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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JANE DOE and JOHN DOE,¹

Plaintiffs,

vs.

CARL RISCH, Assistant Secretary for
Consular Affairs, U.S. Dept. of State, et al.,²

Defendants.

Case No: C 18-04583 SBA

**ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Dkt. 31, 33

15 In this immigration mandamus action, Plaintiffs seek an order compelling
16 Defendants to adjudicate their Form I-730 petition for derivative asylum. Presently before
17 the Court are the parties' cross-motions for summary judgment. Having read and
18 considered the papers filed in connection with this matter and being fully informed, the
19 Court GRANTS Plaintiffs' motion and DENIES Defendants' motion, for the reasons stated
20 below. The Court, in its discretion, finds this matter suitable for resolution without oral
21 argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

22
23 ¹ Magistrate Judge Nathanael Cousins granted Plaintiffs' motion to proceed under
24 the pseudonyms Jane Doe and John Doe. Dkt. 14.

25 ² Plaintiffs name as party-defendants: Carl Risch, Assistant Secretary for Consular
26 Affairs, Bureau of Consular Affairs, U.S. Department of State ("DOS"); Edward
27 Ramotowski, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs,
28 DOS; Paul Malik, Consul General to the U.S. Embassy & Consulate in the United Arab
Emirates, DOS; and L. Francis Cissna, Director of the U.S. Citizenship and Immigration
Services ("USCIS"), Department of Homeland Security (collectively, "Defendants").
Pursuant to Federal Rule of Civil Procedure 25(d), the Court substitutes Philip Frayne in
place of Paul Malik and Kenneth Cuccinelli II in place of L. Francis Cissna.

1 **I. BACKGROUND**

2 **A. THE FORM I-730 PETITION PROCESS**

3 “A spouse or child . . . of an alien who is granted asylum under [section 1158(b)]
4 may, if not otherwise eligible for asylum under this section, be granted the same status as
5 the alien if accompanying, or following to join, such alien.” 8 U.S.C. § 1158(b)(3)(A). A
6 principal asylee may request “accompanying or following-to-join benefits for his or her
7 spouse or child(ren) by filing a separate Request for Refugee/Asylee Relative [i.e., a Form
8 I-730 petition] . . . in accordance with the form instructions.” 8 C.F.R. § 208.21(d). To
9 establish eligibility for derivative asylum, four requirements must be met: (1) the
10 beneficiary’s identity must be verified; (2) there must be a qualifying family relationship
11 between the petitioner and the beneficiary; (3) the beneficiary cannot be subject to any of
12 the mandatory bars to asylum; and (4) the beneficiary must merit a favorable exercise of
13 discretion. Declaration of Seven J. Pollnow (“Pollnow Decl.”) ¶ 7, Dkt. 34.³

14 A follow-to-join petition is processed in two distinct phases. Id. ¶ 8. First, the
15 principal asylee in the United States files the I-730 petition, which is processed by USCIS
16 at a domestic Service Center. Id. If approved, the beneficiary is then interviewed to
17 determine if he or she is eligible to receive documentation authorizing travel to the United
18 States. Id. ¶ 9. When a beneficiary is located outside the United States and in a location
19 where USCIS does not have a presence, petitions approved by USCIS are forwarded to the
20 DOS National Visa Center for transfer to the U.S. embassy or consulate with jurisdiction.
21 Id. ¶ 10. In such circumstances, DOS is authorized to conduct the interviews, make
22 eligibility determinations, and issue travel documentation. Id.

23 Beneficiaries of follow-to-join petitions are subject to various “biographic and
24 biometric background and security checks” throughout the petition process. Id. ¶ 15. As is
25 pertinent here, Security Advisory Opinion (“SAO”) biographic checks may be initiated by
26

27 ³ Steven J. Pollnow serves as a Section Chief at USCIS’s Nebraska Service Center.
28 Pollnow Decl. ¶ 1. His duties include overseeing the adjudication of Form I-730,
Refugee/Asylee Relative Petitions for asylum-based follow-to-join beneficiaries. Id. ¶ 2.

1 the embassy/consulate following a beneficiary’s DOS interview. Id. ¶ 16. SAOs are
2 initiated for beneficiaries who “are nationals of a country that the U.S. government has
3 designated as requiring this security check or who otherwise meet the requirements for an
4 SAO.” Id. SAOs are conducted by the Federal Bureau of Investigation (“FBI”) and
5 intelligence community partners. Id. “When an SAO is required, a cleared response must
6 be received before issuance of a travel document to a beneficiary.” Id.

