ORAL ARGUMENT NOT YET SCHEDULED

No. 25-5001 consolidated with **No. 25-5180**

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SHAHNAZ HAERI MEHNEH, ALIASGHAR NEJAT, *consolidated with* SAEID MOTEVALI, ALIREZA MOTEVALY ALAMOUTI,

Appellants,

v.

MARCO RUBIO, SECRETARY, U.S. DEPARTMENT OF STATE; ROBERT JACHIM, DIRECTOR, SCREENING, ANALYSIS AND COORDINATION,

Appellees.

On Appeal from the U.S. District Court for the District of Columbia
(No. 24-cv-1374) (Hon. Zia M. Faruqui, Magistrate Judge)
(No. 24-cv-1029) (Hon. Sparkle L. Sooknanan, District Judge)

CONSENTED TO BRIEF OF *AMICI CURIAE* AMERICAN IMMIGRATION COUNCIL AND AMERICAN IMMIGRATION LAWYERS ASSOCIATION IN SUPPORT OF APPELLANTS AND AFFIRMING JURISDICTION

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES PER CIRCUIT RULE 28(a)(1); STATUTES AND REGULATIONS PER CIRCUIT RULE 28(a)(5)

A. Parties and *Amici*.

All parties and *amici* appearing before the district court, and in this Court, are listed in the Brief for Appellants.

B. Rulings Under Review.

Reference to the rulings under review in these consolidated cases is in the Brief for Appellants.

C. Related Cases.

Since this Court ordered the consolidation of No. 25-5001 with No. 25-5180, the undersigned counsel is not aware of any other case that is related to these cases.

D. Statutes and Regulations.

All applicable statutes and regulations are contained in the Brief for Appellants.

Dated: July 28, 2025

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STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP AND SEPARATE BRIEFING
(CORPORATE DISCLOSURE PREVIOUSLY FILED)

Pursuant to Circuit Rule 29(b), *amici* filed a Notice to Participate, with Consent, as *Amici Curiae* in Support of Appellants with this Court on July 28, 2025.

In their Notice to Participate, *amici* represented that all parties consented, through their respective counsel, to the filing of this brief. Their Notice to Participate also included the separate Corporate Disclosure Statement required by Circuit Rule 26.1, which Rule 29(b) states must accompany a written representation of consent to participate.

Pursuant to Fed. R. App. P. 29(a)(4)(E), this brief has not been authored, in whole or in part, by counsel to any party in this case. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person other than *amici curiae,* their members, and their counsel contributed money that was intended to fund preparation or submission of this brief.

Pursuant to Circuit Rule 29(d), *Amici* certify that this *amici* brief is necessary and do not believe it duplicates any other brief that may be submitted. With their extensive experience in consular processing, visa regulations and guidance, federal court review of visa matters, and the Administrative Procedure Act, *amici* offer the Court an important legal perspective on the impact of a ruling regarding visa delays.

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APA	Administrative Procedure Act
DHS	Department of Homeland Security
DOS	Department of State
FAM	Foreign Affairs Manual
INA	Immigration and Nationality Act

INTEREST OF AMICI CURIAE

The American Immigration Lawyers Association ("AILA"), founded in 1946, is a national, nonpartisan, nonprofit association with more than 16,000 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.

The American Immigration Council is a nonprofit 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 in the United States. The Council regularly litigates and advocates around issues involving access to immigration benefits, including issues of judicial review in the immigration context.

INTRODUCTION

U.S. citizen Saeid Motevali filed a family-based visa petition in 2019 for his father, Appellant Alireza Motevaly Alamouti, so he could reunite with his father in the United States. After the Department of Homeland Security (DHS) approved the petition, and Mr. Alamouti filed a visa application with the Department of State (DOS), a consular officer in Colombo, Sri Lanka, interviewed Mr. Alamouti in September 2023. Now, nearly two years after the interview, DOS has not issued a final decision on his visa application. DOS has told Mr. Alamouti that his visa application remains in "administrative processing" and that the consulate was "waiting for certain clearances to further process the case." Complaint, Exh. C, JA101.

