No.

# In the Supreme Court of the United States

BAOMING CHEN, PETITIONER,

*v.*

KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; UR M. JADDOU, IN HER OFFICIAL CAPACITY AS DIRECTOR OF U.S. CITIZENSHIP & IMMIGRATION SERVICES.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether a claim alleging unreasonable agency delay under 5 U.S.C. § 706(1) becomes nonjusticiable when the Government takes the delayed action while the case is pending on appeal.

2. Whether courts should adjudicate unreasonable-delay claims under 5 U.S.C. § 706(1) using the six-factor framework set forth in *Telecommunications Research & Action Center v. FCC (TRAC)*, 750 F.2d 70 (D.C. Cir. 1984), or instead apply the APA's text as written.

## RELATED PROCEEDINGS

U.S. District Court for the Eastern District of New York (E.D.N.Y.):

*Chen v. Mayorkas*, No. 23-CV-1357 (June 5, 2024) (opinion and order dismissing the complaint)

U.S. Court of Appeals for the Second Circuit (2d Cir.):

*Chen v. Noem*, No. 24-2058 (May 22, 2025) (affirming district court)

*Chen v. Noem*, No. 24-2058 (Sept. 10, 2025) (denying rehearing en banc and panel rehearing)

Supreme Court of the United States:

*Chen v. Noem*, No. 25A564 (Nov. 14, 2025) (granting application for extension of time to file petition for a writ of certiorari)

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## PETITION FOR A WRIT OF CERTIORARI

### OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit (Pet. App. 1a-8a) is unpublished but available at 2025 WL 1466205. The decision of the United States District Court for the Eastern District of New York (Pet. App. 9a-25a) is published at 736 F. Supp. 3d 151 (E.D.N.Y. 2024).

### JURISDICTION

The judgment of the court of appeals was entered on May 22, 2025. The Second Circuit denied a petition for rehearing and rehearing en banc on September 10, 2025. On November 14, 2025, Justice Sotomayor granted petitioner an extension of time to file the petition to February 9, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

### STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in the petition appendix (Pet. App. 28a-30a).

### STATEMENT OF THE CASE

This case presents a pair of important questions relating to the basic enforcement of the provisions of the Administrative Procedure Act (APA) that have evaded this Court's review for 80 years. Those questions center on the provision in 5 U.S.C. § 706 authorizing individuals aggrieved by agency inaction to seek aid of the federal courts to "compel agency action unlawfully withheld or unreasonably delayed."

Since 1984 that important provision, which sits right next to the oft-invoked 5 U.S.C. § 706(2)(A), has been largely a dead letter as a result of the D.C. Circuit's decision in *Telecommunications Research & Action Center v. FCC (TRAC)*, 750 F.2d 70 (D.C. Cir. 1984). The

standard set out in that decision, which virtually every federal court of appeals now follows, makes it virtually impossible for litigants to win judicial relief compelling egregiously delayed agency action. The *TRAC* test is inconsistent with the APA's text and history, and destroys one of the APA's key pillars.

Efforts to obtain reconsideration of the *TRAC* standard have been stymied by a feature of unreasonable delay itself—namely, that the time it takes to litigate an unreasonable delay case often results in the United States taking the underlying action before the case can reach an adjudication on the merits. The United States has the unilateral power to take unreasonably delayed actions at any time and it has taken advantage of the authority in a manner that thwarts judicial review of unreasonable delay claims. Notwithstanding their clear statutory and constitutional authority to decide these cases, federal courts of appeals have held that when the United States takes the underlying action the lawsuit sought to compel that makes the case moot.

This case is the prototypical case demonstrating the flaws in the *TRAC* standard and the thwarted appellate review of an effort to challenge it. After two years waiting for USCIS to adjudicate his nine-page immigration waiver application, petitioner sued to compel the agency to act. More than a year after petitioner filed suit the district court dismissed it as *premature* under *TRAC*. Then, miraculously, on the very first business day after petitioner noticed his appeal the agency granted his application. The Second Circuit therefore dismissed the case as moot and not within any mootness exceptions—rejecting without discussion his argument that the APA renders such claims justiciable even when the United States takes the underlying delayed action while the case is pending on appeal.

These are tremendously important questions that warrant this Court's review. In the United States' highly regulated economy, agency action unlawfully withheld can inflict harms as significant as unlawful action itself. The inability to timely obtain necessary permits, licenses, or approvals can be the difference between operating and shutting down, safety and catastrophe, or life and death. When agencies fail to act promptly, construction projects stall while housing shortages deepen; disaster-relief funds sit idle while communities struggle to rebuild; hospitals and laboratories wait for approvals needed to deploy lifesaving treatments; and energy, transportation, and communications infrastructure remains offline despite urgent public need. Businesses cannot hire, workers cannot work, and public services cannot be delivered without timely government action. In these contexts, delay is not a neutral choice—it is a substantive regulatory decision with immediate and irreversible consequences. Congress recognized this in the APA and provided a solution in the form of 5 U.S.C. § 706(1). But that essential safety valve is currently inaccessible.

This is an exceptionally important question that warrants this Court's review. The appropriate standard for adjudicating unreasonable delay claims is an issue of major economic and political significance that affects the entire structure of the United States federal government. The courts of appeals have largely aligned on a standard that reads 5 U.S.C. § 706(1) out of the APA and justiciability rules that make it virtually impossible to challenge. This Court has the power to correct the lower federal courts' incorrect holdings as to both issues. The petition for certiorari should be granted.

**1.** Petitioner Baoming Chen is a native and citizen of the People's Republic of China. Pet. App. 10a. He arrived in the United States on July 20, 2002 through the Mexican border, entering without inspection. Pet. App. 33a.