7 **B. PLAINTIFFS’ FOLLOW-TO-JOIN PETITION**

8 Jane Doe is a native citizen of Iran and a legal permanent resident of the United
9 States. Declaration of Jane Doe (“Doe Decl.”) ¶ 1, Dkt. 32-1. She is married to John Doe,
10 who still lives in Iran. Id. ¶ 2. They have two minor sons. Id.

11 Jane Doe and her sons arrived in the United States on a tourist visa in December
12 2015. Id. ¶ 3. Shortly thereafter, Jane Doe converted to Christianity. Id. In Iran,
13 “conversion from Islam is deemed apostacy and is punishable by death.” Id. ¶ 4. Fearing
14 religious persecution if she returned to Iran, Jane Doe applied for asylum for herself and her
15 children. Id. They were granted asylum on January 5, 2017. Id.⁴

16 On January 30, 2017, Jane Doe filed a Form I-730 Petition on behalf of her husband,
17 John Doe. Id. ¶ 5. She also submitted a request for expedited processing based on the
18 distress of their younger son. Id. ¶ 6. Plaintiffs’ younger son suffers from extreme
19 depression and anxiety due to separation from his father and fears that his father may be
20 harmed in Iran. Id. His mental suffering is so severe that he attempted suicide. Id. ¶ 7.

21 On August 11, 2017, Plaintiffs’ I-730 petition was preliminarily approved by USCIS
22 and forwarded to the United States Embassy in Abu Dhabi, United Arab Emirates (the
23 “Embassy”) for further processing. Id. ¶ 8. On September 13, 2017, the National Visa
24 Center notified Plaintiffs’ that their request for expedited processing had been approved.
25 Id. ¶ 9. On November 16, 2017, John Doe appeared at the Embassy for his interview. Id.

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28 ⁴ To be eligible for asylum, Jane Doe had to show that she is unable or unwilling to
return to Iran because of a well-founded fear of persecution on account of her religion.
Ahmen v. Keisler, 504 F.3d 1183, 1191 (9th Cir. 2007) (citing 8 U.S.C. § 1101 (a)(42)(A)).

1 ¶ 10. At the end of the interview, John Doe was advised that his petition was being placed
2 in administrative processing, where it has remained. Id. & Ex. A.

3 Plaintiffs assert that John Doe’s continued separation from his family is causing
4 much pain and hardship. Id. ¶ 11. The family fears that John Doe is at risk of persecution
5 in Iran due to his wife’s conversion to Christianity. Id. As a result, Plaintiffs’ youngest son
6 continues to suffer from extreme anxiety and depression. Id. According to the treating
7 psychologist, Plaintiffs’ youngest son suffers debilitating panic and anxiety attacks and has
8 experienced an increase in suicidal thoughts. Id. & Ex. B.

9 Defendants admit that John Doe meets the criteria for derivative asylum based on his
10 qualifying relationship to a principal asylee. Pollnow Decl. ¶ 6. They confirm that USCIS
11 approved Plaintiffs’ I-730 petition on August 11, 2017, and that the DOS interviewed John
12 Doe at the Embassy on November 16, 2017. Id. ¶ 17. Defendants aver: “To date, USCIS
13 has not received complete results of the security vetting process on the beneficiary,
14 specifically the SAO, and until the complete results are received, and are deemed
15 satisfactory for purposes of the [*sic*] determining the beneficiary’s eligibility for derivative
16 asylum status, no travel documentation can be issued.” Id.

17 **C. THE INSTANT ACTION**

18 Plaintiffs filed the instant action on July 30, 2018 and filed the operative First
19 Amended Complaint on November 5, 2018. Dkt. 1, 25. They bring a single cause of action
20 pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq., and the
21 Mandamus Act, 28 U.S.C. § 1361, to compel Defendants to adjudicate their I-730 petition.

22 A scheduling order was entered in this action in accordance with General Order 61.
23 Dkt. 6. Thereafter, the parties filed several stipulations extending the deadline for
24 Defendants to file an answer. See Dkt. 21, 23, 26, 29. Defendants’ counsel advised that
25 USCIS was “working to adjudicate Plaintiff’s pending I-730 Petition,” and the extensions
26 were sought “to allow time for USCIS to continue [that] process[.]” Dkt. 29 ¶¶ 3-4.
27 Defendants filed an Answer on December 21, 2018. Dkt. 28.

