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8 **United States District Court**
9 **Central District of California**
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11 CASA LIBRE/FREEDOM HOUSE et al.,

12 Plaintiffs,

13 v.

14 ALEJANDRO MAYORKAS et al.,

15 Defendants.
16

Case № 2:22-cv-01510-ODW (JPRx)

**ORDER GRANTING IN PART AND
DENYING IN PART CROSS-
MOTIONS FOR SUMMARY
JUDGMENT [97] [102]**

17
18 **I. INTRODUCTION**

19 This is an action challenging how U.S. Citizenship and Immigration Services
20 (“USCIS”) processes petitions for Special Immigrant Juvenile (“SIJ”) status. The
21 Plaintiffs are individuals who submitted SIJ petitions to USCIS and organizations who
22 provide legal and other assistance to such individuals. The Court certified a class for
23 the purpose of Plaintiffs’ challenge to regulations that allow USCIS in certain
24 circumstances to suspend the statutory 180-day deadline for adjudicating SIJ petitions.
25 (Order Certify Class, ECF No. 91.) Both sides now move for summary judgment.
26 (Pl. Mot. Summ. J. (“Pl. Mot.”), ECF No. 97; Def. Mot. Summ. J. (“Def. Mot.”), ECF
27 No. 102.) For the following reasons, the Court **GRANTS IN PART AND DENIES**
28 **IN PART** each Motion.

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2 **II. BACKGROUND**

3 At the outset of this case, Plaintiffs asserted two claims: a constitutional equal
4 protection claim and a claim pursuant to the Administrative Procedure Act (“APA”),
5 5 U.S.C. §§ 701–706. The Court has since dismissed the equal protection claim,
6 (Order Mot. Dismiss FAC, ECF No. 48), and has narrowed which aspects of the APA
7 claim may proceed on a classwide basis, (Order Certify Class 27–28). The following
8 facts relate to the claims that remain.

9 **A. The SIJ Petition Process**

10 In 1990, Congress created the SIJ classification to aid noncitizen children
11 physically present in the United States who were declared dependent on state courts
12 and were eligible for long-term foster care. Immigration Act of 1990, Pub. L.
13 No. 101–649, § 153, 104 Stat. 4978 (1990). The purpose of the SIJ classification is to
14 help alleviate “hardships experienced by some dependents of United States juvenile
15 courts by providing qualified aliens with the opportunity to apply for special
16 immigrant classification and lawful permanent resident status, with possibility of
17 becoming citizens of the United States in the future.” 58 Fed. Reg. 42843-01, 42844,
18 1993 WL 304167 (Aug. 12, 1993).

19 In 1998, Congress revised the SIJ definition to include juveniles eligible for
20 long-term foster care “due to abuse, neglect, or abandonment.” Departments of
21 Commerce, Justice, & State, the Judiciary, & Related Agencies Appropriations Act of
22 1998, H.R. 2267, Pub. L. 105–119, 105th Cong., at 22 (Nov. 26, 1997). More
23 recently, in 2008, Congress passed the Trafficking Victims Protection Reauthorization
24 Act of 2008 (“TVPRA”). Pub. L. No. 110–457, § 235(d), 112 Stat. 5044 (2008). The
25 TVPRA replaced the foster care requirement with more expansive language permitting
26 young immigrants to apply for SIJ status based on a state court’s finding that
27 “reunification with 1 or both of the immigrant’s parents is not viable due to abuse,
28 neglect, abandonment, or a similar basis found under State law.” TVPRA

1 § 235(d)(1)(A); Immigration & Nationality Act § 101(a)(27)(J)(i), 8 U.S.C.
2 § 1101(a)(27)(J)(i); *see J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1055 (N.D. Cal. 2018).
3 The TVPRA also amended the SIJ statute to provide that “[a]ll applications for [SIJ]
4 status . . . shall be adjudicated . . . not later than 180 days after the date on which the
5 application is filed.” TVPRA § 235, 8 U.S.C. § 1232(d)(2). This deadline is the key
6 statutory provision at issue in this case.

7 SIJ status is available if (1) the juvenile immigrant has been declared dependent
8 on a juvenile court or legally committed to the custody of an individual or entity;
9 (2) reunification with one or both of the juvenile immigrant’s parents is not viable due
10 to abuse, neglect, or abandonment; (3) it has been determined in administrative or
11 judicial proceedings that it would not be in the juvenile immigrant’s best interest to be
12 returned to the juvenile immigrant’s or parent’s previous country of nationality or
13 country of last habitual residence; and (4) the Secretary of Homeland Security
14 consents to the grant of special immigrant juvenile status. *See* 8 U.S.C.
15 § 1101(a)(27)(J). The petitioner must be under the age of twenty-one at the time they
16 file their SIJ petition. 8 C.F.R. § 204.11(b)(1).

17 SIJ status provides a pathway to lawful permanent residency: once a juvenile
18 immigrant’s SIJ petition is approved, the juvenile immigrant may then apply to adjust
19 their status to lawful permanent resident. 8 U.S.C. § 1255(a), (h).

20 **B. Tolling Provisions**

21 Pursuant to enacted regulations, USCIS follows two procedures with respect to
22 the aforementioned 180-day deadline:

- 23 • When a SIJ petition lacks required initial evidence, USCIS informs the
24 petitioner what evidence is required and provides a deadline for submitting the
25 additional evidence. *See* 8 C.F.R. § 103.2(b)(8)(ii). The 180-day time period
26 starts over on the date USCIS receives the required initial evidence. *Id.*
27 § 204.11(g)(1).

- 1 • If USCIS requests that the SIJ petitioner submit additional evidence, USCIS
2 may send the petitioner a Request for Evidence (“RFE”) or a Notice of Intent to
3 Deny (“NOID”). *See id.* § 103.2(b)(8)(iii). The 180-day deadline is suspended,
4 or “tolled,” as of the date the RFE or NOID is issued and resumes when USCIS
5 receives the requested additional evidence. *Id.* §§ 103.2(b)(10)(i), 204.11(g)(1).

6 Herein, the Court refers to these rules as the “Tolling Provisions.” The Tolling
7 Provisions are based on longstanding Immigration and Naturalization Service (“INS”)
8 regulations, first adopted in 1996, that govern how INS interprets statutory and
9 regulatory processing timeframes. At the time the 1996 regulation was adopted, INS
10 explained:

11 The filing of [a] . . . petition without the required initial evidence . . .
12 effectively hampers our ability to make a definitive determination of
13 eligibility. . . . Therefore, the Service considers processing time for any
14 application or petition to refer to time unhampered by the applicant or
petitioner’s action or lack of required action.

15 . . .

16 Accordingly, in such circumstances the processing clock will stop with
17 respect to any time limits for adjudicating the request for Service action
18 at the time the Service sends a notice for initial evidence, and it will start
over at the time the Service receives the evidence

19 (DSUF 55 (citing Changes in Processing Procedures for certain Applications and for
20 Immigration Benefits, 59 Fed. Reg. 1455-01, 1457, 1994 WL 5197 (Jan. 11, 1994)).

