Mojtabavi v. Blinken

United States District Court for the Central District of California

December 12, 2024, Decided; December 12, 2024, Filed

SA CV 24-1359 PA (ASx)

Reporter
2024 U.S. Dist. LEXIS 225418 *

SEYEDKHASHAYAR MOJTABAVI, Plaintiff, v. ANTONY BLINKEN, et al., Defendants.

Notice: This decision contains references to invalid citations in the original text of the opinion. They are relevant to the decision and therefore have not been editorially corrected. Linking has been removed from those citations.

Prior History: *Mojtabavi v. Blinken, 2024 U.S. Dist. LEXIS 192956 (C.D. Cal., Oct. 22, 2024)*

Counsel: [*1] Seyedkhashayar Mojtabavi, Plaintiff, Pro se, Lake Forest, CA.

For Antony Blinken, United States Secretary of State, United States Department of State, Director of the National Visa Center, Merrick B. Garland, Attorney General of the United States, Defendants: OIL-DCS Trial Attorney, LEAD ATTORNEY, Office of Immigration Litigation, District Court Section, Washington, DC; Oil Appellate, LEAD ATTORNEY, US Department of Justice, Civil Div Office of Immigration Lit, Washington, DC; Nancy K Canter, US Department of Justice, Washington, DC.

Judges: PERCY ANDERSON, UNITED STATES DISTRICT JUDGE.

Opinion by: PERCY ANDERSON

Opinion

CIVIL MINUTES - GENERAL

Proceedings: IN CHAMBERS - ORDER

Before the Court is a Motion to Dismiss filed by defendants Secretary of State Antony Blinken, United States Department of State, Director of Department of State ("DOS") National Visa Center ("NVC"), and Attorney General Merrick B. Garland (collectively "Defendants"). (Docket No. 28 ("Motion").) The Motion is fully briefed. (Docket Nos. 29, 30.) Pursuant to *Rule 78 of the Federal Rules of Civil Procedure* and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument. The hearing calendared for December 23, 2024 at 1:30 p.m. is vacated, and the matter taken off calendar.

I. [*2] Background

Plaintiff Seyedkhashayar Mojtabavi ("Plaintiff") is a United States citizen, currently residing in California. (Docket No. 27, First Amended Complaint ("FAC") ¶ 3.) Plaintiff's father, Seyed Alireza Mojtabavi is a citizen of Iran, currently residing in Iran. (Id. ¶ 4.) On May 5, 2021, Plaintiff filed a Form I-130, Petition for Alien Relative, on behalf of his father, with United States Citizenship and Immigration Services ("USCIS"). (Id. ¶ 11.) On July 2, 2021, USCIS approved the petition and forwarded it to the NVC. (Id. ¶ 12.) On January 13, 2022, Plaintiff submitted an Immigrant Visa Electronic Application Form DS-260 ("Application"), to NVC; and the Application was deemed "Documentary

Qualified" [sic] by the NVC on August 25, 2022. (Id. ¶ 13.) The Application has been pending since August 25, 2022. (See id. ¶¶ 14-15.)

Plaintiff asserts that his father's Application has been pending for "an entirely unreasonable amount of time." (Id. ¶ 16.) Plaintiff alleges that he is "grappling with profound emotional and mental distress stemming from the absence of his father, his only family member and vital source of support" and that "[w]ithout siblings, he confronts overwhelming **[*3]** feelings of isolation and loss, which are further exacerbated by his struggle with Post Finasteride Syndrome," a "rare condition [that] has severely diminished his qualify of life, leaving him physically weak and in poor shape." (Id. ¶ 17.) He also alleges that the "constant uncertainty surrounding the timeline" has caused stress for him and his father. (Id. ¶ 18.)