28

1 Thereafter, Plaintiffs filed the instant Motion for Summary Judgment and
2 Memorandum in Support of their Motion for Summary Judgment (“Mot.”). Dkt. 31, 32.
3 Defendants’ filed a combined Opposition to Plaintiffs’ Motion for Summary Judgment and
4 Cross-Motion for Summary Judgment (“Cross-Mot.”). Dkt. 33. Plaintiffs filed an
5 Opposition and Reply (“Opp’n”), Dkt. 37, and Defendants filed a Reply (“Reply”), Dkt. 38.
6 The cross-motions are fully briefed and ripe for adjudication.

7 **II. LEGAL STANDARD**

8 “Summary judgment is appropriate only where ‘there is no genuine dispute as to any
9 material fact and the movant is entitled to judgment as a matter of law.’” Salazar-Limon v.
10 City of Houston, 137 S. Ct. 1277, 1280 (2017) (quoting Fed. R. Civ. P. 56(a)). The moving
11 party bears the initial burden of identifying those portions of the pleadings, discovery, and
12 affidavits that establish the absence of a genuine dispute of material fact. Cline v. Indus.
13 Maint. Eng’g & Contracting Co., 200 F.3d 1223, 1229 (9th Cir. 2000) (citing Celotex Corp.
14 v. Catrett, 477 U.S. 317, 323-25 (1986)). If the moving party meets its burden, the burden
15 shifts to the non-moving party to go beyond the pleadings and identify specific facts
16 demonstrating the existence of a triable issue. Id. (citing Celotex, 477 U.S. at 323-24).

17 **III. DISCUSSION**

18 Through this action, Plaintiffs seek to compel Defendants to adjudicate their I-730
19 petition.⁵ The parties have filed cross-motions for summary judgment.

20 **A. JURISDICTION**

21 As a threshold matter, Defendants assert that the Court lacks jurisdiction “to compel
22 the agency action in question because Congress has divested the courts of jurisdiction over
23 immigration suits that concern decisions or actions committed to agency discretion.”

24 ⁵ Plaintiffs invoke both the APA and the Mandamus Act in a single cause of action
25 to compel Defendants to adjudicate their I-730 petition. Where, as here, the relief sought
26 under the APA and the Mandamus Act is essentially the same, the Ninth Circuit had elected
27 to analyze a plaintiff’s entitlement to relief under the APA. Independence Min. Co. v.
28 Babbitt, 105 F.3d 502, 507 (9th Cir. 1997) (citing Japan Whaling Ass’n v. American
Cetacean Soc’y, 478 U.S. 221, 230 n.4 (1986) (construing a claim for mandamus under 28
U.S.C. § 1361 as, “in essence,” one for relief under § 706 of the APA)). This Court
likewise analyzes Plaintiffs’ entitlement to relief under the APA.

1 Cross-Motion at 5 n.1 (citing 8 U.S.C. § 1252(a)(2)(B)(ii)). No further argument is
2 provided. Instead, Defendants “recognize that there have been a number of opinions from
3 this District and others within the Ninth Circuit finding jurisdiction over claims of
4 unreasonable delay” in analogous cases. Id. (citing Islam v. Heinauer, 32 F. Supp. 3d 1063,
5 1069 (N.D. Cal. 2014), and cases cited therein).⁶

6 Pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii), courts are divested of jurisdiction to review
7 immigration-related decisions or actions (other than the granting of relief under § 1158(a)),
8 “the authority for which is specified [by statute] to be in the discretion of the Attorney
9 General or the Secretary of Homeland Security.” The decision to grant or deny derivative
10 asylum status is committed to agency discretion by statute. 8 U.S.C. § 1158(b)(3)(A)
11 (“A spouse or child . . . of an alien who is granted asylum under this subsection *may* . . . be
12 granted the same status as the alien . . .”) (emphasis added); see also Ngassam v. Chertoff,
13 590 F. Supp. 2d 461, 464 (S.D.N.Y. 2008). The ultimate decision to grant or deny
14 Plaintiffs’ I-730 petition is therefore insulated from judicial review. Id.