21 USCIS is not statutorily required to issue a RFE or a NOID. Instead, pursuant
22 to USCIS regulations, when a SIJ petition is deficient, USCIS retains the discretion to
23 choose, in each individual case, whether to issue a RFE or a NOID, or deny the
24 petition altogether. 8 C.F.R. §§ 103.2(b)(8)(ii), (iii). Under USCIS policy, officers are
25 directed “not [to] issue an RFE or NOID if the officer determines the evidence already
26 submitted establishes eligibility or ineligibility for the request.” (Pl. Statement of
27 Uncontroverted Facts (“PSUF”) 63, ECF No. 97-14 (quoting USCIS Policy Manual
28 (“Pol. Man.”) Vol. 1, Part E, Chap. 6, § F.)

1 **C. How USCIS Processes SIJ Petitions**

2 USCIS trains the officers who adjudicate SIJ petitions on the history and
3 background of the SIJ classification, the child welfare process, general SIJ eligibility
4 requirements, what constitutes a juvenile court, whether the juvenile court has
5 jurisdiction over the SIJ petitioner, the relevance of dependency or custody, the
6 function of best interest and reunification findings by the state court, and ultimately,
7 whether the SIJ petitioner has met all requirements such that the Secretary of
8 Homeland Security’s consent is warranted. (Def. Statement of Uncontroverted Facts
9 (“DSUF”) 12, ECF No. 102-2; Pl. Statement of Genuine Issues (“PSGI”) 12, ECF
10 No. 107-1 (designating facts as undisputed); *see also* Def. Resp. PSGI, ECF No.
11 108-1.) As part of each SIJ adjudication, the adjudicating officer must thoroughly
12 review the record, including the petitioner’s immigration history and any prior
13 applications to USCIS. (DSUF 5.) The adjudicating officer must also ensure the
14 petitioner has passed a background and security check. (DSUF 5.) If the officer
15 determines that the petitioner meets all requirements, the officer approves the case and
16 grants SIJ classification. (DSUF 7.) If the officer determines that the petitioner has
17 not met all eligibility requirements, the officer may (i) issue a RFE; (ii) issue a NOID,
18 or (iii) deny the petition. (*Id.*)

19 USCIS regulations permit adjudicating officers some flexibility in assigning
20 deadlines for petitioners to respond to a RFE, subject to a maximum response period
21 of eighty-four days. (DSUF 9.) To ensure consistency, officers generally allow
22 petitioners the full eighty-four days, but USCIS regulations permit officers to advance
23 the response deadline on a case-by-case basis after obtaining supervisory concurrence.
24 (*Id.*) As USCIS policy provides, when issuing a RFE, the officer should ask for all the
25 evidence the officer anticipates needing to determine eligibility and clearly state the
26 deadline for response. (DSUF 8.) An officer should not request evidence that is
27 outside the scope of the adjudication or otherwise irrelevant to an identified
28 deficiency. (*Id.*)

1 USCIS has discretion to issue a NOID for similar and additional reasons,
2 including when the petitioner has not established eligibility or when USCIS uncovers
3 derogatory information of which the petitioner may not be aware. (DSUF 10.) The
4 deadline for responding to a NOID is subject to an upper limit of thirty-three days.
5 (DSUF 19.)

6 From March 2020 to March 2023, as part of a series of “COVID-Related
7 Flexibilities,” USCIS granted SIJ petitioners an additional sixty days to respond with
8 the evidence requested in a RFE or NOID, meaning petitioners typically had a
9 maximum of 147 days to respond to a RFE and 93 days to respond to a NOID.
10 (DSUF 19.)

11 While USCIS does not second-guess the judgment of the juvenile court or
12 “reweigh the evidence” to determine whether the order meets the requirements under
13 8 U.S.C. § 1101(a)(27)(J)(i), USCIS must nevertheless “review the juvenile court
14 order(s) and any supporting evidence submitted” to determine whether the petition
15 warrants USCIS’s consent to the grant of SIJ classification, as required under 8 U.S.C.
16 § 1101(a)(27)(J)(iii). Pol. Man. Vol. 6, Pt. J, Ch. 2, § D; (Def. Resp. PSGI 5). To
17 warrant USCIS’s consent, the evidence must allow USCIS to conclude “that the
18 request for SIJ classification is bona fide, which requires the petitioner to establish
19 that a primary reason the required juvenile court determinations were sought was to
20 obtain relief from parental abuse, neglect, abandonment, or a similar basis under state
21 law.” Pol. Man. Vol. 6, Pt. J, Ch. 2, § D; see also 8 C.F.R. § 204.11(b)(5). To
22 determine whether a “primary reason” that the petitioner sought the juvenile court
23 order was to obtain relief from parental maltreatment, USCIS looks to juvenile court’s
24 determinations, the factual bases supporting those determinations, and the relief
25 provided by the juvenile court. Pol. Man. Vol. 6, Pt. J, Ch. 2, § D.

26 **D. USCIS Hiring Freeze and Budget Cuts**

27 To cover its operating costs, USCIS relies in large part on fees paid by those
28 who apply for immigration benefits. (DSUF 15.) Starting in March 2020, USCIS saw

1 a 50% reduction in incoming fees as a result of the COVID-19 pandemic. (DSUF 16.)
2 As a consequence, beginning May 1, 2020, and continuing through March 31, 2021,
3 USCIS implemented a hiring freeze. (*Id.*) While the hiring freeze was in place,
4 USCIS was unable to engage in normal hiring processes, including replacing staff
5 who retired, transferred, or otherwise moved on from their positions. (*Id.*)

6 USCIS has also recently experienced \$500 million in budget cuts. (*Id.*) As a
7 result, support staff at the National Benefits Center has been reduced by 1,000. (*Id.*)

8 The hiring freeze has since been lifted, and as of June 30, 2023, there are still
9 approximately ninety-four vacant positions at the National Benefits Center.
10 (DSUF 18.) The process of re-staffing the Center often takes several months and
11 continues to this day as USCIS attempts to reach full staffing in all its component
12 offices. (DSUF 17; Decl. Rose Kendrick ISO Def. Mot. (“Kendrick Decl.”) ¶ 36,
13 ECF No. 103.) The process of onboarding new employees, which includes
14 interviews, background checks, and training, typically takes six months, and an
15 onboarded employee typically requires at least six months to become proficient in SIJ
16 adjudications. (DSUF 17.)

17 **E. SIJ Petition Adjudication Data**

18 For SIJ petitions filed between January 1, 2020, and June 29, 2023, USCIS’s
19 average processing time to adjudicate SIJ petitions is 205 days, which is 25 days
20 beyond the 180-day deadline. (DSUF 40.) This figure includes all actual days from
21 receipt to the final decision, including the days during which the deadline is tolled
22 while USCIS waits for SIJ petitioners to submit evidence responsive to RFEs and
23 NOIDs. (DSUF 41.)

24 Of the 78,844 SIJ petitions that were adjudicated between January 1, 2020, and
25 June 29, 2023, 77,210 (97.9%) were approved and 1,634 (2.1%) were denied.
26 (DSUF 44.) Of the 78,844 adjudicated SIJ petitions, 12,140 (15.3%) were issued
27 RFEs. (*Id.*) In the most recent quarter for which data is available, USCIS issued
28 1,542 RFEs and 464 NOIDs to SIJ petitioners. (*Id.*)

1 In fiscal year 2022, USCIS received a total of 31,933 SIJ petitions, a 40%
2 increase from the previous fiscal year. (DSUF 21.) The volume of SIJ petition
3 submissions continued to increase throughout early 2023. (DSUF 22.)