Similarly, Shahnaz Haeri Mehneh, a 71-year-old U.S. citizen, filed a petition in 2017 to admit her husband of 50 years, 80-year-old husband Aliasghar Nejat, so that the couple could live together in the United States. Mr. Nejat received a visa interview at the U.S. Embassy in Yerevan, Armenia, in January 2023, but a consular officer refused the visa and placed the application in "administrative processing." It was not until this case was on appeal in this circuit—more than two years later—that Mr. Nejat finally received a visa to emigrate to the United States based on his 50-year marriage to a U.S. citizen.[1]

[1] Appellees have not yet argued mootness as to Ms. Mehneh and Mr. Nejat's case, and mootness is a waivable defense. *See* Appellants' Br. at 25–26 n.2.

Both families filed lawsuits seeking APA and mandamus relief, with the goal of compelling agency action "unreasonably delayed." 5 U.S.C. § 706(1). The government has thrown up a fistful of arguments in response. While *amici* believe that plaintiffs' positions are correct across the board, we focus this brief on two of the government's responses.

First, the government argues that the Department of State ("DOS") made a final decision when they placed Appellants' case in "administrative processing," so that plaintiffs received the relief they sought at that stage of the process. As the district court recognized, this is incorrect. DOS regulations, policy manual, and public-facing communications all confirm that the designation of a visa application for administrative processing under 8 U.S.C. § 1201(g) is merely a decision not to grant a visa application *immediately*; the application remains open pending further processing. It is a decision to delay the decision whether to grant or deny a visa and, thus, is the opposite of a final decision.

Second, the government argues that suits challenging its unreasonable delay in adjudicating visa applications are barred by the doctrine of consular nonreviewability. As the district court recognized, this, too, is incorrect. The Administrative Procedure Act ("APA") assures individuals the right to challenge agency action that is unreasonably delayed. In the face of harmful government action, such APA review is presumptively available, and exceptions are narrow and

rare. The doctrine of consular nonreviewability is not such an exception and does not bar judicial review of unreasonably delayed visa decisions.

ARGUMENT

A. The District Court was correct when it found an INA § 221(g refusal is not a final visa decision.

1. DOS regulations and interpretive guidance support the non-finality of INA § 221(g) refusals.

When a visa applicant applies for an immigrant visa, consular officers have three options. First, they may grant the visa. *See* Immigration and Nationality Act ("INA") § 221(a)(1)(B), 8 U.S.C. § 1201(a)(1)(B). Second, they may deny the visa on the ground that the applicant is ineligible for the visa. *See* INA § 212, 8 U.S.C. § 1182; *see also* 9 FAM 301.4-2. Third, they may refuse the visa under INA § 221(g), 8 U.S.C. § 1201(g). As explained in the DOS Foreign Affairs Manual, § 221(g) refusals are not final. For example, the text of INA § 221(g) refusal letters for petition-based immigrant visa cases state: "If you fail to take the action requested within one year following visa denial under INA 221(g) of the Immigration and Nationality Act, then your petition will be permanently terminated under INA 203(g)." 9 FAM 504.11-3(A)(1)e.(c)(ii). Similarly, "INA 221(g) refusals require the applicant to wait for the results of additional administrative processing or comply with a request for additional documentation or information within one year of the

visa interview." 9 FAM 403.10-3(A)(5).[2] As this quoted language makes clear, INA § 221(g) refusals require additional action, administrative processing, or evidence and are not, therefore, final.

The Foreign Affairs Manual describes this process in some detail. *See generally* 9 FAM 306.2. The consular officer should issue a refusal under INA § 221(g) where the visa applicant has made a formal application but "admissibility cannot be established without additional evidence, further clearance, a namecheck, or some other reason." 9 FAM 403.10-3(B)(b). The FAM instructs that "when additional evidence is presented, or administrative processing is completed," consular officers can grant the visa. 9 FAM 306.2-2(A)(a). Further, a case only becomes "inactive" if the applicant "fails to provide evidence to overcome the [§ 221(g)] refusal within one year." 9 FAM 504.1-4(B)(a)(3). And a case cannot be terminated if an application is refused under 221(g) for administrative processing, no matter how long the administrative processing takes. 9 FAM 504.13-2(A)(2)(b)(2). As such, "administrative processing" simply allows the consular officer additional time to complete their processing and investigation. In other words, when consular officers enter a § 221(g) refusal, their work is not complete. *See* 9 FAM 306.2-2(A)(a)(2)(a). This is supported by the communications Mr.