15 As Defendants acknowledge, however, courts in this district—including this
16 Court—have consistently held that § 1252(a)(2)(B)(ii) does not divest courts of subject
17 matter jurisdiction over claims that an agency has *unlawfully withheld* or *unreasonably*
18 *delayed* the processing of immigration-related petitions. Islam, 32 F. Supp. 3d at 1069; see
19 also Dong v. Chertoff, 513 F. Supp. 2d 1158, 1165 (N.D. Cal. 2007) (Armstrong, J.) (“8
20 U.S.C. § 1252(a)(2)(B)(ii) does not deprive the Court of jurisdiction to hear an allegation
21 that the determination of an application for adjustment of status has been unlawfully
22 withheld”). Even where no time limits are imposed by the enabling-statute, Defendants
23 have a non-discretionary duty to adjudicate immigration-related petitions “within a
24 reasonable period of time.” 5 U.S.C. § 555(b); see also Islam, 32 F. Supp. 3d at 1069.

25
26 ⁶ Ordinarily, Defendants’ one-sentence argument—relegated to a footnote—would
27 be insufficient to present the matter to the Court for determination. However, because the
28 Court has “an independent obligation to determine whether subject-matter jurisdiction
exists, even in the absence of a challenge from any party,” Arbaugh v. Y&H Corp., 546
U.S. 500, 514 (2006), the Court briefly addresses this issue.

1 ““To hold otherwise would be to sanction the perpetual delay of governmental obligations
2 that are clearly mandated by law.”” Islam, 32 F. Supp. 3d at 1069 (citation omitted).

3 The Court finds the rationale of these prior cases persuasive, and Defendants offer
4 no reasoned basis for the Court to deviate therefrom. Accordingly, the Court has subject
5 matter jurisdiction over Plaintiffs’ claim of unreasonable delay.

6 **B. TRAC FACTORS**

7 The underlying facts are not in dispute; rather, the parties dispute whether the
8 government’s delay in adjudicating Plaintiffs’ I-730 petition is unreasonable. See 5 U.S.C.
9 § 706(a) (courts shall “compel agency action unlawfully withheld or unreasonably
10 delayed”). In determining whether agency action is unreasonably delayed under 5 U.S.C.
11 § 706(a), the Ninth Circuit has adopted the so-called TRAC factor test. Brower v. Evans,
12 257 F.3d 1058, 1068-69 (9th Cir. 2001) (citing Telecomm. Research & Action v. FCC
13 (TRAC), 750 F.2d 70, 80 (D.C. Cir. 1984)). The six factors to be balanced are:

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

25 Id. (quoting Indep. Mining Co., 105 F.3d at 507 n.7 (quoting TRAC, 750 F.2d at 80)
26 (quotation marks, internal citations, and alterations omitted)).

27 **1. First Factor: A Rule of Reason**

28 The first TRAC factor teaches that the timing of agency action is governed by a
“rule of reason.” TRAC, 750 F.2d at 80. Although the length of the delay is a primary
consideration, it is not dispositive. Islam, 32 F. Supp. 3d at 1071. “What constitutes an
unreasonable delay in the context of immigration applications depends to a great extent on
the facts of the particular case.” Id. (quotation marks and citation omitted). Courts
typically consider the source of the delay, including the complexity of the investigation and

1 the extent to which each party contributed to the delay. Singh v. Still, 470 F. Supp. 2d
2 1064, 1068 (N.D. Cal. Jan. 8, 2007) (quotation marks and citations omitted).

3 In the instant case, Plaintiffs' I-730 petition has been pending for nearly two and half
4 years. There is no evidence that the delay is attributable, in whole or in part, to Plaintiffs.
5 Nor is there any evidence that the investigation is especially complex. Rather, Defendants
6 assert only that "USCIS has not yet received the complete results of the security vetting
7 process," i.e., the SAO, for John Doe. Cross-Mot. at 6. They argue that, "[g]iven the
8 importance of a complete security vetting process," the delay at issue here is not
9 unreasonable. Id. As discussed below, however, Defendants' bare assertions are
10 insufficient to justify a delay of this length. Although Defendants aver that John Doe's
11 SAO has not yet been completed, they provide *no further detail*. Among other things, they
12 fail to provide any information as to why an SAO is required in this case, why it has taken
13 so long to complete an SAO, and whether any particular issue of concern has arisen during
14 the security vetting process that has caused or contributed to the delay.