The FAC alleges, on information and belief, that Defendants, are "intentionally delaying" processing Plaintiff's father's Application under a Department of Homeland Security ("DHS") policy known as the "Controlled Application Review and Resolution Program" ("CARRP"). (Id. ¶ 25-26.) According to the FAC, CARRP is "an internal policy not approved by Congress or subjected to public and comment" that is used to "address applications flagged as presenting potential 'national security concerns.'" (Id. ¶ 28.) The FAC alleges that CARRP's definition of "national security concern" is overbroad and "has resulted in significant delays for applicants like [Plaintiff's father], who are subject to heightened scrutiny based on their nationality or other characteristics." (Id. ¶ 29.) Although the FAC alleges that CARRP is a DHS program, **[*4]** it also alleges that "DOS regularly collaborates with [DHS] for background and security investigations that can contribute to delays in processing the applications." (Id. ¶ 24.) The FAC alleges, on information and belief, that "DOS, along with other relevant authorities, has been complicit in delaying" processing Plaintiff's father's Application, and that this delay is due to Plaintiff's father's "origin from a predominantly Muslim country." (Id. ¶¶ 26-27.)

Based on the foregoing, the FAC asserts a claim under the *Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq.*, and a claim for violation of Plaintiff's rights under the *Due Process Clause of the Fifth Amendment*. Plaintiff seeks declaratory judgment that the CARRP policy is unlawful and injunctive relief requiring Defendants to rescind the policy and/or enjoining them from utilizing it. (See FAC at pgs. 9-10.) Plaintiff also seeks a writ of mandamus compelling Defendants to schedule an interview for Plaintiff's Father and to "explain to Plaintiff the cause and nature of the delay and inform Plaintiff of any action that may be taken to accelerate processing of the Application[.]" (Id. at pg. 10.)

Plaintiff filed this action on June 20, 2024. Defendants moved to dismiss the original Complaint, and the Court granted the motion **[*5]** and dismissed the Complaint with leave to amend on October 22, 2024. (Docket No. 26.) Plaintiff filed the operative First Amended Complaint on November 7, 2024. Defendants now move to dismiss the FAC under *Federal Rule of Civil Procedure 12(b)(6)* for failure to state a claim for relief.

II. Legal Standard

Generally, plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." *Fed. R. Civ. P. 8(a)*. While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." *Fed. R. Civ. P. 12(b)(6)*, *8(e)*. The purpose of *Rule 8(a)(2)* is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007)* (quoting *Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)*).

However, in *Twombly*, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." *Twombly, 550 U.S. at 561, 127 S. Ct. at 1968* (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will **[*6]** reveal evidence of [the alleged infraction]." *Id. at 556, 127 S. Ct. at 1965*. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above

the speculative level." *Id. at 555, 127 S. Ct. at 1965* (citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); *Daniel v. Cnty. of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002)* ("'All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.'") (quoting *Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)*). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly, 550 U.S. at 555, 127 S. Ct. at 1964-65* (internal quotations omitted). In construing the *Twombly* standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When **[*7]** there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal, 556 U.S. 662, 663-664 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009)*.

III. Discussion

A. Inaccurate/Falsified Case Citations

As an initial matter, Plaintiff's Opposition, like his prior opposition filing, is filled with inaccurate and/or falsified case citations. In his Opposition, Plaintiff purports to cite the following cases in support of his arguments: Ghazal v. Blinken, No. 21-cv-01510 (N.D. Cal. 2021); Rahman v. Blinken, No. 22-2535 (E.D. Pa. 2023); Mohamed v. Pompeo, No. 19-cv-06253 (N.D. Cal. 2020); P.K. v. Tillerson, No. 17-cv-03605 (N.D. Ill. 2018); Hamdi v. Napolitano, No. 12-04391 (C.D. Cal. 2013); Al-Karni v. Pompeo, No. 18-5206 (D.D.C. 2020); Arjmand v. Blinken, No. 21-1356 (C.D. Cal. 2022); Rosales v. Bureau of Citizenship & Immigration Services, 2007 WL 2318478 (E.D. Cal. Aug. 10, 2007). (Opp'n at pgs. 4-6.) Not a single one of these citations corresponds with the case name given. Several of the citations yield no results, while others correspond with different, unrelated cases.[1] While there may be actual cases with the names provided in Plaintiff's Opposition, Plaintiff's failure to properly identify any of those cases prevents Defendants and the Court from locating and reviewing those cases and, in turn, hinders the Court's ability to consider Plaintiff's arguments.

