 consider material properly submitted as part of the complaint and documents that are not 24 physically attached to the complaint if their authenticity is not contested and the plaintiff’s 25 complaint necessarily relies on them. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 26 (9th

Cir. 2001). The court may also consider matters of public record. Id. 27 /// 28 /// 1 B. Summary Judgment 2 “A party is entitled to summary judgment if the ‘movant shows that there is no 3 genuine dispute as to any material fact and the movant is entitled to judgment as a 4 matter of law.’” City of Pomona v. SQM North America Corp., 750 F.3d 1036, 1049 (9th Cir. 2014) (quoting Fed. R. Civ. P. 56(a)). “The moving party initially bears the burden of 6 proving the absence of a genuine issue of material fact.” In re Oracle Corp. Sec. Litig., 7 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 8 (1986)). “Where the moving party meets that burden, the burden then shifts to the non- 9 moving party to designate specific facts demonstrating the existence of genuine issues 10 for trial.” Id. “The court must view the evidence in the light most favorable to the 11 nonmovant and draw all reasonable inferences in the nonmovant’s favor.” City of 12 Pomona, 750 F.3d at 1049. “‘Where the record taken as a whole could not lead a 13 rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.’” Id. 14 (quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 15 (1986)).

16 III. DISCUSSION2

17 A. APA and Mandamus Act 18 Plaintiffs allege there has been unreasonable delay in processing Plaintiff 19 Jammu’s asylum application under Section 706(1) of the APA and also seek relief under 20 the Mandamus Act, 28 U.S.C. § 1361. See generally Compl. Under Section 706(1) of the 21 APA, courts can “compel agency action unlawfully withheld or unreasonably delayed.” 22 5 U.S.C. § 706(1). “[A] court may compel [delayed] agency action under the APA when 23 the agency (1) has ‘a clear, certain, and mandatory duty’ and (2) has unreasonably 24 delayed in performing such duty.” Vaz v. Neal, 33 F.4th 1131, 1136 (9th Cir. 2022) 25 (citations omitted) (quoting Plaskett v. Wormuth, 18 F.4th 1072, 1082 (9th Cir. 2021)). 26 27 2 Though Plaintiffs’ failure to file an opposition is construed as a non-opposition to Defendants’ motion, E.D. Cal. L.R. 230(c), the Court will evaluate Defendants’ motion on 28 the merits. 1 Under the Mandamus Act, to compel governmental action, a court must find that “(1) the 2 plaintiff’s claim is clear and certain; (2) the duty is ‘ministerial and so plainly prescribed 3 as to be free from doubt’; and (3) no other adequate remedy is available.” Or. Nat. Res. 4 Council v. Harrell, 52 F.3d 1499, 1508 (9th Cir. 1995) (internal quotation marks omitted) 5 (quoting Fallini v. Hodel, 783 F.2d 1343, 1345 (9th Cir. 1986)). 6 The Ninth Circuit has recognized that the relief sought under the Mandamus Act 7 and under Section 706(1) of the APA is “essentially the same.” Indep. Mining Co. v. 8 Babbitt, 105 F.3d 502, 507 (9th Cir. 1997). Thus, “when a complaint seeks relief under 9 the Mandamus Act and the APA and there is an adequate remedy under the APA, [a 10 court] may elect to analyze the APA claim only.” Vaz, 33 F.4th at 1135. Because an 11 adequate remedy exists under the APA, the Court will analyze Plaintiffs’ claim of delay 12 under the APA only. See id. If Plaintiffs’ APA claim fails, their claim under the Mandamus 13 Act fails as well. See Vaz, 33 F.4th at 1138-39. 14 B. Unreasonable Delay 15 Defendants argue that Plaintiffs cannot establish an APA claim because the delay 16 in adjudicating Plaintiff Jammu’s asylum application is not

unreasonable.³ Defs. Mot. at 17 11-12. “[T]he APA and related case law provide ‘law to apply’ in determining whether 18 defendants have failed to act within a reasonable time.” *Khan v. Johnson*, 65 F. Supp. 19 3d 918, 926 (C.D. Cal. 2014). “[F]ederal courts routinely assess the ‘reasonableness’ of 20 the pace of agency action under the APA.” *Id.* (citation omitted). 21 Under the APA, a reviewing court must “compel agency action ... unreasonably 22 delayed[.]” 5 U.S.C. § 706(1). However, “[a] court can compel agency action under this 23 section only if there is a specific, unequivocal command placed on the agency to take a 24 discrete agency action, and the agency has failed to take that action.” *Vietnam Veterans 25 of Am. v. Cent. Intel. Agency*, 811 F.3d 1068, 1075 (9th Cir. 2016) (internal quotation 26 marks and citation omitted). “The agency action must be pursuant to a legal obligation 27 3 The Court does not reach whether Defendants owe Plaintiffs a non-discretionary duty, 28 as resolution of the issue of unreasonable delay resolves the motion. 1 ‘so clearly set forth that it could traditionally have been enforced through a writ of 2 mandamus.’” *Id.* at 1075-76 (citation omitted). 3 In determining whether an agency action was unreasonably delayed, courts 4 consider the six “TRAC” factors: 5 (1) the time agencies take to make decisions must be governed by a rule of reason; (2) where Congress has 6 provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that 7 statutory scheme may supply content for this rule of reason;