Following removal proceedings, an immigration judge granted petitioner withholding of removal on November 1, 2006. *Id.*

On October 20, 2004, petitioner's sister, a U.S. citizen, filed a Form I-130 for petitioner, as well as his wife and two children, who still reside in China. Pet. App. 10a. USCIS approved the petition on January 11, 2010. Pet. App. 10a.

To obtain his visa, petitioner was required to return to China for an interview at a U.S. consulate. Pet. App. 10a. However, because petitioner was inadmissible due to the circumstances of his arrival in the United States and pending removal order, he risked not being able to reenter the United States lawfully unless he received an unlawful presence waiver. Pet. App. 10a.

To obtain the waiver, petitioner first filed a Form I-212 on May 4, 2019, which USCIS approved on December 11, 2020. Pet. App. 10a-11a. Petitioner then filed a Form I-601A Provisional Unlawful Presence Waiver on April 12, 2021. Pet. App. 11a.

**2.** On February 21, 2023, after nearly two years had passed without adjudication of his application, petitioner filed this action seeking a declaration that Defendants—the DHS Secretary and USCIS Director—failed to perform a duty owed to petitioner, warranting a writ of mandamus, and "unlawfully withheld or unreasonably delayed" acting on his application, violating the APA, 5 U.S.C. § 706(1). Pet. App. 11a. Petitioner included exhibits documenting that the delay or denial of processing of his application caused extreme hardship to his parents, who are lawful permanent residents in the United States and were diagnosed with major depressive disorder and anxiety disorder due to petitioner's unsettled immigration status. Pet. App. 11a.

Fifteen months later the district court dismissed the suit as premature. Pet. App. 9a-25a. The district court considered the merits of petitioner's APA claim by applying the factors identified by the D.C. Circuit for evaluating allegedly unreasonable delay in *Telecommunications Research & Action Center v. Federal Communications Commission* (*TRAC*), 750 F.2d 70 (D.C. Cir. 1984). Pet. App. 18a-23a. The district court rendered the factors as follows:

> "(1) [T]he time agencies take to make decisions must be governed by a rule of reason…
>
> (2) [W]here Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply context for this rule of reason…;
>
> (3) [D]elays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;…
>
> (4) [T]he court should consider the effect of expediting delayed action on agency activities of a higher or competing priority…;
>
> (5) [T]he court should also take into account the nature and extent of the interests prejudiced by delay…; and
>
> (6) [T]he court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed."

Pet. App. 18a-19a (alterations in original) (quoting *TRAC*, 750 F.2d at 80).

The district court found that the first and fourth factors favored respondents. Pet. App. 20a-21a. On the first factor, the court accepted respondents' assertions in their briefing that USCIS "generally adjudicates I-601A applications on a first-in-first-out basis," which the court

found was "a sufficient rule of reason under the *TRAC* analysis." Pet. App. 20a. On the fourth factor, the court relied on district court precedents reasoning that courts may "refuse" to rule for a plaintiff if granting relief would simply place the plaintiff at the head of a queue of similarly situated applicants "and produce no net gain." Pet. App. 20a (quoting *L.M. v. Johnson*, 150 F. Supp. 3d 202, 213 (E.D.N.Y. 2015)). The court found that rule applies "even if all of the other *TRAC* factors militate in favor of relief," and accepted Defendants' litigation position that the relief petitioner requested would merely place him "at the front of the adjudication line." Pet. App. 20a-21a. (quoting *L.M.*, 150 F. Supp. 3d at 213).

Examining the third and fifth factors next, the district court acknowledged that "human welfare is undoubtedly at stake," seemingly favoring petitioner. Pet. App. 22a. Nonetheless, relying on cases describing USCIS's backlog and lack of resources and holding that similar wait times to petitioner's were not "unreasonable," the court granted Defendants' motion to dismiss petitioner's § 706(1) claim. Pet. App. 22a-23a. The district court also granted the motion to dismiss petitioner's mandamus claim, reasoning that it was moot because the alternative remedy of petitioner's APA claim was available. Pet. App. 23a-24a.

Petitioner filed a notice of appeal on Friday, August 2, 2024. On Tuesday, August 6, 2024, Defendants' counsel emailed petitioner's counsel a notice that petitioner's I-601A application for an unlawful presence waiver had been approved the previous day, Monday, August 5.

**3.** The Second Circuit dismissed the appeal in a summary order holding that the agency's action rendered the appeal nonjusticiable. Pet. App. 1a-9a.

The court held that petitioner no longer had a "legally cognizable interest in the outcome" because the government had taken the action he sought to compel.

Pet. App. 4a (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)).[1]

The court rejected petitioner's reliance on various recognized exceptions to mootness. Pet. App. 4a-6a, 7a. The court rejected petitioner's argument that this case falls within the voluntary-cessation doctrine. Pet. App. 4a-6a. It held that petitioner had not shown a reasonable likelihood that the government would again delay adjudication of an I-601A application, reasoning that petitioner's application was no longer pending and that any future delay would depend on a speculative chain of events. Pet. App. 5a-7a.

The court also rejected petitioner's argument that the case fell within the "capable of repetition, yet evading review" exception to mootness, holding that petitioner lacked a reasonable expectation of being subjected to the same challenged conduct again. Pet. App. 7a-8a. It additionally held that petitioner's potential eligibility for attorney's fees under the Equal Access to Justice Act could not preserve Article III jurisdiction. *Pet. App.* 7a.