4 **F. Recent Efforts to Expedite SIJ Petition Processing**

5 In late 2021, USCIS added a new permanent SIJ section at the USCIS National
6 Benefits Center, and it is currently recruiting and selecting officers for this section.
7 (DSUF 52.) The SIJ team at the National Benefits Center now has approximately
8 sixty-three officers permanently assigned to process SIJ petitions, and generally, each
9 officer adjudicates two SIJ petitions per workday. (DSUF 50.) This means that the
10 team can be expected to adjudicate 16,380 petitions in a six-month period, but this
11 falls short of the number of SIJ petitions USCIS might expect to receive. (*Id.* (citing
12 declaration referencing data showing 18,203 SIJ petitions received in a recent six-
13 month period).)

14 As a result of the increase in receipts over time and related staffing shortages,
15 USCIS has resumed hiring, trained and either temporarily or permanently reassigned
16 additional officers to adjudicate SIJ petitions, reassigned all non-SIJ activities from
17 officers assigned to the SIJ workload, and allowed officers to work overtime on the
18 SIJ workload. (DSUF 23; Kendrick Decl. ¶¶ 40, 43.)

19 **G. Procedural History**

20 On March 7, 2022, Plaintiffs filed their initial Complaint in this matter, setting
21 forth two claims. (Compl., ECF No. 1.) Plaintiffs' first claim is an equal protection
22 claim. (*Id.* ¶¶ 102–03.) Plaintiffs' second claim is for violation of the 180-day
23 adjudication deadline imposed by 8 U.S.C. § 1232(d)(2), brought by way of the APA,
24 5 U.S.C. §§ 701–706. (*Id.* ¶¶ 104–06.) On April 22, 2022, Plaintiffs filed the
25 operative First Amended Complaint, setting forth the same two claims and amending
26 the second claim in light of Tolling Provisions, which USCIS had recently announced.
27 (*See* First Am. Compl. (“FAC”), ECF No. 34.)

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1 Defendants moved to dismiss both claims. (Mot. Dismiss FAC, ECF No. 41.)
2 The Court dismissed the equal protection claim in its entirety, leaving only the second
3 claim at issue. (Order Mot. Dismiss FAC.)

4 Plaintiffs' second claim is styled as a claim for "routine[] violat[ions]" of
5 8 U.S.C. § 1232(d)(2). (FAC at 29.) The claim comprises two distinct subparts, and
6 each subpart has its own distinct basis. First, Plaintiffs challenge "Defendants' policy
7 and practice of routinely delaying the adjudication of SIJ petitions for longer than 180
8 days." (FAC ¶ 109.) The Court previously referred to this subpart of the claim as the
9 "missed deadline claim," and moving forward, the Court refers to it the "routine delay
10 claim," in accord with Plaintiffs' own allegations. Second, Plaintiffs challenge the
11 Tolling Provisions themselves. (*Id.*) The Court refers to this subpart of the claim as
12 the "Tolling Provisions claim." The primary remedies Plaintiffs seek are (1) a
13 declaration that the Tolling Provisions and the routine delays are unlawful; and (2) a
14 permanent injunction directing USCIS's strict compliance with the 180-day deadline.
15 (FAC 30–31.)

16 On February 16, 2023, Plaintiffs moved for class certification. (Mot. Certify
17 Class, ECF No. 58.) The Court granted the motion in part, certifying a class of
18 individual SIJ petitioners for the purposes of the Tolling Provisions claim and
19 declining to certify a class for the purposes of the routine delay claim. (Order Certify
20 Class 27–28.) Each side now moves for summary judgment. (Pl. Mot.; Def. Mot.)
21 The Motions are fully briefed. (Order Joint Appl., ECF No. 96; Pl. Combined Opp'n
22 & Reply Br. ("Pl. Opp'n"), ECF No. 107; Def. Reply, ECF No. 108.) The Court
23 carefully considered these materials, deemed the matter appropriate for decision
24 without oral argument, and took the Motions under submission. Fed. R. Civ. P. 78;
25 C.D. Cal. L.R. 7-15.

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1 **H. *Galvez v. Cissna***

2 This case is related to a case in the Western District of Washington, originally
3 styled as *Galvez v. Cissna*, No. 2:19-cv-00321-RSL (W.D. Wash. filed Mar. 5, 2019).¹
4 The plaintiffs in *Galvez* are SIJ petitioners in the State of Washington who challenged
5 certain USCIS practices, including the Tolling Provisions. The district court in *Galvez*
6 held that USCIS’s delays were unlawful and issued a permanent injunction imposing a
7 strict 180-day deadline on USCIS and allowing Washington-based SIJ petitioners—
8 but not USCIS—to toll the statutory deadline. Order Mot. Summ. J. 19–20, *Galvez v.*
9 *Cissna*, No. 2:19-cv-00321-RSL (W.D. Wash. issued Oct. 5, 2020), ECF No. 76. As
10 part of the injunction, the court ordered that “USCIS may not use the issuance of a
11 request for information or notice of intent to deny for the sole purpose of avoiding the
12 statutory deadline for adjudication of an SIJ petition.” *Id.*

13 The Ninth Circuit affirmed the permanent injunction, with one exception, in
14 *Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It found the district court abused its
15 discretion in issuing the part of the injunction allowing SIJ petitioners but not USCIS
16 to toll the statutory deadline. 52 F.4th at 838. It remanded the case and instructed the
17 district court “to make any further, proper modifications to its order consistent with its
18 disposition.” *Id.* at 839. The Ninth Circuit concluded its opinion by “encourag[ing]
19 the parties on remand to present the district court with more practical terms for an
20 injunction that considers Congress’s plain directive and the parties’ respective
21 interests.” *Id.*

22 To comply with the *Galvez* injunction, USCIS now issues only NOIDs, to
23 which a petitioner has thirty-three days to respond, and not RFEs, to Washington-state
24 SIJ petitioners. (DSUF 46.) To comply with the injunction, USCIS also prioritizes
25 Washington-state petitions over all other petitions nationwide. (*Id.*) To achieve this,
26 rather than being placed in a queue, Washington-state SIJ petitioners immediately go
27 to the front of the line for adjudication. (*Id.*)

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¹ Later *Galvez v. Cuccinelli* and currently *Galvez v. Jaddou*. See Fed. R. Civ. P. 25(d).

1 **III. LEGAL STANDARD**

2 **A. Administrative Procedure Act**

3 The Administrative Procedure Act permits those desiring to challenge the final
4 decision of an administrative agency to seek review in a federal district court.
5 5 U.S.C. § 706. Under 5 U.S.C. § 706(2)(A), district courts are empowered to “hold
6 unlawful and set aside agency action, findings, and conclusions” when the agency
7 action is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
8 with law.”