15 As courts in this district have recognized, national security concerns rightly factor
16 into an evaluation of the reasonableness of Defendants' delay. Chen v. Chertoff, No. C 07-
17 2816 MEJ, 2008 WL 205279, at *3 (N.D. Cal. Jan. 23, 2008). "However, the mere
18 invocation of national security is not enough to render agency delay reasonable per se."
19 Singh, 470 F. Supp. 2d at 1069 (finding that the government's claim of "[security] issues
20 requiring further inquiry" was insufficient absent "further information"). Defendants
21 "cannot simply point to a pending FBI background check to establish that any delay in
22 processing [a petition] is reasonable." Chen, 2008 WL 205279, at *3. "National security
23 interests and the complexity of the background check process can only excuse *reasonable*
24 *delay*." Id. (emphasis added). Here, Defendants provide "no particularized facts to suggest
25 that these concerns apply with special force" to John Doe's petition or that his SAO is
26 "otherwise subject to special circumstances." Id.; see also Kousar v. Mueller, 549 F. Supp.
27 2d 1194, 1199 (N.D. Cal. 2008) ("Although national security certainly justifies a thorough
28 name check process, there is no contention that Plaintiff's application is particularly

1 complex or any evidence as to why the name check caused the application processing to
2 take far longer than the 180 days suggested by Congress.”).

3 Defendants cite Islam for the proposition that courts in this district “have generally
4 found delays of four years or less not to be unreasonable.” Cross-Motion at 8 (citing Islam,
5 32 F. Supp. 3d at 1071-72); see also Reply at 1. Islam and the cases it surveys are inapt,
6 however, because they involve “holds on Form I-485 Applications due to findings of
7 terrorist-related inadmissibility.” 32 F. Supp. 3d at 1071 (and cases cited therein, including
8 Khan v. Scharfen, No. 08-1398 SC, 2009 WL 941574 (N.D. Cal. Apr. 6, 2009)). A
9 determination of whether to grant an exception to terrorist-related inadmissibility “is a
10 complicated process, involving inter-agency consultation.” Khan, 2009 WL 941574, at *9.
11 Such cases are “distinguishable from the now-typical case involving a delay in processing
12 an applicant’s FBI background check.” Id. at *8 (noting that, in a typical background check
13 case, “there are no facts specific to the applicant which are causing the delay, or which
14 implicate national security concerns”).

15 With regard to typical background check cases, courts in this district have found
16 that, “under normal circumstances, a delay of approximately two years due to an
17 uncompleted FBI background check is unreasonable as a matter of law.” Chen, 2008 WL
18 205279, at *3 (and cases cited therein); accord Kousar, 549 F. Supp. 2d at 1199 (and cases
19 cited therein). Here, just shy of two and a half years have passed since Plaintiffs’ petition
20 was filed. Accordingly, the first factor tips in Plaintiffs’ favor.

21 2. Second Factor: Congressional Timetable

22 The second TRAC factor provides that a timetable or other indication of the speed
23 with which Congress expects the agency to proceed may “supply content” for the rule of
24 reason. TRAC, 750 F.2d at 80. Absent “exceptional circumstances,” administrative
25 adjudication of a *principal* asylum application “shall be completed within 180 days” of the
26 date the application is filed. 8 U.S.C. § 1158(d)(5)(A)(iii). There is no congressionally-
27 mandated timetable for adjudicating *derivative* asylum petitions. However, “[i]t is the
28 sense of Congress that the processing of an immigrant benefit application should be

1 completed not later than 180 days after the initial filing of the application[.]” 8 U.S.C.
2 § 1571(b). Although § 1571(b) is merely precatory, this provision nonetheless suffices to
3 “tip the second TRAC factor in [Plaintiffs’] favor.” Islam, 32 F. Supp. 3d at 1073.

4 Defendants respond that § 1571(b) “does not reflect the notion that the government
5 must take extra care with an application that requires additional security vetting.” Cross-
6 Mot. at 6-7. The fact that certain circumstances may justify a departure from the standard
7 processing time does not counsel in favor of disregarding Congress’s guidance. Rather,
8 similar to the allowance in § 1158(d)(5)(A)(iii) for “exceptional circumstances,” that is a
9 matter for the Court to evaluate on a case-by-case basis. As discussed above, Defendants
10 have not shown any circumstances unique to this case that justify a lengthy delay in
11 completing the security vetting process. On the other hand, approximately 900 days have
12 elapsed since the filing of Plaintiffs’ petition, which is five times longer than the 180-day
13 benchmark set forth in § 1571(b). Consequently, Defendants are well outside the expected
14 processing time without sufficient justification.