In his briefing, petitioner argued that "the Court should recognize a new exception to mootness for unreasonable delay claims." Court of Appeals Reply Brief at 1, Dkt. 73.1; *see also id.* at 10-11. The court did not specifically address the argument, but stated that the

[1] The court erroneously stated that petitioner "[did] not dispute that his unreasonable delay claim was mooted when the Government granted his then-pending I-601A waiver." Pet. App. 4a. In fact petitioner strenuously maintained in his briefing that "the case is *not moot*." Court of Appeals Reply Brief at 1, Dkt. 73.1 (emphasis in original); *id.* at 4 n.2. And later in its order, the court rejected petitioner's argument that petitioner "continues to suffer … adverse effects from the length of time taken by USCIS to approve his application," Pet. App. 6a, and has a vested interest in future EAJA fees, Pet. App. 7a.

court had "considered [petitioner's] remaining arguments and [found] them to be unpersuasive." Pet. App. 7a.

The court thus dismissed the appeal as moot, vacated the district court's judgment, and remanded with instructions to dismiss the complaint for lack of subject-matter jurisdiction. Pet. App. 8a-9a.

The Second Circuit denied a timely petition for rehearing and rehearing en banc.

**REASONS FOR GRANTING THE PETITION**

This Court should grant the petition to resolve two recurring, exceptionally important questions that together have made the APA's unreasonable-delay remedy largely illusory.

First, the decision below holds that the United States may unilaterally defeat Article III review of an APA § 706(1) unreasonable-delay claim—at any stage, including on appeal—simply by taking the delayed action after years of inaction, thereby ensuring that the legality of the delay never receives appellate review. That justiciability rule invites strategic mooting, frustrates uniform enforcement of § 706(1), and leaves regulated parties without a meaningful judicial check on unlawful agency inaction.

Second, the petition squarely presents the governing merits standard for "unreasonably delayed" agency action: whether courts should continue to apply the *TRAC* framework—which, as applied by most courts, elevates agency backlog and "competing priorities" into near-dispositive defenses—or instead apply the APA's statutory reasonableness standard as Congress wrote it.

Both questions are exceptionally important, frequently recurring across the federal government, and cleanly presented here in the prototypical posture in which they otherwise evade review.

## I. THE JUSTICIABILITY QUESTION WARRANTS THIS COURT'S REVIEW

This case cleanly presents a recurring jurisdictional question that has become a structural obstacle to the enforcement of 5 U.S.C. § 706(1): whether the United States may defeat appellate review of an unreasonable-delay claim simply by taking the delayed action after the plaintiff has litigated for years and after an appeal is underway. The Second Circuit held that it can. Pet. App. 4a-9a. That rule allows the Government to run out the clock on judicial review of unlawful delay while insulating both the legality of the delay and the governing standard for judging it from meaningful appellate scrutiny.

This Court should grant review because that justiciability rule systematically prevents the merits question presented here—whether *Telecommunications Research & Action Center v. FCC* (*TRAC*) properly implements § 706(1)'s "unreasonably delayed" standard—from ever reaching this Court. As petitioner explained below, the ordinary timeline of unreasonable-delay litigation enables the Government to moot appeals as a matter of course by acting belatedly once review is imminent. The Second Circuit's decision confirms that practice and leaves plaintiffs without any means of obtaining authoritative review of whether prolonged agency inaction violated the APA.

History, doctrine, and structure all confirm that Article III permits judicial resolution of cases in this posture. And prudence—together with the APA's evident design—strongly favors holding that unreasonable-delay claims remain justiciable when the Government acts only after appellate review is underway.

### A. History and Tradition Show that Article III Permits Judicial Review in this Posture

From its origins, the mootness doctrine has never operated as an absolute constitutional bar to the adjudication of cases that were live when initiated. As Chief Justice Rehnquist explained, the connection between mootness and Article III's case-or-controversy requirement is "attenuated," and the Court's reluctance to decide technically moot cases has historically rested on prudential judgments rather than constitutional compulsion. *Honig v. Doe*, 484 U.S. 305, 331 (1988) (Rehnquist, C.J., concurring).

Early mootness decisions did not purport to derive the doctrine from Article III at all. And the Court's later recognition of exceptions—most notably for cases "capable of repetition, yet evading review"—would be "incomprehensible" if Article III itself imposed a rigid requirement that a plaintiff retain a live personal stake at every stage of appellate review. *Id.* at 330-31 (discussing *Mills v. Green*, 159 U.S. 651 (1895), and *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498 (1911)). As Chief Justice Rehnquist observed, the very existence of those exceptions confirms that mootness doctrine is not dictated by the constitutional text. *Id.* at 330.

Historical practice confirms that understanding. For more than a century, federal courts treated mootness as a discretionary doctrine grounded in instrumental concerns rather than constitutional limitation. *See* Matthew I. Hall, *The Partially Prudential Doctrine of Mootness*, 77 Geo. Wash. L. Rev. 562, 569-71 (2009). Nineteenth-century decisions dismissing moot cases did not suggest a lack of judicial power; instead, they employed discretionary language focused on conserving judicial resources, preserving institutional authority, ensuring genuine adversity, and avoiding collusive litigation. *Id.* Only in the mid-twentieth century did the Court begin to describe

mootness as a constitutional requirement—and it did so without identifying any supporting authority in Article III's text or original understanding. *Id.* at 571-72.

That history matters here. Where intervening events eliminate only the plaintiff's immediate interest in prospective relief, but leave a concrete, adversarial dispute over the legality of completed government conduct, Article III permits adjudication. The Constitution requires a live controversy capable of judicial resolution—not the continued availability of coercive relief in every case.