Plaintiff's conduct violates Local Rule 11-3.9.3, which provides:

> Citation to a U.S. Supreme Court case must be to the United States Reports, Lawyers' Edition, or Supreme Court Reporter if available. Citation to a case from any other federal court must be to the Federal **[*8]** Reporter, Federal Supplement, or Federal Rules Decisions if available. Citation to a state court case must be to the official state reporter or any regional reporter published by West Publishing Company if available. If a case is not available in the foregoing sources, but is available on an electronic database (e.g., LEXIS or Westlaw), citation to the case must include the case name, the database identifier, the court, the date of decision, any code or number used by the database to identify the case, and any screen or page numbers assigned.

In its prior dismissal order, the Court identified similar issues with the accuracy of Plaintiff's case citations, explained that "to the extent that Plaintiff has used a text-generative artificial intelligence tool (e.g., ChatGPT) that has generated fake case citations, this is unacceptable," and expressly warned Plaintiff that "any violation of Local Rule 11-3.9 in the future may result in the imposition of sanctions, including but not limited to dismissal of this action." (Docket No. 26 at pg. 8 n. 7.) Despite this warning, Plaintiff has continued to provide falsified or inaccurate case citations in support of his arguments.

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[1] For instance, it appears that the only case in the U.S. District Court for the Northern District of California with case number 21-cv-01510 is Spencer v. Monsanto Company, No. 3:21-cv-01510-VC (N.D. Cal. filed Feb. 4, 2021), and "2007 WL 2318478" is the Westlaw database citation for *Moore v. Special Distrib. Servs. Inc., No. CIV.A. H-06-3946, 2007 U.S. Dist. LEXIS 58071, 2007 WL 2318478 (S.D. Tex. Aug. 8, 2007)*.

Plaintiff's apparent disregard of **[*9]** the Local Rules and of the Court's prior warning justifies dismissal of this action. See *Fed. R. Civ. P. 41(b)* (allowing a court to dismiss an action or claim if "the plaintiff fails to . . . comply with the [Federal Rules of Civil Procedure] or a court order"); *Yourish v. Cal. Amplifier, 191 F.3d 983, 986-88 (9th Cir. 1999)* (affirming dismissal for failure to comply with court order). Nevertheless, the Court also considers the merits of Defendants' Motion.

B. APA Claim

The FAC alleges that Defendants are "intentionally delaying a response" to Plaintiff's father's Application based on an application of the CARRP policy and that Defendants have failed to "comply with their legal duty to process applications within a reasonable timeframe, as mandated by the [Immigration and Nationality Act] and relevant regulations." (FAC ¶¶ 26, 32.) Defendants argue that the FAC fails to state a claim under the APA because Plaintiff's allegations regarding the CARRP policy are purely speculative and because the policy does not apply to this case. Defendants also argue that the FAC fails to establish that Defendants have unreasonably delayed processing Plaintiff's father's Application. (See Mot. at pgs. 5-7.)

1. Applicable Law

The APA requires an administrative agency to adjudicate "a matter **[*10]** presented to it" within a "reasonable time." *5 U.S.C. § 555(b)*. In situations where an agency fails to do so, a "reviewing court shall [] compel agency action unlawfully withheld or unreasonably delayed." *5 U.S.C. § 706(1)*. However, "[a] court can compel agency action under [*5 U.S.C. § 706(1)*] only if there is 'a specific, unequivocal command' placed on the agency to take a 'discrete agency action,' and the agency has failed to take that action." *Vietnam Veterans of Am. v. Cent. Intel. Agency, 811 F.3d 1068, 1075 (9th Cir. 2016)* (quoting *Norton v. S. Utah Wilderness All., 542 U.S. 55, 63-64, 124 S. Ct. 2373, 159 L. Ed. 2d 137 (2004)*).