[2] While this portion of the FAM pertains to *nonimmigrant* visas, and Mr. Motevali and Ms. Mehneh sponsored Mr. Alamouti and Mr. Nejat, respectively, for *immigrant* visas, the discussion around administrative processing applies to both types of visas. Therefore, references to the nonimmigrant visa portions of the FAM are instructive in this case.

Alamouti received, stating that the consulate was "waiting for certain clearances to further process the case." JA101.

This stands in stark contrast to the situation of applicants whose visas have been refused for ineligibility. Those applicants have no right to reconsideration; they must submit a new application and fee if they wish to reapply. *See* DOS, Bureau of Consular Affs., Visa Denials, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visa-denials.html (found under the "Can I Reapply for a Visa?" drop-down) (last visited June 13, 2025). But an applicant who has received a § 221(g) refusal does not need to pay a new fee and submit a new application. No new fee is necessary because the old application was never denied. *See id.* ("If you reapply for a visa after being found ineligible, *with the exception of 221(g) refusals*, you must submit a new visa application and pay the visa application fee again.") (emphasis added).

Similarly, 9 FAM 403.10-4(A) makes plain that no matter how much time has passed since a § 221(g) refusal, if the cause of the delay is "a lack of U.S. Government action"—that is, the case has been languishing in administrative processing—then the old application remains active. Only if the consulate directs a visa applicant to submit additional information and the applicant fails to respond for an entire year will the application lapse from active consideration, requiring the noncitizen to resubmit it with a new fee. *See id.*

If more evidence were needed, DOS' public-facing website makes the nature of a § 221(g) refusal plain. The website explains that officers "may determine that additional information from sources other than the applicant may help establish an applicant's eligibility for a visa," in which case the officer will refuse the visa under § 221(g) and initiate administrative processing. DOS, Bureau of Consular Affs., Administrative Processing Information, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html (last visited July 24, 2025). The agency advises applicants that administrative processing "takes additional time after your interview" and that "times can vary based on individual circumstances." DOS, Bureau Consular Affs., Administrative Processing Information (found under the "INA Section 221(g) – Incomplete Application or Supporting Documentation" dropdown). The DOS writes that "[u]pon completion of the case-specific administrative processing," the consular officer may then conclude that the applicant is qualified for the visa. *Id.* Once the administrative processing is complete, "the embassy or consulate will contact you." *Id.* Until that time, though, the application is under consideration. It certainly has not been finally denied.

In light of all this, the government's position that a § 221(g) refusal is a final decision is unreasonable. Section 221(g) refusals are the *beginning* of a process of giving a visa application more deliberate consideration. Visa applications are in

active consideration throughout the process initiated by a § 221(g) refusal. What plaintiffs ask in this case, though, is that the process come to an end.

2. The weight of caselaw confirms that a § 221(g) refusal is not final.

Courts both within and outside of the D.C. Circuit have upheld the interpretation that a § 221(g) refusal is not a final decision, recognizing the lack of finality in § 221(g)'s statutory language and DOS regulations and interpretations.[3]