That principle applies directly here. Although the Government's belated action eliminated petitioner's need for the adjudication he sought, it did not extinguish the live controversy over whether the Government violated the APA by unreasonably delaying that adjudication. Petitioner continues to allege that the delay was unlawful; the Government continues to deny it. A declaratory judgment resolving that dispute would not be advisory. It would be a binding adjudication of legality based on a completed course of conduct, with concrete legal consequences for both parties. An adjudication of delay has collateral consequences for petitioner and numerous other individuals subject to the same unlawful delay.

Under settled history and doctrine, Article III poses no obstacle to judicial review in this posture.

### B. Prudence and Presumed Legislative Intent Favor Finding Justiciability In This Posture

The absence of any Article III constraint means that the relevant question is whether federal courts *should* adjudicate unreasonable-delay claims when the Government acts only after appellate review is underway. Prudence and presumed legislative intent point decisively in favor of doing so.

Congress enacted the APA against the backdrop of widespread concern that agency inaction could inflict harms as serious as unlawful agency action. Section 706(1) therefore directs courts to "compel agency action unlawfully withheld or unreasonably delayed," and § 555(b) independently commands agencies to "conclude a matter presented to it" "within a reasonable time." Those provisions reflect a considered legislative judgment that delay itself is a form of legal injury subject to judicial correction. They also presuppose meaningful judicial review—not merely at the threshold, but through the ordinary appellate process by which federal law is authoritatively interpreted.

Allowing the Government to defeat appellate review by acting belatedly once an appeal is filed undermines that design. If post-appeal compliance automatically extinguishes jurisdiction, § 706(1) becomes enforceable only at the sufferance of the very agencies it was meant to constrain. Agencies may delay for years, litigate in the district court, and then—once review threatens to produce precedent—moot the appeal by finally acting. Nothing in the APA suggests that Congress intended to vest agencies with that unilateral power to insulate their delays from appellate scrutiny.

To the contrary, the APA's structure confirms that Congress expected courts to adjudicate the legality of agency delay even after the delayed action is complete. Section 706(1) is not limited to prospective relief. It authorizes courts to determine whether action was "unlawfully withheld or unreasonably delayed"—a legal determination that often can be made only after the agency has acted and the full duration of the delay is known. Treating belated compliance as jurisdiction-destroying therefore frustrates, rather than effectuates, the statute's operation.

Prudential considerations reinforce that conclusion. First, refusing to adjudicate cases in this posture invites strategic manipulation of appellate jurisdiction. The Government alone controls the timing of agency action. A rule that allows post-appeal compliance to moot the case rewards delay and encourages agencies to time compliance so as to avoid appellate review. Courts have long been wary of doctrines that permit a prevailing party to unilaterally destroy federal jurisdiction in order to prevent authoritative resolution of legal questions. That concern applies with particular force here, where the Government's conduct is both the subject of the suit and the mechanism by which review is defeated.

Second, declining review in these cases squanders judicial resources and destabilizes the law. Unreasonable-delay cases often require years of litigation to reach the appellate stage. When appeals are dismissed as moot and district court judgments are vacated, the governing legal standard remains unsettled, and identical issues recur without resolution. As Chief Justice Rehnquist observed, once substantial judicial resources have been expended and the Court has undertaken review, rigid adherence to mootness doctrine can be more wasteful than frugal. *Honig*, 484 U.S. at 332 (Rehnquist, C.J., concurring). Congress could not have intended § 706(1) to operate in a way that systematically prevents the development of appellate precedent.

Third, holding these cases justiciable aligns with the APA's core purpose of ensuring uniform, law-bound administration across the federal government. Section 706(1) applies to all agencies and all forms of legally required action. If appellate courts are routinely barred from reviewing whether delays were unlawful, the meaning of "unreasonably delayed" will continue to vary across circuits, shaped by fact-specific dismissals rather than by appellate guidance. That fragmentation is

incompatible with the APA's role as a unifying framework for administrative law.

Finally, adjudicating these cases poses no separation-of-powers concern. Courts need not supervise agency dockets or dictate priorities to decide whether a completed delay violated the law. They need only do what the APA directs: determine whether the time the agency took exceeded what reason permits under the circumstances. Any equitable considerations about how to remedy delay—or how relief might affect third parties—can be addressed at the remedial stage. They do not justify refusing to decide whether the statute was violated in the first place.

In short, prudence and congressional design point in the same direction. The APA reflects a deliberate choice to make unreasonable agency delay judicially reviewable. That choice would be hollow if agencies could defeat appellate review simply by acting at the last possible moment. The Court should grant certiorari and hold unreasonable-delay claims justiciable when the Government's belated compliance occurs only after appellate review is underway.

## II. THE MERITS QUESTION ALSO WARRANTS THE COURT'S REVIEW

The Court should also grant review to determine the appropriate test for adjudicating claims of unreasonable delay under 5 U.S.C. § 706(1). For decades, courts adjudicating claims of agency delay under the APA have relied on a six-factor test derived from *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984). *TRAC* involved a petition for a writ of mandamus, yet its framework has come to dominate litigation under 5 U.S.C. § 706(1), which commands courts to "compel agency action … unreasonably delayed." The *TRAC* test transforms that

statutory inquiry. It elevates the basic threshold for relief far above what Congress prescribed and directs courts to balance a set of extratextual considerations that do not bear on whether a particular delay is unreasonable. That mandamus-derived approach, untethered to the language Congress enacted, has displaced § 706(1) in the lower courts.