9 A court reviews the agency’s purely legal determinations de novo. *Akiak Native*
10 *Cmty. v. U.S. Postal Serv.*, 213 F.3d 1140, 1144 (9th Cir. 2000). But when the agency
11 has made factual findings, the court may review those findings only for substantial
12 evidence; that is, the agency action is valid if a “reasonable basis exists” for the
13 agency’s factual findings. *Arrington v. Daniels*, 516 F.3d 1106, 1112 (9th Cir. 2008).
14 An agency abuses its discretion, and its decision is therefore subject to invalidation,
15 “if there is no evidence to support the decision or if the decision was based on an
16 improper understanding of the law.” *Tongatapu Woodcraft Haw., Ltd. v. Feldman*,
17 736 F.2d 1305, 1308 (9th Cir. 1984).

18 **B. Summary Judgment**

19 A court “shall grant summary judgment if the movant shows that there is no
20 genuine dispute as to any material fact and the movant is entitled to judgment as a
21 matter of law.” Fed. R. Civ. P. 56(a). Because judicial review under the APA is
22 confined to the administrative record, *Arrington*, 516 F.3d at 1112, in the typical case,
23 “the entire case is a question of law,” *Tolowa Nation v. United States*, 380 F. Supp. 3d
24 959, 963 (N.D. Cal. 2019) (internal quotation marks removed). Thus, courts routinely
25 resolve APA actions by way of summary judgment. *See, e.g., Occidental Eng’g Co. v.*
26 *I.N.S.*, 753 F.2d 766, 770 (9th Cir. 1985).

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IV. DISCUSSION

Plaintiffs seek summary judgment in their favor in the form of a ruling that (1) as claimed by the certified class of individual SIJ petitioners, the Tolling Provisions violate both the 180-day statutory deadline for the adjudication of SIJ petitions and the APA, and (2) as claimed by the Organizational Plaintiffs, Defendants’ routine delay in adjudicating SIJ petitions beyond 180 days violates both the 180-day statutory deadline and the APA. (Pl. Notice Mot., ECF No. 97.) Defendants seek summary judgment on Plaintiffs’ Amended Complaint generally. (Def. Notice Mot., ECF No. 102.)

For the following reasons, the Court finds that the Tolling Provisions violate the statutory 180-day limit, and the Court will issue declaratory relief, but not injunctive relief, to that effect. By contrast, the routine delay claim must be dismissed because, absent class certification, the remedies Plaintiffs seek for USCIS’s alleged routine delay are not available under the APA.

A. Tolling Provisions Claim

On behalf of a certified class of SIJ petitioners, Plaintiffs challenge the Tolling Provisions pursuant to 5 U.S.C. § 706(2)(A), which allows courts to “hold unlawful and set aside agency action, findings, and conclusions” when the agency action is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” (FAC ¶ 109.) The Tolling Provisions at issue here are an “agency action.” See 5 U.S.C. § 551(13) (“[A]gency action’ includes the whole or a part of an agency rule.”). Plaintiffs ask the Court to find that the Tolling Provisions are “not in accordance with” the TVPRA’s 180-day deadline. 5 U.S.C. § 706(2)(A).

To clarify, Plaintiffs in this case are not advancing a theory that USCIS is issuing RFEs and NOIDs without a bona fide basis to do so, solely for the purpose of delaying adjudication of an otherwise complete SIJ petition. While this issue appears to have arisen in *Galvez*, it does not arise here. See *Galvez*, 52 F.4th at 829 (setting forth terms of district courts’ injunction, including that “USCIS may not use the

1 issuance of a request for information or notice of intent to deny for the sole purpose of
2 avoiding the statutory deadline for adjudication of an SIJ petition”); *id.* at 840
3 (describing district court’s injunction “forb[iddi]ng the claims-processing gimmicks
4 that USCIS had argued it could use to dodge the 180-deadline”) (Graber, J., dissenting
5 in part). There is no evidence in the record of this case that USCIS is issuing RFEs or
6 NOIDs in circumstances where they are not required, much less evidence that USCIS
7 is doing so for the purpose of delaying adjudication. This discussion remains squarely
8 focused on the Tolling Provisions themselves, not on how USCIS may be applying or
9 using the Tolling Provisions.

10 For the following reasons, the Court finds that the Tolling Provisions are “not in
11 accordance with” the TVPRA’s 180-day deadline, 8 U.S.C. § 1232(d)(2), a finding
12 that justifies declaratory relief but not a permanent injunction directing USCIS to
13 strictly comply with the statute. Furthermore, the Court finds that the Tolling
14 Provisions are arbitrary and capricious to the extent, and only to the extent, that they
15 allow for violation of the 180-day deadline in 8 U.S.C. § 1232(d)(2).

16 *1. The Tolling Provisions are not “in accordance with” the TVPRA’s*
17 *180-day deadline, and declaratory relief is appropriate.*

18 This brings the Court to the core issue of this case: whether the Tolling
19 Provisions are “in accordance with” the 180-day statutory deadline set forth at
20 8 U.S.C. § 1232(d)(2).

21 When it enacted 8 U.S.C. § 1232(d)(2), Congress issued a “plain directive,”
22 *Galvez*, 62 F.4th at 839, that USCIS adjudicate SIJ petitions “not later than 180 days
23 after the date on which the application is filed.” In discussing this deadline, the Ninth
24 Circuit in *Galvez* noted that courts are to “primarily interpret a statute by its text” and
25 avoid “augment[ing] or mak[ing] exceptions to the law as [the court may] think would
26 better achieve the results some may reasonably interpret the law to be aimed to
27 achieve.” *Galvez*, 52 F.4th at 837 n.11.

1 That principle applies here. The statute at issue “plainly provides no
2 mechanism for ‘tolling.’” *Id.* at 838. If Congress had wished to provide USCIS with
3 a mechanism for extending the 180-day deadline in certain circumstances, Congress
4 could and would have done so. *Id.* at 837 n.11 (“Congress’s decision to choose
5 specifically 180 days, use mandatory language, and omit tolling language may reflect
6 competing values that have already been considered by Congress in determining how
7 best to effectuate section 1232’s overarching goal of protecting vulnerable immigrant
8 children.”). Thus, “[c]reating a carveout where the text provides none may actually
9 frustrate rather than effectuate legislative intent.” *Id.* (cleaned up).

10 Granted, any analysis in *Galvez* regarding the lawfulness of the Tolling
11 Provisions is dicta. The government was not appealing the *Galvez* district court’s
12 finding on the unlawfulness of the Tolling Provisions, and thus, the Ninth Circuit
13 simply assumed the Tolling Provisions were unlawful for the purpose of its analysis.
14 *Galvez*, 52 F.4th at 826 (“This case does not require us to decide whether USCIS
15 violated § 1232(d)(2) by delaying the adjudication of SIJ petitions.”). Dicta or not,
16 the Court finds the Ninth Circuit’s reasoning persuasive, as well as strong evidence
17 that the Ninth Circuit would find the Tolling Provisions to be unlawful, if presented
18 directly with the issue.

19 Based on these observations, this Court finds that the Tolling Provisions violate
20 8 U.S.C. § 1232(d)(2) to the extent they allow USCIS in particular instances to extend
21 the deadline for adjudicating SIJ petitions beyond the statutorily mandated 180-day
22 deadline. Therefore, the Tolling Provisions are an “agency action” “not in accordance
23 with law,” constituting a violation of the APA. 5 U.S.C. § 706(2)(A).