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[3] *See, e.g.*, *Shoaie v. Blinken*, No. 1:24-CV-01513, 2024 WL 4697732, at *3 (D.D.C. Nov. 6, 2024) ("Judges on this court have consistently held that the doctrine of consular nonreviewability does not apply to review of visa applications that have been refused under Section 221(g), finding that such refusal is not a final agency action."); *Baygan v. Blinken*, No. CV 23-2840, 2024 WL 3723714, at *4 (D.D.C. Aug. 8, 2024) ("[R]efusal . . .for administrative processing is a temporary, interim status . . . the consular nonreviewability doctrine does not apply under the final-decision grounds raised by the State Department"); *Sawahreh v. United States*, 630 F. Supp. 3d 155, 157 (D.D.C. 2022); *Al-Gharawy v. U.S. Dep't of Homeland Sec.*, 617 F. Supp. 3d 1, 17 (D.D.C. 2022) *Zaman v. U.S. Dep't of Homeland Sec.*, No. 19-cv-3592, 2021 WL 5356284, at *4 (D.D.C. Nov. 16, 2021) ("Applications may remain in administrative processing even after DOS issues section 221(g) refusals, rendering these refusals interim decisions"); *Ghadami v. U. S. Dep't of Homeland Sec.*, No. 10-cv-397, 2020 WL 1308376, at *1 (D.D.C. Mar. 19, 2020); *Vulupala v. Barr*, 438 F. Supp. 3d 93, 98 (D.D.C. Feb. 7, 2020); *Ibrahim v. U.S. Dep't of State*, No. 19-cv-610, 2020 WL 1703892, at *7 (D.D.C. Apr. 8, 2020); *Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the U. S. v. Kerry*, 168 F. Supp. 3d 268, 290–92 (D.D.C. 2016); *P.K. v. Tillerson*, 302 F. Supp. 3d 1, 11 (D.D.C. 2017) ("[T]he doctrine of consular non-reviewability does not apply where the government has not made a final visa decision."); *see also Momeni v. Blinken*, No. 2:24-CV-04879, 2024 WL 5112234, at *4 (C.D. Cal. Dec. 13, 2024) ("Rather than simply accepting the label of 'Refused,' courts should consider what is actually happening in a specific case to determine whether an agency has discharged its duty."); *Hassan v. Dillard*, No. 24-CV-1351, 2024 WL 4979476, at *5 (D. Minn. Dec. 4, 2024) ("Simply describing the decision as final does not make it so."); *but see Pasiukevich v. Lawton*, No. CV 24-3349, 2025 WL 2023207, at *3–4 (D.D.C. July 17, 2025) (applying *Karimova* to find § 221(g)

In reaching the same conclusion, other courts have described administrative processing as having "the effect of placing [a noncitizen's] application in administrative limbo." *Jafarzadeh v. Blinken*, No. 1:23-cv-0770 KJM CDB, 2024 WL 3937417, at *3 (E.D. Cal. Aug. 26, 2024). Courts have been explicit that nothing in § 221(g) indicates that a refusal is a final decision; rather the statutory language "merely establishes limits on the authority of a consular official to '*issue*' a visa." *Al-Gharawy*, 617 F. Supp. 3d at 15 (emphasis added).

Those few decisions that have found that § 221(g) refusals are final are both non-binding and unpersuasive. In *Karimova v. Abate*, an unpublished opinion from this Circuit, the court held that a § 221(g) denial is a final agency decision. No. 23-5178, 2024 WL 3517852, at *4 (D.C. Cir. July 24, 2024) (unpublished). As an initial matter, *Karimova* is non-binding; it is a decision that this Circuit "*twice* determined should be unpublished." *Mahmoodi v. Altman-Winans*, No. CV 24-2010, 2025 WL 763754, at *6 (D.D.C. Mar. 11, 2025) (citing *Karimova*, 2024 WL 3517852, at *1; Order, *Karimova v. Abate*, No. 23-5178 (D.C. Cir. Sept. 10, 2024), Doc. No. 2074062 at 1). Under the D.C. Circuit rules, an unpublished decision has "no precedential value in that disposition," D.C. Cir. R. 36(e)(2), and does "not 'alter[ ], modif[y], or

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refusal final), *Ibrahim v. Spera*, No. CV 23-3563, 2024 WL 4103702, at *3 & n.2 (D.D.C. Sept. 6, 2024) (dismissing Mandamus Act complaint based on *Karimova* but noting that "it is extremely difficult to square the Circuit's analysis, which is based largely on agency regulations, with the communications that visa applicants actually receive from various consulates, and that it is particularly difficult to do so in this case").

significantly clarif[y] a rule of law," *In re Grant*, 635 F.3d 1227, 1232 (D.C. Cir. 2011) (alterations in original) (quoting D.C. Cir. R. 36(c)(2)(B)); *see also Ahmed v. Blinken*, No. 24-cv-0153, 2024 WL 4903771, at *4 n.4 (D.D.C. Nov. 27, 2024) (recognizing *Karimova*'s lack of precedential value and refusing to apply it); *Mahmoodi*, 2025 WL 763754, at *6 (same). Considering the nonprecedential nature of *Karimova* and the district court law to the contrary, the law in this Circuit is still unsettled regarding the finality of visa applications in administrative processing. *See Mahmoodi*, 2025 WL 763754, at *5 ("*Karimova* thus leaves uncertain the case law in this District rejecting application of the consular nonreviewability doctrine where, as here, a plaintiff's application has been "refused" but simultaneously—and confusingly—still subject to further administrative processing.").