*TRAC*'s effects are not confined to any one agency or regulatory context: from individuals seeking immigration relief to businesses awaiting regulatory approvals or trying to vindicate their property rights, *TRAC* has become a pervasive obstacle to obtaining relief from prolonged administrative inaction. *See, e.g.*, *Independence Mining Co. v. Babbitt*, 105 F.3d 502 (9th Cir. 1997) (delay in adjudicating mineral patent claims); *Stenson Tamaddon, LLC v. United States Internal Revenue Serv.*, 742 F. Supp. 3d 966, 997 (D. Ariz. 2024) (delay in processing refunds for Employee Retention Tax Credit).

As commentators have recognized,[2] the *TRAC* test is fundamentally flawed in several respects. At the threshold, it raises the bar for relief far above what Congress specified in the APA by asking whether delay is "egregious" rather than whether it is "unreasonable." That alone sharply narrows the category of cases in which § 706(1) can provide relief as Congress intended. *TRAC* then compounds that error by distorting what counts as "unreasonable" delay in two ways. First, it measures

[2] *E.g.*, Aram A. Gavoor & Steven A. Platt, *Agency Delay and the Courts*, 77 Admin. L. Rev. 761, 825-29 (2025); Sant'Ambrogio, *Agency Delays: How a Principal-Agent Approach Can Inform Judicial and Executive Branch Review of Agency Foot-Dragging*, 79 Geo. Wash. L. Rev. 1381, 1411-14 (2011); *see also* Marisa Sylvester, Note, *Compelling Compliance: Disciplining Agencies Through Statutory Deadlines*, 47 Harv. J.L. Pub. Pol'y 265, 274 (2024).

delay against the agency's existing practice rather than against any objective or external standard, allowing systemic slowness to justify itself. Second, it instructs courts to credit the agency's asserted "competing priorities," even though such considerations are irrelevant to whether a particular delay is unreasonable. In practice, the priorities invoked are often nothing more than the agency's accumulated delays in similar matters, so that delay in one case is excused by delay in others. The result is to invert § 706(1): the more an agency delays across the board, the harder it becomes to show that any single delay is unlawful.

In short, *TRAC* substitutes a judge-made framework for the statutory standard Congress enacted in § 706(1). *See Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 313 (2025) (Thomas, J., concurring) ("Judge-made doctrines have a tendency to distort the underlying statutory text, impose unnecessary burdens on litigants, and cause confusion for courts."). This Court's review is warranted to determine whether § 706(1) means what it says, or whether unreasonable-delay claims may continue to be adjudicated under a mandamus-based test that raises the bar for relief and excuses prolonged inaction.

### A. *TRAC* Replaces the APA's Reasonableness Standard with an Atextual "Egregiousness" Requirement

The APA establishes a single, familiar threshold for relief: whether agency action has been unreasonably delayed. Section 706(1) commands courts to "compel agency action ... unreasonably delayed," and § 555(b) correspondingly directs an agency to "conclude a matter presented to it" "within a reasonable time." Those provisions leave no gap for courts to fill and no heightened showing to invent. Yet *TRAC* supplants that statutory threshold by demanding that delay be "egregious" before

judicial relief is available—a requirement drawn from mandamus doctrine rather than from the APA itself. By elevating the standard in this way, *TRAC* rewrites the statute's operative term and transforms a legal command into a rarely available form of relief.

The difference between those standards is not semantic. "Unreasonable" is an ordinary, workaday term that calls for an objective assessment of whether the time taken exceeds what reason permits under the circumstances—a meaning it has carried consistently since the APA's enactment in 1946. *See* Forkosch, *A Treatise on Administrative Law* § 318, at 643 (1956) (noting that "unreasonable" "is most commonly used by lawyers and judges as a qualifying adjective in such expressions as 'unreasonable delay,' . . . in which sense it means 'more than fair and proper under the circumstances'" (citation omitted)). "Egregious," by contrast, denotes conduct that stands apart in degree or severity. *See SEC v. Almagarby*, 92 F.4th 1306, 1324 (11th Cir. 2024). Congress chose the former and nowhere hinted at the latter. Nothing in § 706(1)'s text, structure, or history suggests that courts may compel agency action only in the most extreme cases of delay. To the contrary, by pairing § 706(1) with § 555(b)'s command that agencies act "within a reasonable time," the APA confirms that relief turns on reasonableness, not on whether the agency's failure to act shocks the conscience. *See* H.R. Rep. No. 79-1980, at 32, 41 (1946) ("[Title 5 U.S.C. § 555(b)] means that no agency shall ... proceed in dilatory fashion to the injury of the persons concerned. No agency should permit any person to suffer injurious consequences of unwarranted official delay."); S. Rep. No. 79-752, at 25 (1945).

The APA provides no basis for importing mandamus doctrine to supply a higher threshold for relief. *See South*

*Carolina v. United States*, 907 F.3d 742, 755-58 & n.10 (4th Cir. 2018) ("The APA neither incorporates nor alludes to the mandamus writ, nor does it admit to any ambiguity."). Before 1946, litigants seeking to force agency action were often required to proceed by writ of mandamus, *e.g.*, *Safeway Stores v. Brown*, 138 F.2d 278, 280 (Emer. Ct. App. 1943) (per curiam), an extraordinary remedy available only in narrow circumstances, *Cheney v. U.S. Dist. Ct. for Dist. of Columbia*, 542 U.S. 367, 380 (2004). Congress consciously departed from that regime in the APA, replacing discretionary writ practice with statutory judicial review governed by defined legal standards. Section 706(1) commands courts to compel unlawfully withheld or unreasonably delayed agency action as a matter of ordinary judicial review, not as an act of extraordinary discretion. Had Congress intended to condition relief on a showing of "egregious" misconduct, it knew how to do so. Instead, it adopted a reasonableness standard, confirming that relief for delay was meant to be available whenever an agency exceeds sensible bounds, not only in the most extreme cases. "The text of the APA means what it says." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 393 (2024).