24 Defendants offer two main arguments in response. First, they argue that, under
25 the so-called *TRAC* factors, USCIS has not unreasonably delayed adjudication of
26 SIJ petitions. However, as discussed below, the *TRAC* factors have no application in
27 the context of Plaintiffs’ Tolling Provisions challenge. Second, Defendants argue that
28

1 USCIS is entitled to *Chevron* deference, but as discussed below, this argument fails
2 because the statute at issue is not ambiguous.

3 a. Applicability of TRAC Factors

4 Defendants argue that the factors for determining whether delay was
5 unreasonable as set forth in *Telecommunications Research & Action Center v. F.C.C.*
6 (*TRAC*), 750 F.2d 70, 79–80 (D.C. Cir. 1984), apply to this case. The Court has
7 previously engaged with the *TRAC* factors in determining whether to certify a class
8 for the purpose of Plaintiffs’ routine delay claim. (Order Certify Class 23–25).

9 This discussion, of course, is about the legal viability of the Tolling Provisions
10 claim. To whatever extent the *TRAC* factors may apply to this case, it is clear that the
11 *TRAC* factors do not apply to Plaintiffs’ challenge to the lawfulness of the Tolling
12 Provisions in particular. As discussed, the Tolling Provisions are an agency action
13 that Plaintiffs assert is “not in accordance with law,” and the Tolling Provisions are
14 therefore appropriately challenged under 5 U.S.C. § 706(2)(A).

15 In contrast, the purpose of the *TRAC* factors is to determine whether a delay
16 was unreasonable, and the *TRAC* factors therefore have applicability only in the
17 context of unreasonable-delay claims brought under 5 U.S.C. § 706(1). *See, e.g., In re*
18 *A Cmty. Voice*, 878 F.3d 779, 786 (9th Cir. 2017) (confirming “unreasonable delay is
19 evaluated under the *TRAC* factors,” and collecting cases). While Plaintiffs can and do
20 challenge the Tolling Provisions under § 706(2)(A), there is no reasonable argument
21 that Plaintiffs could challenge the Tolling Provisions under § 706(1). Under § 706(1),
22 courts can “compel agency action unlawfully withheld or unreasonably delayed,”
23 which is not what Plaintiffs seek to do in challenging the Tolling Provisions here. The
24 Tolling Provisions have already been enacted, and the issue here is obviously not
25 whether the Tolling Provisions were enacted in a timely manner. Instead, Plaintiffs
26 are challenging the legality of the Tolling Provisions themselves. It may be that the
27 *effect* of the Tolling Provisions is an unreasonable delay, but that does not mean that
28 the challenge to the Tolling Provisions themselves constitutes an unreasonable delay

1 claim. Moreover, it makes little sense to speak of *prohibiting* USCIS from applying
2 the Tolling Provisions as a type of “compel[ling]” of agency action as contemplated
3 by § 706(1).

4 The *TRAC* factors do not apply in the context of Plaintiffs’ challenge to the
5 Tolling Provisions. Accordingly, any argument based on the *TRAC* factors has no
6 relevance in the Tolling Provisions analysis.

7 b. *Chevron* Deference

8 Defendants further argue that the Tolling Provisions are USCIS’s interpretation
9 of a statute and are accordingly entitled to deference under *Chevron, U.S.A. Inc. v.*
10 *Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

11 When an agency issues a regulation interpreting a statute that it administers,
12 courts apply the two-step approach set out in *Chevron*. *Id.* at 842. First, the court
13 determines whether the statute is “silent or ambiguous with respect to the specific
14 issue.” *Id.* at 843. At that point, “[i]f the intent of Congress is clear, that is the end of
15 the matter,” and courts “must give effect to the unambiguously expressed intent of
16 Congress.” *Akhtar v. Burzynski*, 384 F.3d 1193, 1198 (9th Cir. 2004)
17 (quoting *Chevron*, 467 U.S. at 842–43). Otherwise, the court proceeds to step two and
18 determines whether the agency’s rule is based on a “permissible construction of the
19 statute.” *Safer Chems., Healthy Families v. EPA*, 943 F.3d 397, 422 (9th Cir. 2019).
20 If the agency’s construction is permissible, the court must defer to the agency’s
21 interpretation. *Id.*

22 Here, the Tolling Provisions are not entitled to *Chevron* deference because the
23 statute they interpret, 8 U.S.C. § 1232(d), is not ambiguous. Defendants urge the
24 Court to find ambiguity based on two words in the statute: “adjudicated” and “filed.”
25 (Def. Mot. 16–18.) This argument fails on both counts.

26 First, the use of the word “adjudicated” does not create any ambiguity in the
27 statute. Defendants point to other congressional uses of the word “adjudicate” in
28 statutes governing USCIS to suggest that “adjudicate” in the Tolling Provisions is

1 ambiguous. (*Id.*) Their core argument is that “in the immigration context,
2 ‘adjudicate’ can mean a final decision, *i.e.* an approval or denial, or determining that
3 the petition is deficient and requesting evidence to overcome that deficiency.” (*Id.*
4 at 18.)

5 The Court rejects this argument. The statutory deadline is clearly drafted and
6 there is no suggestion or implication of any exceptions. *See* 8 U.S.C. 1232(d) (“All
7 [SIJ] applications . . . shall be adjudicated . . . not later than 180 days after the date on
8 which the application is filed.”). Moreover, the words “applications” and “filed”
9 provide additional contextual cues regarding the clear meaning of “adjudicated.” That
10 Congress mandated that “applications” must go from “filed” to “adjudicated”—that is,
11 from start to finish—in 180 days or less confirms that “adjudicated” means what
12 Plaintiffs assert that it means: either approved or denied. That is to say, the word
13 “adjudicated” in § 1232(d) unambiguously excludes the act of issuing a RFE or
14 NOID. *See Galvez*, 52 F.4th at 837 n.11 (suggesting that the text of § 1232(d) is
15 “clear” and devoid of “textual ambiguity justifying the tolling provision”).

16 The same is true of the word “filed.” The statute indicates an unambiguous
17 intent that the entire process of SIJ petition adjudication, from start to finish, take no
18 more than 180 days. The word “filed” has its usual meaning here; a petition is filed
19 when it is transmitted to, and received by, USCIS. The statute makes no suggestion or
20 implication that “filed” should refer to some later date after a petitioner has submitted
21 additional materials.

22 The statute at issue, 8 U.S.C. 1232(d), is clear about the 180-day statutory
23 deadline and contains no ambiguity requiring interpretation. Accordingly, the Court
24 does not give *Chevron* deference to the Tolling Provisions.

25 c. The Court will not issue injunctive relief.

26 Having determined that the Tolling Provisions are not in accordance with the
27 law set forth at 8 U.S.C. 1232(d), the Court proceeds to consider whether it is
28 appropriate to issue injunctive relief. Plaintiffs seek a permanent injunction “requiring

1 that Defendants adjudicate SIJ petitions within six months of submission,” (FAC,
2 Prayer for Relief ¶ 4), and they urge the Court to defer determining the exact terms of
3 the injunction to provide the parties an opportunity to cooperate on the matter
4 following a ruling in Plaintiffs’ favor. (Pl. Opp’n 32.)