15 3. Third & Fifth Factors: Human Welfare & Interests Prejudiced

16 “The third and fifth factors overlap, requiring the court to consider whether human
17 health and welfare are at stake, and the nature and extent of the interests prejudiced by the
18 delay.” Islam, 32 F. Supp. 3d at 1073. It is undisputed that human health and welfare are
19 at stake where an asylee files a follow-to-join petition for a family member still residing in
20 their native country. See Cross-Mot. at 7 (acknowledging that “Plaintiffs assert legitimate
21 concerns regarding human health and welfare”). Delay that might be reasonable in another
22 context is therefore “less tolerable” here. TRAC, 750 F.2d at 80.

23 Further, the Court finds that the specific interests prejudiced by delay in processing
24 I-730 petitions are weighty. As set forth above, follow-to-join petitions may be filed on
25 behalf of an asylee’s spouse or child. 8 U.S.C. § 1158(b)(3)(A). Thus, as is the case here,
26 delay in processing such petitions may result in extended family separation. Doe Decl. ¶ 11
27 (describing separation of John Doe from his wife and minor sons). Additionally, because
28 the principal asylee has been granted asylum, there may be a credible threat of persecution

1 in the native country. See Ahmen, 504 F.3d at 1191. Here, the family fears for John Doe’s
2 safety in Iran due to Jane Doe’s conversion to Christianity. Doe Decl. ¶¶ 6-7, 11. In this
3 case, Plaintiffs also assert that the ongoing family separation and fear of persecution have
4 caused their minor son to suffer extreme anxiety and depression. Id.⁷

5 Again, Defendants do not dispute that “Plaintiffs assert legitimate concerns
6 regarding human health and welfare[.]” Cross-Mot. at 7. They simply respond that they
7 “have a strong [countervailing] interest in completing security vetting of derivative asylee
8 applicants before permitting them to enter the United States.” Id. “Undoubtedly,” national
9 security is an interest “of the highest order.” Singh, 470 F. Supp. 3d at 1069. As discussed
10 above, however, “the mere invocation of national security is not enough to render agency
11 delay reasonable per se.” Id. The third and fifth factors therefore tip in favor of Plaintiffs.

12 **4. Fourth Factor: Higher or Competing Priorities**

13 The fourth TRAC factor considers the effect of expediting delayed action on agency
14 activities of a higher or competing priority. TRAC, 750 F.2d at 80. Defendants make the
15 bald assertion that expediting Plaintiffs’ application would divert resources to this case, “to
16 the detriment of other duties carried out by the various government offices involved.”
17 Cross-Mot. at 7. Defendants do not identify those other duties or make any effort to
18 prioritize them, however. Defendants further assert that “it would be unfair for [John
19 Doe’s] SOA to be prioritized at the expense of others ahead of [him] in the queue.” Id.
20 Defendants do not establish that there is a queue, however, let alone John Doe’s place
21 therein. There is no evidence before the Court as to the number of I-730 petitions/SOAs
22 currently pending or how many of those petitions/SOAs have been pending longer than
23 John Doe’s. Given that nearly two and a half years have elapsed since Plaintiffs’ petition
24 was filed and more than 20 months have elapsed since John Doe completed his interview,

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26 ⁷ The Court notes that adjudication of Plaintiffs’ petition will not necessarily result
27 in John Doe being granted derivative asylum, and thus, may not alleviate the harms
28 described above. Given that USCIS preliminarily approved his petition, however, it is
plausible that John Doe will benefit from the final adjudication of his petition. In that
event, delay is prejudicial. Further, the uncertainty that Plaintiffs face while the petition
sits “in limbo” inflicts its own sort of harm. See Islam, 32 F. Supp. 3d at 1070, 1073.

1 the Court finds that expediting adjudication of Plaintiffs’ petition would not unduly burden
2 agency resources. Thus, the fourth factor tips in Plaintiffs’ favor.