When determining whether an agency's delay is unreasonable, courts in the Ninth Circuit apply the six-factor test articulated in *Telecommunications Research and Action Center v. F.C.C., 750 F.2d 70, 242 U.S. App. D.C. 222 (D.C. Cir. 1984)*, known as the "TRAC factors." *In re Pesticide Action Network N. Am., Natural Res. Def. Council, Inc., 798 F.3d 809, 813 (9th Cir. 2015)*. These factors are:

> (1) the time agencies take to make decisions must be governed by a rule of reason;
> (2) where 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 content for this rule of reason;
> (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;
> (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority;
>
> (5) the court should also take into account the nature **[*11]** and extent of the interests prejudiced by delay; and
> (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

TRAC, 750 F.2d at 79-80 (internal citations and quotation omitted).

2. The FAC Fails to Allege Facts to Support a Claim based on CARRP

According to the FAC, Plaintiff's father's Application is pending with DOS. Plaintiff attributes this delay to CARRP, a DHS/USCIS policy, and alleges on information and belief that Defendants are "intentionally delaying" adjudicating Plaintiff's father's Application through an application of the CARRP policy. Absent from the FAC, however, are any nonconclusory factual allegations to support Plaintiff's claims about the CARRP policy.

First, while plaintiffs challenging CARRP need not have "concrete proof that they were subjected to the program to survive a motion to dismiss," they must raise a plausible inference they are being injured by CARRP. *Giliana v. Blinken, 596 F. Supp. 3d 13, 23-24 (D.D.C. 2022)* (dismissing CARRP claim for lack of standing), appeal dismissed,

No. 22-5108, 2022 U.S. App. LEXIS 31124, 2022 WL 16842251 (D.C. Cir. Nov. 9, 2022), reh'g denied, *No. 22-5108, 2022 U.S. App. LEXIS 34390, 2022 WL 17722855 (D.C. Cir. Dec. 13, 2022)*. Here, however, the FAC merely alleges that CARRP has caused delays "for applicants like [Plaintiff's father]" and speculates that the delay in this case must be "influenced **[*12]** by [Plaintiff's father's] origin from a predominantly Muslim country." (FAC ¶¶ 26, 29 (emphasis added).) The Court need not accept as true mere speculation of injury from the CARRP policy. See *Twombly, 550 U.S. at 555*; see also *Aghchay v. United Statess Dep't of State, No. CV 22-5708 PA (PVCx), 2022 U.S. Dist. LEXIS 229185, 2022 WL 19569516, at *3 (C.D. Cal. Dec. 20, 2022)* (finding that plaintiff's allegations of delay due to CARRP program were "at most, only one of several possible explanations" for the alleged delay in processing of visa application). Rather, the Court joins the numerous other courts that have found speculative allegations like those in the FAC insufficient to state a CARRP claim. See, e.g.,*Al-Saadoon v. Barr, 973 F.3d 794, 804 (8th Cir. 2020)* (upholding dismissal of CARRP claim where pleadings failed to allege how CARRP individually impacted plaintiffs' immigration proceedings); *Arab v. Blinken, 600 F. Supp. 3d 59, 68 (D.D.C. 2022)* ("Plaintiff has not set forth sufficient factual allegations to support his CARRP claim, relying instead 'on information and belief' that defendants 'are intentionally delaying this visa application because of an application of the CARRP program.'"); *Alshawy v. U.S. Citizenship & Immigr. Servs., No. CV 21-2206 (FYP), 2022 U.S. Dist. LEXIS 58696, 2022 WL 970883, at *4 (D.D.C. Mar. 30, 2022)* ("With nothing more than Plaintiff's speculation that CARRP contributed to the delay that she is experiencing, [Plaintiff] lacks standing to challenge CARRP because she cannot demonstrate that she has suffered an injury-in-fact as a result of the policy." (internal **[*13]** citations and quotations omitted)); *Ali v. United States Dep't of State, 676 F. Supp. 3d 460, 468 (E.D.N.C. June 8, 2023)* ("[T]he only allegation [the plaintiff] makes that CARRP even applies to this visa petition is that '[o]n information and belief ... [d]efendants are intentionally delaying a response ... pursuant to the CARRP program.' [The plaintiff] lacks standing to sue because CARRP does not apply to a Form 1-130.").