5 An injunction is an “extraordinary remedy never awarded as of right.” *Winter*
6 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *see Flexible Lifeline Sys., Inc. v.*
7 *Precision Lift, Inc.*, 654 F.3d 989, 996 (9th Cir. 2011) (confirming that the standards
8 for injunctions apply equally to preliminary and permanent injunctive relief); *Menges*
9 *v. Knudsen*, 538 F. Supp. 3d 1082, 1105 (D. Mont. 2021) (evaluating permanent
10 injunction). Thus, the mere fact that a court has jurisdiction to enforce a statute does
11 not mean the court has an “absolute duty” to ensure compliance with the statute, and
12 courts are “not mechanically obligated to grant an injunction for every violation of
13 law.” *N. Cheyenne Tribe v. Norton*, 503 F.3d 836, 843 (9th Cir. 2007) (quoting
14 *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982)). Instead, courts “must
15 balance the competing claims of injury and must consider the effect on each party of
16 the granting or withholding of the requested relief.” *Amoco Prod. Co. v. Village of*
17 *Gambell*, 480 U.S. 531, 542 (1987); *see N. Cheyenne Tribe*, 503 F.3d at 842 (rejecting
18 appellants’ theory that “when a district court finds a violation of a statute, it must
19 enforce the statute without qualification”).

20 The Ninth Circuit’s opinion in *Galvez* confirms that it is appropriate to apply
21 the traditional injunctive-relief factors to determine whether to issue an injunction
22 requiring USCIS’s strict compliance with the 180-day deadline. *See Galvez*, 52 F.4th
23 at 831 (applying traditional injunctive-relief factors to determine whether district court
24 abused its discretion in enjoining USCIS to strictly comply with 180-day deadline).
25 These factors are: (1) whether the plaintiffs have suffered an irreparable injury;
26 (2) whether remedies available at law are inadequate to compensate for that injury;
27 (3) whether, considering the balance of the hardships between the plaintiff and
28 defendant, a remedy in equity is warranted; and (4) whether the public interest would

1 not be disserved by a permanent injunction. *Id.* (quoting *eBay Inc. v. MercExchange*,
2 *L.L.C.*, 547 U.S. 388, 391 (2006). When the government is a party to a case, the
3 balance of the equities and public-interest factors merge. *Drakes Bay Oyster Co. v.*
4 *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

5 Regarding the first factor, to the extent any SIJ petitioners have suffered or will
6 likely suffer irreparable injury as a result of the Tolling Provisions, the injury does not
7 appear to be systematically severe. USCIS is currently adjudicating SIJ petitions in
8 205 days on average, and this figure includes “tolling,” that is, it includes the time
9 USCIS spent waiting for petitioners to respond to RFEs and NOIDs. Twenty-five
10 days, on average, past the statutory deadline is not a severe delay, especially given
11 that this figure includes periods during which certain petitions were incomplete and
12 could not yet be finally approved or denied. Notably, most SIJ petitioners appear to
13 be at little to no risk of deportation while their SIJ petitions are pending. (*See* DSUF
14 65 (“[The Department of Homeland Security] is not currently prioritizing the removal
15 of SIJ petitioners, including individuals who have not yet submitted a petition but
16 appear eligible for SIJ classification, unless the petitioner has severe criminal history
17 or presents a threat to national or border security.”).

18 This conclusion—that the overall delay is not severe—is an observation about
19 the Tolling Provisions specifically and not about any broader phenomenon of “routine
20 delay” that may have resulted in certain petitioners waiting many months beyond
21 180 days for adjudication. Certainly, if there is a delay of several months and the
22 delay owes entirely to USCIS’s own inaction, at a certain point, the petitioner’s
23 inability to obtain SIJ status and the associated benefits—including permission to
24 work and federal educational services, Order Granting Mot. Summ. J. 17, *Galvez v.*
25 *Cuccinelli*, ECF No. 76—becomes a significant and possibly irreparable injury. But
26 this discussion is not about any long delays entirely within USCIS’s control; this
27 discussion is about the Tolling Provisions and about the delays that occur when
28 USCIS requests additional evidence from SIJ petitioners.

1 Other reasons exist for concluding that the irreparable harm, if any, is minimal.
2 Under the Tolling Provisions, USCIS has 180 days, and no more, to adjudicate SIJ
3 petitions that do not need any additional evidence and for which a RFE or NOID is
4 therefore not appropriate. Thus, the Tolling Provisions themselves cause no
5 irreparable harm to petitioners who do not receive a RFE or NOID. As for the
6 petitioners who do receive a RFE or NOID, the amount of delay they experience is
7 exactly equal to the number of days each petitioner takes to respond to the RFE or
8 NOID. Thus, even if the Tolling Provisions cause some amount of irreparable injury
9 owing to the delays, it is within SIJ petitioners' power to mitigate that injury by
10 providing a timely response to a RFE or NOID.

11 Moreover, in cases where the tolling of the deadline provides the petitioner an
12 opportunity to submit materials and complete their petition beyond the purported strict
13 180-day deadline, it is difficult to see how those petitioners suffer any injury at all.
14 With a strict 180-day deadline in place, USCIS would be forced to deny those
15 petitioners' petitions, because USCIS cannot approve incomplete or otherwise
16 deficient petitions. 8 C.F.R. § 103.2(b)(8)(i). Owing to the Tolling Provisions, such
17 petitioners gained the ability to complete their petitions beyond the strict 180-day
18 window and avoid the denial that would have otherwise resulted.

19 Regarding the second factor, remedies at law are available in individual
20 instances where a SIJ petitioner concludes that, in light of the course of their
21 interactions with USCIS, USCIS is unreasonably delaying adjudication of their
22 petition. In such instances, the petitioner may assert an unreasonable delay claim
23 pursuant to the APA, 5 U.S.C. § 706(1).

24 Regarding the third and fourth factors, the consideration of the public interest
25 weighs strongly against the issuance of an injunction. As discussed, USCIS has been
26 working through a significant staffing shortage that resulted in part from the
27 COVID-19 pandemic. An injunction is not a talisman that would result in the
28 immediate existence of more staff at the National Benefits Center, so at least at first,

1 to comply with an injunction, USCIS would have to divert staff and resources away
2 from other matters in order to process SIJ petitions more quickly. Adjudicating a SIJ
3 petition is not a trivial process; the adjudicating officer must make several
4 determinations and must be familiar with the petition as a whole so that the officer can
5 determine whether USCIS's consent to SIJ classification is warranted. Compounding
6 the problem is the fact that staff who are not trained on SIJ petitions would have to be
7 trained, and the training process consumes even more USCIS resources and prevents
8 agents from processing any immigration applications at all while they are being
9 trained.

10 Based on these observations, the Court finds little justification to insert itself
11 into the affairs of USCIS and order USCIS to divert significant resources away from
12 other priorities. Moreover, the uncontroverted evidence indicates that USCIS is
13 making bona fide efforts to address any remaining systemic delays in processing
14 SIJ petitions, including by hiring and training new staff and by implementing
15 technological and other efficiencies. The Court declines to interpose its own
16 mandates on this process when the evidence shows that USCIS has taken, and is
17 continuing to take, meaningful steps to fix the problem.