That reading also accords with the APA's broader structure. Review for "arbitrary" or "capricious" action under § 706(2) turns on whether the agency's decision making falls within the bounds of reason, not on whether it is exceptionally bad. *See FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021) ("The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained."). Its sister provision, § 706(1), operates in parallel fashion: it asks whether delay has exceeded what reason permits in light of the action the agency is required to take under the circumstances. *See Coit Indep. Joint Venture v. Fed. Sav.*

*& Loan Ins. Corp.*, 489 U.S. 561, 590 (1989) (Scalia, J., concurring in part) ("[P]articular agency action *becomes* arbitrary and capricious when it is too long delayed, wherefore the Administrative Procedure Act instructs reviewing courts to 'compel agency action … *unreasonably delayed*.'" (quoting 5 U.S.C. § 706(1))); Daniel E. Walters, *Symmetry's Mandate: Constraining the Politicization of American Administrative Law*, 119 Mich. L. Rev. 455, 480 (2020). Courts are neither instructed nor authorized to dilute either inquiry by requiring a showing of extraordinary misconduct. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514 (2009) (rejecting an argument for a "heightened standard" in the context of arbitrary-and-capricious review that lacked a basis in the APA's text); *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 100-01 (2015); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 685 (2020). By converting a familiar reasonableness standard into a demanding, mandamus-like hurdle, *TRAC* departs not only from § 706(1)'s text, but from the APA's design as a whole.

Finally, giving "unreasonable" its plain meaning furthers the APA's purpose. Sections 555(b) and 706(1) were enacted to expedite agency action, as embodied in the former's original language: "Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties." Pub. L. 79-404, § 6(a), 60 Stat. 237, 240 (1946).[3] Celerity is the *baseline*, and agencies are to move slower only for the convenience of the *regulated parties*. This vindicates Congress's and the public's longstanding interest in prompt agency

[3] Congress emphasized that no substantive changes were intended by the rephrasing in the 1966 recodification. H.R. Rep. No. 89-901, at 1-4, 13 (1965); S. Rep. No. 89-1380, at 18-21, 29 (1966).

action. *See* 89 Cong. Rec. app. at 2151 (1940) (remarks of Rep. Walter) (citation omitted) ("The maxim that 'justice delayed is justice denied' applies with special force in the vast American bureaucracy."); 92 Cong. Rec. 5657 (1946) (remarks of Rep. Springer) (explaining that 5 U.S.C. § 706(1) was intended "to hasten action on the part of these agencies"); H.R. Rep. No. 79-1980, at 44; S. Rep. No. 79-752, at 28. Elevating the standard for relief from unreasonable agency delay therefore thwarts Congress's purpose in enacting these provisions of the APA.

### B. *TRAC* Defines "Unreasonable Delay" by Treating Agency Practice as the Benchmark

*TRAC* fundamentally distorts the unreasonable-delay inquiry by measuring delay against the agency's own pace of decision making rather than any objective or external standard of reasonableness. Instead of asking whether the time an agency has taken to perform a legally required action exceeds what reason permits under the circumstances, *TRAC* asks whether the agency is following some minimally coherent process or "rule of reason." Under that approach, delay is no longer evaluated on its own terms; it is judged by reference to how slowly the agency typically operates. So long as the agency can gesture to a general procedure governing its conduct—no matter how slow—prolonged inaction is treated as reasonable simply because it reflects the agency's usual pace. That mode of analysis does not merely respect agency autonomy; it effectively substitutes deference to agency procedure for the judicial determination the statute requires. *See, e.g.*, *Cutler v. Hayes*, 818 F.2d 879, 896 (D.C. Cir. 1987) ("Any discussion of the standards relevant to the issue of delay must begin with recognition that an administrative agency is entitled to considerable deference in establishing a timetable for completing its proceedings."); *Am. Auto. Mfrs. Ass'n v.*

*Mass. Dep't of Env't Prot.*, 163 F.3d 74, 82 n.9 (1st Cir. 1998) ("[The D.C. Circuit] set forth a six-part test for determining whether agency action has been unreasonably delayed that is very deferential to administrative agencies."); *Oil, Chem. & Atomic Workers Union v. OSHA*, 145 F.3d 120, 123 (3d Cir. 1998); *see also* Howard I. Rubin, *Judicial Review of Agency Delay: The District of Columbia Moves Towards a More Deferential Standard—A Survey of Recent Cases*, 3 Admin. L.J. 725, 744 (1989) (explaining that the D.C. Circuit has "clearly indicated that deference to agency discretion is the paramount factor in unreasonable delay cases"); *Interstate Nat. Gas Ass'n of Am. v. FERC*, 285 F.3d 18, 57 (D.C. Cir. 2002) ("Our review is highly deferential.").

Under *TRAC*'s "rule of reason," the agency's own pace becomes the benchmark for legality. In applying that concept, courts typically look to the agency's general practices for handling cases of the same type as the plaintiff's and measure delay against how those cases are ordinarily processed. *See, e.g.*, *Palakuru v. Renaud*, 521 F. Supp. 3d 46, 50-51 (D.D.C. 2021); *Ctr. for Sci. in the Pub. Interest v. FDA*, 74 F. Supp. 3d 295, 300-01 (D.D.C. 2014); *Hulli v. Mayorkas*, 549 F. Supp. 3d 95, 100 (D.D.C. 2021); *Liberty Fund, Inc. v. Chao*, 394 F. Supp. 2d 105, 116 (D.D.C. 2005); *see also Ramirez v. Blinken*, 594 F. Supp. 3d 76, 92 (D.D.C. 2022) ("[T]he Manila Embassy is failing to follow the stated priorities of the Department, *which provide the applicable rule of reason*." (emphasis added)). Those practices are not just part of the analysis; they do the work of the analysis. The question becomes whether the delay fits within the agency's normal way of doing things, not whether the agency has objectively taken longer than reason permits to do what the law requires, leaving courts with no independent role in judging whether statutory limits have been exceeded.