The court should reject *Karimova's* reasoning. In *Karimova,* the panel first looked at the text of the INA and noted that consular officers must either issue or deny visas. *Id*. But its reliance on the INA stopped there. It did not, and could not, cite to any statutory support in the INA to conclude that § 221(g) denials are final. Nor did the regulations support its answer. The court cited to 22 C.F.R. §42.81(a) (concerning refusal of immigrant visas). But that regulation contains no language stating that a refusal for administrative processing constitutes a final agency decision. A visa that is "refused" has not necessarily been "denied" with finality.

The *Karimova* panel did not engage with the rest of the DOS guidance described above. Rather, without peeling back the label of "refusal," the *Karimova*

court assumed that the binary choice between "grant" or "refuse" must mean that a refusal is a final denial. *Karimova*, 2024 WL 3517852, at *4; *but see Network Optix Inc. v. Rubio,* No. 2:24-cv-06505-SK, 2025 WL 1122358 (C.D. Cal. Feb. 14, 2025) (rejecting DOS' "hyper technocratic" binary position as a "forced, false choice"). The unpublished *Karimova* decision, and others finding that a § 221(g) refusal for administrative processing is "final," are unpersuasive, and the district court correctly rejected Defendants' reliance on them. *See Mehneh v. Blinken*, No. 24-CV-1374-ZMF, 2024 WL 5116521, at *5 (D.D.C. Dec. 16, 2024) ("To treat this as a final decision would create a perverse incentive for the State Department to refuse applications out of hand and then begin the true deliberation process thereafter.").

B. The District Court correctly held the doctrine of consular nonreviewability does not apply.

The district court correctly held that the doctrine of consular nonreviewability does not bar the court's review of the visa delay claim. *Motevali* Mem. Opinion, JA118-20; *Mehneh* Mem. Opinion, JA50-53. The notion that the DOS can indefinitely suspend a visa application in administrative limbo, leaving applicants waiting for years without judicial review, stretches the doctrine of consular nonreviewability beyond its original purpose.

1. The purpose of the doctrine of consular nonreviewability does not apply to visa delay actions.

Under the doctrine of consular nonreviewability, a court will not review "a consular officer's denial of a visa." *See Dep't of State v. Muñoz,* 602 U.S. 899, 907–

08 (2024). Congress has "plenary power to make rules for the admission [and exclusion] of aliens." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (internal quotations omitted). Congress, in turn, "partially delegated to the Executive its power to make rules for the admission and exclusion of noncitizens." *Baan Rao Thai Restaurant v. Pompeo*, 985 F.3d 1020, 1024 (D.C. Cir. 2021).

But where the consular officer has not made any decision granting or denying a visa, the consular nonreviewability doctrine does not apply. Challenges to a consular officer's failure to make any decision at all do not interfere with the executive branch's delegated authority. *See Al-Gharawy*, 617 F. Supp. 3d at 10 ("Control over a consular officer's visa determinations . . . is not the same as control over the timing by which the consular officer considers the applications presented to her."). Rather, judicial review in such cases simply ensures that consular officers act on such applications without unreasonable delay, as Congress has required. Rather than encroaching on Congress' delegation of authority to the executive branch, a delay lawsuit seeks to enforce a consular officer's statutory duty to adjudicate. *See* 8 U.S.C. § 1202(b) ("All immigrant visa applications *shall be reviewed and adjudicated* by a consular officer.") (emphasis added).

Courts have recognized the difference between challenges to "a consular officer's discretionary decision to grant or deny a visa petition," which is "not subject to judicial review," and suits that instead invoke "the consulate['s] duty to act." *Patel v. Reno*, 134 F.3d 929, 931-33 (9th Cir. 1997). In the latter case, where

"the consulate had a duty to act [on a visa application] and . . . has failed to act in accordance with that duty," judges must enforce the law. *Id.*; *see also, e.g., Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States v. Kerry*, 168 F. Supp. 3d 268, 290 (D.D.C. 2016) ("However, as Plaintiffs point out, the doctrine of consular nonreviewability is not triggered until a consular officer has made a decision with respect to a particular visa application"). As the court explained in *Al-Gharawy*, 617 F. Supp. 3d at 11, "[p]laintiffs do not ask that the Court review a decision rendered by a consular officer; they merely ask that the Court require the consular officer to render a decision—regardless of what that decision might be."