Second, the FAC fails to adequately allege how any purported delay due to the CARRP, a DHS/USCIS policy, is attributable to DOS or the other Defendants. As both parties acknowledge, CARRP is a DHS/USCIS policy, and USCIS already approved Plaintiff's Form I-130 petition. (See FAC ¶¶ 12, 25; Mot. at pgs. 5-7; Opp'n at pg. 5.) The only connection alleged between DHS and the DOS is that DOS "regularly collaborates" with DHS "for background and security investigations[.]" (FAC ¶ 24.) This allegation does not rise above the level of mere speculation and fails to support a claim against the Defendants based on CARRP. See *Ali, 676 F. Supp. 3d at 468* ("The only allegation [the plaintiff] makes connecting DHS to the defendants is that DOS "regularly works with" DHS. CARRP only applies to DHS, and [the plaintiff's] allegations to the contrary are too speculative." (internal citations **[*14]** omitted)). Further, while Plaintiff argues in his Opposition that DOS "relies on DHS information, including security 'flags' initiated under CARRP" and that "[a]ny flags or delays initiated by CARRP are implicitly carried over when cases move to DOS" (Opp'n at pg. 5.), Plaintiff fails to adequately identify any authority to support this position. Even if the Court found this argument persuasive, moreover, the FAC nevertheless fails to state a CARRP claim because it fails to allege any facts to show that Plaintiff's father's Application was actually subjected to the CARRP policy. See *Rahimian v. Blinken, No. CV 22-785 (BAH), 2023 U.S. Dist. LEXIS 4406, 2023 WL 143644, at *9-10 (D.D.C. Jan. 10, 2023)* (explaining that even assuming that DOS utilizes CARRP in coordinating with DHS as the plaintiff alleged, the plaintiff's CARRP claim still failed because it was based solely on an allegation on information and belief that "defendants are intentionally delaying this visa application because of an application of the CARRP program").

Absent any nonconclusory allegations to show an injury by the CARRP policy, the FAC fails to state an APA claim based on CARRP.

3. The FAC Fails to Establish Unreasonable Delay

In the FAC, Plaintiff's APA claim appears to be based solely on allegations of delay due to the CARRP **[*15]** policy. However, to the extent that Plaintiff seeks to assert an APA claim for unreasonable delay separate from Plaintiff's CARRP-related allegations, the Court concludes that the *TRAC* factors favor a finding that Defendants' alleged delay in processing Plaintiff's father's Application is not unreasonable. First, for the same reasons set forth in the Court's prior dismissal order, the first, second, and fourth factors weigh in favor of Defendants. (See Docket No. 26 at pgs. 7-10.)

Next, with regard to the third and fifth factors, the FAC alleges that Plaintiff's father is his only family member, that he and his father are experiencing emotional strain due to the "constant uncertainty surrounding the timeline" for his father's immigration, and that Plaintiff's emotional distress is "further exacerbated by his struggle with Post Finasteride Syndrom," which leaves him "physically weak and in poor shape." (FAC ¶¶ 17-18.) While the FAC offers some additional details about Plaintiff's hardship compared the original Complaint, the Court still "cannot find these are unique or particularly pressing needs that justify prioritizing [Plaintiff's father's] visa application or altering the routine **[*16]** course of further evaluation of the refused visa application." *Aminzadeh v. Blinken, No. 2:24-CV-02025-DSF (MRWx), 2024 U.S. Dist. LEXIS 146216, 2024 WL 3811153, at *7 (C.D. Cal. Aug. 9, 2024)* (citation omitted).[2] Finally, with regard to the sixth TRAC factor, although Plaintiff claims that Defendants have intentionally delayed adjudication of his father's Application under CARRP, the FAC offers no factual support for this assertion. Accordingly, this factor is neutral.