That approach makes agency delay self-justifying. When reasonableness is defined by reference to an agency's ordinary pace, systemic slowness ceases to be a problem and instead becomes the answer. Delays that would otherwise be excessive are normalized simply because they are widespread. As backlogs grow, they recalibrate the baseline against which new delays are judged, ensuring that what once would have been unreasonable is now treated as routine. *E.g.*, *Palakuru*, 521 F. Supp. 3d at 52 n.7 (explaining that plaintiff's citation to other cases where courts held similar-length delays unreasonable "merely show that others waiting for immigration benefits face similar delays and thus reinforce the determination that Plaintiff has not stated a claim of unreasonable delay"). The unreasonable-delay inquiry thus collapses into a tautology: delay is reasonable because the agency delays. Section 706(1), however, calls for a different judgment—one that asks whether the agency has taken too long, not whether it has taken as long as it usually does. That inquiry requires an objective legal determination by the court, not reflexive acceptance of the agency's chosen pace.

That transformation also alters the role of the courts in a way the APA does not contemplate. Proper application of § 706(1) would not require courts to manage agency dockets, dictate internal procedures, or otherwise intrude into agency administration. It would instead require courts to do something more limited and familiar: decide whether the time an agency has taken to perform a legally required act exceeds what the statute allows. *TRAC* prevents courts from performing that function. By defining reasonableness by reference to agency practice, it substitutes acceptance of the agency's chosen pace for an independent judicial judgment. Judicial review thus becomes largely observational rather than evaluative.

Courts do not decide whether delay is too long; they confirm that it is typical. What emerges is not judicial intrusion into Article I administration, but judicial abdication of the Article III role Congress assigned—making an independent, objective legal determination of what the statute permits.

### C. *TRAC* Improperly Treats Agency "Competing Priorities" as a Justification for Delay

*TRAC* further distorts § 706(1) by instructing courts to consider an agency's asserted "competing priorities" in determining whether delay is unreasonable. Reasonableness under the APA is an objective legal standard; it does not turn on the defendant's internal preferences about how to allocate its time. In analogous contexts—most notably arbitrary-and-capricious review—courts do not excuse unlawful agency action on the ground that the agency had other matters it regarded as more important. An agency may not defend an inadequately reasoned rule, or a failure to consider relevant factors, by explaining that it was busy elsewhere. Nor do courts withhold remedies for unlawful affirmative agency action on the ground that compliance would interfere with the agency's priorities or strain its limited resources. Yet *TRAC* imports precisely that kind of equitable balancing from mandamus doctrine into § 706(1)'s statutory inquiry. The result is not merely a misplaced consideration, but a self-perpetuating one: agencies may point to delays in other cases as "competing priorities," allowing accumulated inaction to justify further inaction and leaving the slowest agencies the most insulated from judicial review.

Courts applying the APA generally do not treat an agency's internal priorities as a defense to statutory noncompliance. When an agency takes affirmative action, it cannot justify a legally deficient rule or order by

explaining that it had other pressing matters, or that it chose to devote limited resources elsewhere. *See, e.g.*, *Wisconsin v. EPA*, 938 F.3d 303, 319 (D.C. Cir. 2019) (per curiam) ("An agency cannot 'shirk[ ] its duties by reason of mere difficulty or inconvenience.'" (citation omitted)); *Salameda v. INS*, 70 F.3d 447, 452 (7th Cir. 1995) (Posner, C.J.) ("[U]nderstaffing is not a defense to a violation of principles of administrative law admitted to bind the Immigration and Naturalization Service."). "An agency confronting resource constraints may change its own conduct, but it cannot change the law." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 327 (2014); *see also Judulang v. Holder*, 565 U.S. 42, 63-64 (2011) ("Cost is an important factor for agencies to consider in many contexts. But cheapness alone cannot save an arbitrary agency policy."). Similarly, when a court remedies unlawful agency action, it does not ask whether ordering compliance will disrupt the agency's preferred allocation of time or personnel. *See* Sant'Ambrogio, *supra*, at 1429; Walters, *supra*, at 506-07; *see also Caswell v. Califano*, 583 F.2d 9, 17 (1st Cir. 1978) ("[T]he vindication of almost every legal right has an impact on the allocation of scarce resources."). Indeed, in challenges to affirmative agency action, a single plaintiff may obtain vacatur of a nationally applicable rule—forcing the agency to reopen or restart costly and time-consuming notice-and-comment proceedings—yet the agency may not defend the unlawful rule by invoking its priorities, workload, or limited resources.

The same principle applies when the agency fails to act. Section 706(1) asks whether required action has been unreasonably delayed—not whether the agency had reasons, from its own perspective, for putting the matter off. Allowing "competing priorities" to carry weight in the unreasonable-delay analysis converts a "legal requirement," S. Rep. No. 79-752, at 19, into a

discretionary one, turning the statutory question—whether the agency has taken too long—into a managerial inquiry about how the agency has chosen to run its docket.