(3) delays that might be reasonable in the sphere of economic 8 regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of 9 expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account 10 the nature and extent of the interests prejudiced by delay; and

(6) the court need not find any impropriety lurking behind

11 agency lassitude in order to hold that agency action is unreasonably delayed. 12 13 *In re Nat. Res. Def. Council, Inc.*, 956 F.3d 1134, 1138-39 (9th Cir. 2020) (quoting 14 *Telecomms. Research and Action Ctr. (“TRAC”) v. FCC*, 750 F.2d 70, 79-80 (D.C. Cir. 15 1984)). 16 In this case, the following facts are undisputed and supported by Defendants’ 17 Statement of Undisputed Material Facts (“SUF”). (ECF No. 13-1.) On or about June 23, 18 2022, Plaintiff Jammu submitted an asylum application with the San Francisco Asylum 19 Office. (SUF 47.) In accordance with the INS’ last-in-first-out (“LIFO”) interview 20 scheduling system, Plaintiff Jammu’s turn to be scheduled for an interview has not 21 occurred. (SUF 48.) Plaintiffs filed their Complaint on July 29, 2024, alleging Plaintiff 22 Jammu’s asylum application has been pending for two years, alleging unreasonable 23 delay. See Compl. 24 The Ninth Circuit has determined the most important factor is the first factor, the 25 “rule of reason.” See *In re Nat. Res. Def. Council, Inc.*, 956 F.3d 1134, 1139 (9th Cir. 26 2020). Despite the first factor’s significance, it is not itself dispositive; all factors must be 27 weighed. *In re A Cmty. Voice*, 878 F.3d 779, 786 (9th Cir. 2017). Courts examine the 28 length of delay and reason for the delay to determine “whether there is any rhyme or 1 reason for the Government’s delay—in other words, whether the agency’s

response time 2 ... is governed by an identifiable rationale.” *Jamalina v. Rubio*, 2025 WL 744861, at *5 3 (E.D. Cal. Mar. 7, 2025) (quoting *Poursohi v. Blinken*, 2021 WL 5331446, at *4 (N.D. Cal. 4 Nov. 16, 2021)). Where Congress has not supplied a period for agency action, courts 5 look to case law in assessing whether the agency’s action is unreasonably delayed. *Id.* 6 (citing *Sarlak v. Pompeo*, 2020 WL 3082018, at *6 (D.D.C. June 10, 2020) (“Absent a 7 congressionally supplied yardstick, courts typically turn to case law as a guide.”)). USCIS 8 follows what is called the last-in-first-out scheduling system for handling asylum 9 applications. Courts have widely found that the last-in-first-out system is a rule of reason. 10 See *Teymouri v. USCIS*, 2022 WL 18717560, at *4 (C.D. Cal. Jan. 31, 2022) (collecting 11 cases); see also *Varol v. Radel*, 420 F. Supp. 3d 1089, 1097 (S.D. Cal. Oct. 22, 2019). 12 Here, Plaintiff Jammu’s asylum application has been pending since June 2022. 13 This represents a delay of over 30 months, or over two years, as of the filing of 14 Defendants’ motion. However, courts have held that even longer delays are insufficient 15 to find the first TRAC factor weighs in favor of finding unreasonable delay. See 16 *Varzaghani v. Mayorkas*, 2024 WL 2952141, at *4 (C.D. Cal. June 5, 2024) (finding a 17 two-year delay to be reasonable); see also *Singh v. Bardini*, 2023 WL 4669864, at *2 18 (E.D. Cal. July 20, 2023) (finding four-year delay to be reasonable); *Teymouri*, 2022 WL 19 18717560, at *4 (finding a five-year delay to be reasonable). Accordingly, the delay in 20 the adjudication of Plaintiff Jammu’s asylum application is reasonable. The Court finds 21 the first TRAC factor favors Defendants. 22 For the second TRAC factor, courts consider whether “Congress has provided a 23 timetable or other indication of the speed with which it expects the agency to proceed in 24 the enabling statute[.]” *In re Nat. Res. Def. Council, Inc.*, 956 F.3d at 1138. Courts 25 acknowledge that Congress has established requirements for adjudicating asylum 26 actions under 8 U.S.C. § 1158(d)(5)(A), but that USCIS retains limited discretion and that 27 this does not afford a plaintiff a private right of action to enforce the timing requirements 28 1 under 8 U.S.C. § 1158(d)(5)(A). See *Varol*, 420 F. Supp. 3d at 1095 (collecting cases). 2 Moreover, Congress has further indicated that USCIS maintains limited discretion “as to 3 the timing of adjudication of asylum applications under exceptional circumstances.” 4 *Denisov v. Mayorkas*, 2024 WL 3522047, at *6 (N.D. Cal. July 23, 2024) (quotation 5 marks and citation omitted). The Court finds the second TRAC factor is neutral. See 6 *Dawod v. Garland*, 2023 WL 8605320, at *10 (C.D. Cal. Aug. 10, 2023) (finding the 7 second TRAC factor is neutral “because the INA lacks a private right of action to enforce 8 the timelines set forth therein and also gives the USCIS some discretion, courts have 9 concluded that this factor is neutral, or at best, slightly weighs in an asylum applicant’s 10 favor.”). 11 The third and fifth TRAC factor contemplate “whether human health and welfare 12 are at stake and the nature and extent of the interests prejudiced by delay.” *Singh*, 2023 13 WL 4669864, at *3. The Complaint asserts Plaintiffs face uncertainty while Plaintiff 14 Jammu’s asylum application remains pending and that Plaintiffs have been unable to 15 plan for their future, including further education, while their immigration status remains 16 uncertain. Compl. ¶¶ 26, 28. Defendants argue that Plaintiff Jammu has remained 17 physically present in the United States with his family