This distinction is consistent with the relief sought in a visa *delay* action, rather than a visa *denial* action. In a delay action under the Mandamus Act and APA, a plaintiff does not seek to constrain a consular officer's judgment, but seeks to enforce a mandatory, nondiscretionary duty. *See, e.g.*, *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1099–1100 (D.C. Cir. 2003) (discussing the nature of mandamus and APA delay claims). Nothing in a delay action compels an officer to grant a visa. Rather than constrain the executive branch's delegated authority, a visa delay action compels DOS' congressionally prescribed duties under the INA, Mandamus Act, and APA. Judicial review in such cases is "'expressly authorized by law.'" *Muñoz*, 602 U.S. at 908 (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). For these reasons, the District Court

correctly found that the doctrine of consular nonreviewability does not apply to the plaintiffs' visa delay action.

2. Applying the doctrine of consular nonreviewability to delay actions would result in unchecked agency action unintended by Congress.

More concerningly, to apply the doctrine of consular nonreviewability to cases of visa delay would insulate the DOS from judicial review of all its functions, making the agency above judicial oversight. Consular nonreviewability is a doctrine of judicial deference, not a jurisdictional bar. *See Trump v. Hawaii*, 585 U.S. 667, 682 (2018) ("[T]he Government does not point to any provision of the INA that expressly strips the Court of jurisdiction over plaintiffs' claims."). There are few ideals in the American legal system as fundamental as judicial review of the government at large. *Marbury v. Madison*, 5 U.S. 137, 163, 2 L. Ed. 60 (1803) ("The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."). While Congress may allow agencies to exercise discretion, there remains a presumption of judicial review absent clear and convincing evidence of congressional intent to preclude judicial review. *See Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020); *see also Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 803 (2024) (noting a "deep-rooted historic tradition that everyone should have his own day in court").

In this case, there is no evidence that Congress intended to insulate *all* DOS actions from judicial review. The APA expressly grants courts the power to review agency actions, and the Mandamus Act allows courts to order nondiscretionary agency action. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391 (2024) ("[T]he APA delineates the basic contours of judicial review of such [agency] action."). The APA plainly states that courts have authority to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The statute also imposes a nondiscretionary duty on the DOS to process visa applications within a 'reasonable period of time.' 5 U.S.C. § 555(b). DOS' issuance of a § 221(g) refusal for administrative processing amounts to unreasonable delay and thus is reviewable under the APA § 706(1) and the Mandamus Act. Ultimately, despite being involved with foreign affairs, the DOS is still an administrative agency of the U.S. Government subject to the APA and the Mandamus Act. And like all agencies, the DOS must perform its functions fairly, in good-faith, and in a reasonable amount of time.

Finally, judicial review of DOS' unreasonable delay furthers the policy purposes of the APA. Eliminating the possibility of judicial review of untimely decision-making creates perverse incentives for the DOS to avoid its duty to the public. *See United States v. Morton Salt Co*., 338 U.S. 632, 643 (1950) (the APA was enacted as a "check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices"). Indeed, the

plaintiffs' claim aligns with the policy purpose of the APA: "When agency recalcitrance is in the face of a clear statutory duty or is of such magnitude that it amounts to an abdication of statutory responsibility, the court has the power to order the agency to act to carry out its substantive statutory mandates." *Adams v. Richardson*, 480 F.2d 1159 (D.C. Cir. 1973) (en banc) (per curiam), *quoted in ONRC Action v. Bureau of Land Mgmt.*, 150 F.3d 1132, 1137 (9th Cir. 1998). The doctrine of consular nonreviewability—a judicially-created doctrine—should not bar judicial review under the clear letter and purpose of the APA.

CONCLUSION

For the reasons given in this brief and in plaintiffs' briefs, this case should be remanded so that the district court can adjudicate plaintiffs' claim of unreasonable delay.

DATE: July 28, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 29 and 32, the undersigned counsel for Appellants certifies that:

1. This brief complies with Fed. R. App. P. 29(a)(5)'s type-volume limitation because this brief contains 4,009 words.
2. This brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and (6) because this brief is set in Times New Roman font in a size of fourteen points.

Dated: July 28, 2025

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically on July 28, 2025, and will, therefore, be served electronically upon all counsel.

/s/ Leslie K. Dellon
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