Once "competing priorities" are treated as relevant, delay becomes unusually easy for an agency to defend. An agency can almost always point to other matters awaiting attention, particularly where it faces a backlog of similar cases. Under *TRAC*, those other delays are not treated as evidence that the agency is failing to meet its obligations, but as reasons to excuse further inaction. *E.g.*, *Skalka v. Kelly*, 246 F. Supp. 2d 147, 153 (D.D.C. 2017) ("Where the agency action sought is one of many similar adjudications that the agency must complete, the court should be even more cautious before intervening."). The inquiry thus allows an agency's delays elsewhere to serve as a defense to delay in the case before the court. As a practical matter, this approach rewards systemic sluggishness: the more widespread the delay, the stronger the agency's claim that it has other priorities to address. Over time, the slowest agencies become the least vulnerable to unreasonable-delay claims, while § 706(1)'s role as a check on prolonged inaction steadily erodes.

This problem is not accidental; it flows directly from *TRAC*'s roots in mandamus doctrine. In mandamus, courts traditionally weigh equitable considerations, including the effect of relief on third parties and the burden it may place on the defendant. *See South Carolina*, 907 F.3d at 755 ("Well-established practice and controlling precedent both confirm that equitable discretion inheres in the issuance of a writ of mandamus."). That mode of analysis makes sense where the writ is extraordinary and relief is discretionary. *See In re Barr Lab'ys, Inc.*, 930 F.2d 72, 74 (D.C. Cir. 1991) ("Equitable relief, particularly mandamus, does not necessarily follow a finding of a violation: respect for the

autonomy and comparative institutional advantage of the executive branch has traditionally made courts slow to assume command over an agency's choice of priorities."). Section 706(1), however, is different. It reflects Congress's judgment that certain agency obligations are mandatory and enforceable as a matter of law, subject only to an objective inquiry into reasonableness. By importing mandamus-style balancing into that statutory framework, *TRAC* collapses the distinction between discretionary equitable relief and enforcement of legal duty. Competing priorities thus become a proxy for discretion that the statute does not confer, allowing agencies to resist compliance with § 706(1) by invoking considerations that would be irrelevant if the same agency conduct were challenged as unlawful action rather than unlawful delay.

In the end, *TRAC*'s focus on competing priorities diverts the unreasonable-delay inquiry away from the question the statute asks. Section 706(1) is concerned with whether the agency has taken too long to perform a required act—not with the downstream consequences of compelling compliance, or with how the agency might prefer to allocate its resources going forward. Those considerations may bear on the form of relief, but they do not bear on whether a legal violation has occurred. By treating them as part of the liability inquiry, *TRAC* allows delay to be justified by reference to the very conditions the statute was meant to correct. The APA does not condition compliance on an agency's workload, nor does it permit systemic delay to excuse individual violations. *See Caswell*, 583 F.2d at 17 ("[C]ourts . . . can hardly permit the legal rights of litigants to turn upon alleged inability of the defendant fully to meet his obligations to others."). An unreasonable delay remains unreasonable even if it is widespread. *See Jefrey v. INS*, 710 F. Supp. 486, 488

(S.D.N.Y. 1989) ("'Not unusual' does not necessarily mean 'reasonable.'").

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Together, these defects show that *TRAC* is not a permissible interpretation of § 706(1), but a wholesale replacement of the standard Congress enacted. By elevating the threshold for relief, redefining reasonableness by reference to agency practice, and excusing delay based on competing priorities, *TRAC* has reshaped unreasonable-delay doctrine in ways the APA does not support. Whether courts may continue to adjudicate § 706(1) claims under that mandamus-derived framework is a recurring and important question of administrative law that warrants this Court's review.

## III. THE QUESTIONS PRESENTED ARE IMPORTANT AND WARRANT REVIEW IN THIS CASE

The questions presented are indisputably important. Unreasonable agency delay affects not just isolated litigants, but thousands of individuals and entities whose legal rights, economic livelihoods, and personal welfare depend on timely government action. Immigration adjudications, environmental permits, infrastructure approvals, benefits determinations, licensing regimes, and regulatory clearances across the federal government all turn on agency action that, if delayed, can impose costs as severe as unlawful action itself. Workers cannot lawfully work, families cannot reunite, businesses cannot operate or expand, and critical public and private projects cannot proceed while applications, petitions, and approvals languish unresolved. In a highly regulated economy, delay is not a neutral administrative choice; it is a substantive regulatory decision with immediate and often irreversible consequences. Congress enacted 5 U.S.C. §§ 555(b) and 706(1) precisely to prevent those

harms by ensuring that agencies act within a reasonable time. Whether those statutory protections remain meaningfully enforceable—or are instead displaced by a deferential, mandamus-derived framework that excuses prolonged inaction—implicates virtually every dimension of the United States economy and the daily lives of countless people subject to federal regulation.

This case is also an excellent vehicle for resolving both questions presented. The justiciability issue is cleanly teed up: the agency acted only after petitioner noticed his appeal, the court of appeals dismissed the case as moot, and no factual disputes complicate review. The merits issue is equally clear. The district court applied *TRAC* to dismiss petitioner's § 706(1) claim as premature despite a multi-year delay, and the court of appeals vacated without reaching the statutory question. The record is complete, the legal issues are squarely presented, and the posture illustrates precisely how unreasonable-delay claims evade appellate review under existing doctrine. There are no jurisdictional obstacles beyond the mootness ruling challenged here, no alternative grounds supporting the judgment below, and no need for further factual development. If the Court wishes to clarify both the justiciability of § 706(1) claims and the proper standard for adjudicating them, this case presents a clean and representative opportunity to do so.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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