3 **5. Sixth Factor: Impropriety**

4 Lastly, the sixth TRAC factor teaches that the Court need not find any impropriety
5 lurking behind agency lassitude to conclude that agency action is unreasonably delayed.
6 TRAC, 750 F.2d at 80. Defendants cite Liberty Fund, Inc. v. Chao, 394 F. Supp. 2d 105
7 (D.D.C. 2005), as providing a corollary to that rule, i.e., that the good faith of the agency
8 weighs against mandamus. Cross-Mot. at 7. Defendants err in reading Liberty Fund too
9 broadly, however. Liberty Fund does not stand for the proposition that the absence of “any
10 improper purpose,” Cross-Motion at 7, weighs against mandamus. Indeed, this would run
11 counter to TRAC’s holding that bad faith is not required for a finding of unreasonable
12 delay. Rather, Liberty Fund stands for the proposition that an agency’s good faith “*in*
13 *addressing the delay* weighs against mandamus.” 394 F. Supp. 2d at 120 (emphasis added)
14 (providing that a court may decline to issue a writ expediting agency action where the
15 agency has already taken steps to address the delay and there is little reason to believe that
16 a court order is necessary to sustain improvement or spur greater effort).

17 In Liberty Fund, the agency provided a sound justification for the delay (i.e., a
18 change in the law that resulted in an influx of applications) and documented its efforts to
19 reduce the backlog and rectify the delay. 394 F. Supp. 3d at 120. Here, by contrast,
20 Defendants do not provide a sound justification for the delay. Although they assert that an
21 SAO is required and has not yet been completed, they fail to identify any circumstance or
22 concern that necessitates an SAO in this case or warrants the lengthy delay in completing
23 the same. Nor do Defendants identify any action taken to ensure the prompt adjudication of
24 Plaintiffs’ petition. To the contrary, they fail to provide even an estimated timeframe to
25 complete the SAO. They assert only that the petition cannot be adjudicated “until the
26 complete results are received.” Pollnow Decl. ¶ 17. This assertion does not address the
27 delay faced by Plaintiffs. Consequently, while the Court does not find that Defendants
28

1 have acted in bad faith to cause the delay, neither does it find that they have acted in good
2 faith to address the delay such that judicial intervention is rendered unnecessary.⁸

3 **IV. CONCLUSION**

4 In view of the forgoing, the Court finds that Defendants have unreasonably delayed
5 in adjudicating Plaintiffs' I-730 petition, which has been pending for nearly two and a half
6 years. Defendants have not shown that any portion of the delay is attributable to Plaintiffs,
7 that the petition is unusually complex, that higher or competing priorities necessitate a
8 delay of this length, or that any effort has been made to ensure the prompt adjudication of
9 the petition. Accordingly, IT IS HEREBY ORDERED THAT Plaintiffs' motion for
10 summary judgment is GRANTED and Defendants' cross-motion for summary judgment is
11 DENIED. Defendants shall adjudicate Plaintiffs' I-730 petition within 30 days of the date
12 this Order is filed. The Clerk shall close the file and terminate all pending matters.

13 IT IS SO ORDERED.

14 Dated: July 26, 2019


15 SAUNDRA BROWN ARMSTRONG
16 Senior United States District Judge
17
18
19

20 _____
21 ⁸ For the first time in their Opposition, Plaintiffs assert that bad faith or improper
22 purpose can be inferred here because Defendants failed to mention an SAO when they
23 requested extensions of the time to file an answer. Opp'n at 8. According to Plaintiffs, it
24 can be inferred that the SAO was not initiated until after the instant action was filed, and
25 thus, that "there has been impropriety behind the government's actions." *Id.* Where an
26 agency has delayed in bad faith, the court may find that delay is unreasonable. *See Indep.*
27 *Min. Co.*, 105 F.3d at 510 (quoting *In re Barr Labs., Inc.*, 930 F.2d 72, 76 (D.C. Cir. 1988)
28 ("[w]here [an] agency has manifested bad faith, as by singling someone out for bad
treatment or asserting utter indifference to a congressional deadline, the agency will have a
hard time claiming legitimacy for its priorities")). The Court finds no evidence of bad faith
here, however. Although Defendants do not state when the SAO was initiated, their
representations made in connection with the extension requests do not necessarily show that
an SAO was initiated *after* the action was filed. Furthermore, even if Defendants delayed
in initiating an SAO, there is no evidence to suggest that this was due to bad faith, as
opposed to mere inadvertence or backlog. In any event, as stated above, bad faith is not
required for a finding that agency action is unreasonably delayed.