18 Finally, and perhaps most fundamentally with respect to the public interest, the
19 Tolling Provisions leave SIJ petitioners as a whole in an objectively *better* position
20 than without the Tolling Provisions. Generally speaking, the Tolling Provisions are a
21 set of regulations that support petitioners whose petitions cannot be approved in the
22 first place, and while the Tolling Provisions allow for adjudications past the 180-day
23 deadline in certain instances, overall, the Tolling Provisions make it easier, not harder,
24 for SIJ petitioners to ultimately obtain approval of their petitions.

25 As one example, consider a situation where USCIS's backlog prevents it from
26 making an initial assessment of a deficient SIJ petition until 150 days after the
27 deficient petition has been filed. The adjudicating officer could, at that point, simply
28 deny the petition based on its deficiencies. Or, as a way of assisting the petitioner in

1 obtaining approval, USCIS could issue a RFE. Without the Tolling Provisions, the
2 petitioner would have a maximum of 30 days to respond to the RFE, and if the
3 response did not reach USCIS in time, USCIS would be obligated to simply deny the
4 petition as incomplete. The petitioner would then be required to take additional steps
5 to reopen their case, a result that is not guaranteed (*See* Def. Reply 4 (discussing
6 standard for reopening petition as set forth at 8 C.F.R. § 103.5(a)(2)).) With the
7 benefit of the Tolling Provisions, on the other hand, the petitioner is guaranteed an
8 appropriate window of time to provide the additional information, without having to
9 worry that the petition will be denied if they do not act quickly enough.

10 The Tolling Provisions also favor petitioners in that that the Tolling Provisions
11 leave the severity of any delay in the hands of the petitioner, not USCIS. After
12 USCIS stops the clock by issuing a RFE or NOID, it is the petitioner who has the
13 power to restart the clock, by providing USCIS with the information necessary to
14 complete adjudication of the petition. Thus, if a petition is missing some technical or
15 easy-to-obtain piece of information, a SIJ petitioner who needs a prompt adjudication
16 can respond to the RFE or NOID in a timely manner (for example, within ten days),
17 thus resuming the clock and ensuring prompt adjudication of the petition (a maximum
18 of $180 + 10 = 190$ days in the example). If, by contrast, a petition is missing
19 significant documents that will take the petitioner longer to procure, the Court still
20 struggles to understand how a longer tolling of the 180-day deadline harms the
21 petitioner. Without the required significant documents, that petitioner's petition could
22 never have been approved by USCIS anyway, and the Tolling Provisions simply
23 provide the petitioner with additional time to submit materials and avoid a denial.

24 The fact that, as a whole, the Tolling Provisions place SIJ petitioners in a better
25 position than they would be without the Tolling Provisions strongly reinforces the
26 Court's finding that an injunction requiring strict compliance would not be in the
27 public interest.

28

1 Plaintiffs observe that “despite COVID and backlogs, USCIS has been capable
2 of following the court order in *Moreno-Galvez*.” (Pl. Opp’n 13.) Their suggestion is
3 that, if USCIS can achieve strict 180-day compliance in Washington, it can do so
4 nationwide. This argument misses the point. The reason USCIS is currently able to
5 comply with the *Galvez* order is because it is quite literally letting Washington-based
6 petitioners skip to the front of the line. By definition, this siphons USCIS’s resources
7 away from other SIJ petitions, and it creates at least a quantum of additional delay in
8 the adjudication of petitions from the other forty-nine states.

9 Thus, the issue is not whether it would be physically or conceptually possible
10 for USCIS to marshal enough human power at the National Benefits Center to
11 adjudicate SIJ petitions within a certain period of time. Even if it were possible, the
12 process would require diverting resources away from other types of immigration
13 applications. (*See* DSUF 49 (estimating that, as a result of recent diversion of
14 resources to SIJ applications, USCIS will be forced to deprioritize 120,000 applicants
15 for other types of benefits.) USCIS would need to hire new staff or reassign current
16 staff away from other responsibilities, and either way, training agents anew to process
17 SIJ petitions is costly and resource-intensive. The Court is not convinced that
18 diverting these resources to get all SIJ petitions adjudicated within a strict 180-day
19 deadline is in the public interest, especially when the average delay is not severe and
20 the length of any potential delay beyond 180 days is within the control of the
21 petitioner.

22 For these reasons, the Court declines to issue an injunction requiring strict
23 compliance with the § 1232(d) 180-day deadline.

24 2. *The Tolling Provisions are “arbitrary and capricious” to the extent they*
25 *violate the 180-day statutory deadline, and no further.*

26 Plaintiffs allege and argue that the Tolling Provisions are also “arbitrary and
27 capricious” as found in 5 U.S.C. § 706(2)(A). (Pl. Mot. 15–18.) This assertion is the
28 subject of a significant amount of evidence and argument regarding the public

1 comment process leading to the enactment of the Tolling Provisions. (*See, e.g.,*
2 PSUF 73–75; DSUF 59–64.)

3 Plaintiffs do not make clear whether an “arbitrary and capricious” finding
4 entitles them to relief or remedies that would not otherwise be available with a “not in
5 accordance with law” finding. The text of the APA suggests that there is no such
6 additional relief or remedy; the “arbitrary and capricious” language and the “otherwise
7 not in accordance with law” language are found in the same subsection as part of a list
8 of findings that allow courts to provide the sole remedy of “hold[ing] unlawful and
9 set[ting] aside agency action.” 5 U.S.C. § 706(2)(A). Thus, whether the Tolling
10 Provisions are also “arbitrary and capricious” does not appear to have any effect on
11 the remedies available to Plaintiffs. Nevertheless, in the interest of completeness, the
12 Court will address this issue; Plaintiffs raise it, the parties argue it, and no one
13 suggests the record is incomplete or insufficient to allow the Court to address it.

14 A regulation or practice is considered arbitrary and capricious “if [1] the agency
15 has relied on factors which Congress has not intended it to consider, [2] entirely failed
16 to consider an important aspect of the problem, [3] offered an explanation for its
17 decision that runs counter to the evidence before the agency, or [4] if the agency’s
18 decision is so implausible that it could not be ascribed to a difference in view or the
19 product of agency expertise.” *All. for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d
20 1105, 1112 (9th Cir. 2018) (internal quotation marks and citation omitted)

21 Here, the Tolling Provisions are arbitrary and capricious to the extent, and only
22 to the extent, that they allow for violations of the § 1232(d) 180-day time limit. To be
23 clear, the Court does not find that Defendants acted arbitrarily or capriciously in the
24 process of considering public comments and preparing the Tolling Provisions for
25 enactment. For the reasons discussed above in the context of injunctive relief, the
26 Tolling Provisions are not illogical, nor are they unequivocally detrimental to SIJ
27 petitioners. To the contrary, they are USCIS’s way of acting on the directive of
28 § 1232(d), and while they technically allow for late adjudications in some cases, they

1 leave SIJ petitioners in a better overall position. The Tolling Provisions also support
2 USCIS in fairly allocating its limited resources to its many functions, and in this
3 sense, the Tolling Provisions benefit immigration applicants of all types. In addition,
4 the Tolling Provisions are based on INS tolling regulations that the government has
5 followed for decades. Given that the public comment and revision process led to a set
6 of Tolling Provisions that are logical and beneficial, the Court does not find that
7 USCIS acted arbitrarily or capriciously in the public comment, revision, and
8 enactment process.