and has been permitted to remain 18 and work without fear of being removed while his asylum application is pending. Defs.

19 Mot. at 18-19. Plaintiffs' allegations do not rise to the level of creating concern that 20 human health and welfare are at stake in the delay. Therefore, the Court finds the third 21 and fifth TRAC factors weigh in favor of Defendants. 22 Under the fourth TRAC factor, the Court considers the effect of expediting the 23 adjudication of Plaintiffs' applications on other agency action of higher or competing 24 priority. *Jamalina*, 2025 WL 744861, at *6 (citation omitted). Here, the agency's 25 competing priorities are that there are other asylum applications that are also waiting to 26 be adjudicated, including pending applications that were filed before Plaintiff Jammu's 27 application. See Defs. Mot. at 16-17. Effectively, Plaintiffs request relief in the form of 28 prioritizing their asylum application over other applicants also awaiting final decisions. 1 "When expediting an agency's progress on one individual's application would necessarily 2 negatively impact another application, courts have held that plaintiffs' appropriate 3 recourse is with Congress, not the courts." *Varzaghani*, 2024 WL 2952141, at *4; see 4 also *Jain v. Renaud*, 2021 WL 2458356, at *6 (N.D. Cal. June 16, 2021) ("Most courts 5 have found that the fourth TRAC factor weighs heavily in the agency's favor when a 6 judicial order putting plaintiffs at the head of the line would simply move all others back 7 one space and produce no net gain."). The Court finds the fourth factor weighs in favor 8 of Defendants. 9 Under the sixth TRAC factor, where a plaintiff has not made cognizable 10 allegations of impropriety, "courts in the Ninth Circuit have found this factor to either 11 weigh in the government's favor or to be neutral." *Jamalina*, 2025 WL 744861, at *6 12 (quoting *Poursohi*, 2021 WL 5331446, at *11). While Plaintiffs assert that Defendants 13 have failed to act in processing Plaintiff Jammu's application (Compl. ¶ 30), the allegedly 14 unreasonable delay is not tantamount to impropriety. "[A]lthough the presence of 15 intentional delay would strongly support plaintiff's argument, the opposite is not 16 necessarily true for defendants." *Denisov*, 2024 WL 3522047, at *7 (quotation marks and 17 citation omitted). Absent specific allegations of impropriety, the Court finds that the sixth 18 factor is neutral. 19 Having considered the TRAC factors, four factors weigh in favor of Defendants 20 and two are neutral. The first and fourth TRAC factors, which are afforded significant 21 weight, weigh in favor of Defendants. See *Poursohi*, 2021 WL 5331446, at *11. 22 Weighing the TRAC factors overall, Defendants' delay in adjudicating Plaintiff Jammu's 23 asylum application is not unreasonable. Therefore, Defendants are entitled to summary 24 judgment on Plaintiff's APA claim for unreasonable delay.

25 IV. CONCLUSION

26 In conclusion, IT IS HEREBY ORDERED THAT: 27 1. Defendants' Motion to Dismiss or, Alternatively, for Summary Judgment (ECF

28 No. 13) is GRANTED;

1 2. Judgment shall be entered for Defendants; and 2 3. The Clerk of Court shall close this case. 3

4 | Dated: July 7, 2025 C iy S \U

5 CHI SOO KIM

6 UNITED STATES MAGISTRATE JUDGE

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