9 **B. Routine Delay Claim**

10 The Court proceeds to the second part of Plaintiffs’ Motion for Summary
11 Judgment. By way of their routine delay claim, Organizational Plaintiffs claim that
12 Defendants’ routine delay in adjudicating SIJ petitions violates the 180-day statutory
13 deadline at 8 U.S.C. 1232(d)(2), and Organizational Plaintiffs now request a ruling in
14 their favor on the routine delay claim, consisting primarily of a declaration that the
15 routine delay is unlawful and an injunction directing strict compliance.

16 To be clear, the routine delay claim is a broader challenge than the Tolling
17 Provisions claim. The routine delay claim challenges USCIS’s overall delay in
18 adjudicating SIJ petitions, which encompasses both the Tolling Provisions and all
19 other aspects of USCIS’s operations that might cause it to miss the 180-day deadline
20 in various cases. Organizational Plaintiffs seek an injunction to stop this routine
21 delay, and, as mentioned, they argue that the Court should wait to address “[t]he scope
22 and timing of compliance with any injunction” until after the Court rules on the
23 summary judgment motions. (Pl. Opp’n 32.)

24 On the routine delay claim, the Court grants summary judgment in favor of
25 Defendants, and correspondingly denies Plaintiffs’ request for summary judgment,
26 because a systemwide injunction to stop generalized delays is not a remedy the APA
27 makes available to Plaintiffs. The routine delay claim is an APA claim, (FAC ¶¶ 107–
28 109), and accordingly, any remedy must be available under the APA and must be

1 appropriate under the facts of the case. The APA empowers district courts to provide
2 one of two “narrow” remedies. *Pub. Lands for the People, Inc. v. U.S. Dep’t of*
3 *Agric.*, 733 F. Supp. 2d 1172, 1183 (E.D. Cal. 2010). First, courts can “compel
4 agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).
5 Second, courts can “hold unlawful and set aside agency action, findings, and
6 conclusions” found to be unjustified for a number of specified reasons. 5 U.S.C.
7 § 706(2). The question is whether Plaintiffs’ request for a systemwide injunction to
8 stop USCIS’s “routine delay” of SIJ adjudications fits either of these descriptions of
9 remedies available under the APA.

10 First, the type of injunction Plaintiffs seek does not appear to be a remedy
11 contemplated by § 706(2). Organizational Plaintiffs are challenging an overall
12 practice of USCIS on behalf of all present and future SIJ petitioners, and they seek an
13 injunction ordering USCIS to alter its overall practice to more quickly adjudicate the
14 petitions of *all SIJ petitioners*. But “[o]nly ‘discrete agency action’ may be reviewed
15 under the APA,” and USCIS’s overall practice with respect to all SIJ petitioners is not
16 a discrete action. *Pub. Lands*, 733 F. Supp. 2d at 1183 (quoting *Norton v. S. Utah*
17 *Wilderness All.*, 542 U.S. 55, 62 (2004)). “Courts may determine whether particular
18 actions violate broad mandates, but the APA does not permit courts to oversee
19 agencies wholesale,” as Plaintiffs ask this Court to do. *Id.*; *see also Norton*, 542 U.S.
20 at 67 (“The prospect of pervasive oversight by federal courts over the manner and
21 pace of agency compliance with such congressional directives is not contemplated by
22 the APA.”). Moreover, the Court notes that, consistent with this case law, the relief
23 requested here is a permanent, forward-looking injunction, and it makes no sense to
24 characterize such an injunction as the “hold[ing] unlawful and set[ting] aside” of
25 anything.

26 What remains is whether § 706(1), which allows courts to “compel agency
27 action unlawfully withheld or unreasonably delayed,” allows the Court in this instance
28 to issue a systemwide declaration and injunction regarding USCIS’s practices.

1 5 U.S.C. § 706(1). In the typical unreasonable-delay case, a plaintiff uses § 706(1) to
2 obtain an injunction directing the agency to prioritize and act on the plaintiff's matter
3 in particular. Moreover, there is no indication in § 706(1) that Congress meant to
4 provide a remedy directed toward the practices of the government agency on a
5 systemwide basis. *Norton*, 542 U.S. at 67. Instead, to obtain such relief, Plaintiffs
6 would need to certify a class of SIJ petitioners pursuant to Federal Rule of Civil
7 Procedure 23(b)(2), which in turn would allow them to pursue a broad injunction
8 regarding Defendants' behavior toward the class as a whole. However, the Court has
9 denied certification of a class for the purposes of the routine delay claim. (Order
10 Certify Class 28.)

11 The mere fact that Organizational Plaintiffs, in carrying out their missions,
12 represent multiple SIJ applicants does not give Organizational Plaintiffs access to a
13 systemwide remedy not otherwise available under the APA. If it were Individual
14 Plaintiffs, not Organizational Plaintiffs, asserting the routine delay claim, the remedy
15 available to them would be an injunction compelling the agency to act *on Individual*
16 *Plaintiffs' petitions*, and no more. *Cf. Pub. Lands*, 733 F. Supp. 2d at 1183–84. The
17 Court is not aware of any case law suggesting individual plaintiffs in individual
18 actions for unreasonable delay are able to obtain, as part of relief under the APA, an
19 injunction regarding the agency's practices more generally, for the benefit of *other*
20 petitioners. The Court sees no basis for allowing organizational plaintiffs access to a
21 remedy to which individual plaintiffs—the primary beneficiaries of the 180-day
22 deadline—do not themselves have access.

23 For these reasons, the systemwide declaratory and injunctive relief Plaintiffs
24 seek in connection with their routine delay claim is not available. This precludes all
25 the relief Plaintiffs seek on the routine delay claim, and accordingly, it is appropriate
26 to grant summary judgment in Defendants' favor by dismissing the routine delay
27 claim.

28

1 **C. Possibility of Remaining Claims or Issues**

2 It is not clear whether their cross-Motions, taken together, resolve all, or less
3 than all, of the claims and issues raised in this case. As described below, the Court
4 provides the parties an opportunity to address this question before it issues judgment.

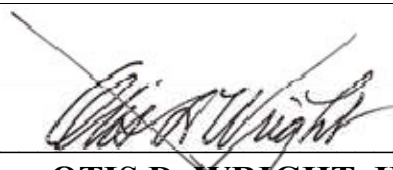
5 **V. CONCLUSION**

6 For the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN**
7 **PART** the parties' respective Motions for Summary Judgment. (ECF Nos. 97, 102.)
8 The Court finds that the Tolling Provisions violate 8 U.S.C. § 1232(d)(2) and the
9 Administrative Procedure Act, and the Court will issue declaratory judgment to that
10 effect. All other relief placed at issue by the Motions, including injunctive relief and
11 relief on the routine delay claim, is denied.

12 By no later than **fourteen (14) days** from the date of this Order, the parties shall
13 file a Joint Report indicating whether any claims or issues remain for this Court's
14 adjudication. The parties shall describe any claims or issues that remain and shall
15 confirm that this Order does not resolve the issues. If no claims or issues remain, the
16 Court will issue judgment accordingly.

17 **IT IS SO ORDERED.**

18
19 July 31, 2023

20
21 
22 **OTIS D. WRIGHT, II**
23 **UNITED STATES DISTRICT JUDGE**