Thus, in assessing the *TRAC* factors individually and collectively, the Court concludes that the balance of the factors weigh strongly in favor of a conclusion that Plaintiff has not alleged sufficient facts to establish unreasonable delay. Accordingly, the FAC fails to state a claim under the APA.[3]

C. Due Process Claim

The FAC alleges that Defendants' "combined delay and failure to act" on Plaintiff's father's Application deprives Plaintiff of "fundamental fairness in administrative adjudication" and amounts to a violation of Plaintiff's *Fifth Amendment* Due Process rights. (FAC ¶¶ 36-37.) Defendants argue that Plaintiff does not possess a due process interest in adjudication of his Father's Application and that Plaintiff cannot vindicate the rights or interests on his father's behalf because his father does not possess any constitutional rights regarding entry **[*17]** to the United States. (Mot. at pgs. 7-8.) Plaintiff argues that the alleged delay in adjudicating his father's Application amounts to a violation of Plaintiff's own due process rights because he has suffered emotional distress and hardship from the delay. (See Opp'n at pg. 10.)

The Court concludes that Plaintiff's due process claim is foreclosed by the Supreme Court's recent decision in *Department of State v. Muñoz, 602 U.S. 899, 144 S. Ct. 1812, 219 L. Ed. 2d 507 (2024)*. In *Muñoz*, the Supreme Court explained:

> Congress can use its authority over immigration to prioritize the unity of the immigrant family. It has frequently done just that. But the Constitution does not require this result; moreover, Congress's generosity with respect to spousal immigration has always been subject to restrictions, including bars on admissibility. This is an area in which more than family unity is at play: Other issues, including national security and foreign policy, matter too. Thus, while Congress may show special solicitude to noncitizen spouses, such solicitude is "a matter of legislative grace rather than fundamental right."

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[2] Plaintiff included these new allegations regarding his lack of other family members and his illness in opposition to Defendants' prior motion to dismiss. In its prior dismissal order, the Court noted that there appeared to be "no connection between Plaintiff's illness and his father's navigation through the visa process," such as an allegation "that Plaintiff is dependent on his father as a result of this illness." (Docket No. 26 at pg. 9 n.8.) The FAC similarly fails to show unique hardship to Plaintiff based on his illness or lack of other family members. There are no allegations, for instance, that Plaintiff's illness has rendered him unable to work or unable to care for himself, or that he is physically or financially dependent on his father.

[3] Plaintiff argues in his Opposition that the Court has the authority to grant mandamus relief in this case. (Opp'n at pgs. 7-8.) While the FAC seeks a "writ of mandamus," the FAC does not assert a claim for relief under the Mandamus Act. Regardless, even if the Court were to construe the FAC were to assert a claim under the Mandamus Act, such a claim would fail for the same reasons that Plaintiff's APA claim fails. See *Vaz v. Neal, 33 F.4th 1131, 1135 (9th Cir. 2022)* ("Because 'mandamus relief and relief under the APA are "in essence" the same,' when a complaint seeks relief under the Mandamus Act and the APA and there is an adequate remedy under the APA, [a court] may elect to analyze the APA claim only." (quoting *R.T. Vanderbilt Co. v. Babbitt, 113 F.3d 1061, 1065 (9th Cir. 1997)*)).

Id. at 916 (quoting *Kerry v. Din, 576 U.S. 86, 97, 135 S. Ct. 2128, 2136, 192 L. Ed. 2d 183 (2015)*). If, as the Supreme Court declared in *Muñoz*, a spouse has no fundamental right protected by the Due Process Clause to bring a noncitizen spouse to the United States, it follows **[*18]** that there is no basis to conclude that Plaintiff has a fundamental right to bring his father to the United States. Moreover, even if Plaintiff has suffered harm from the delay in the processing of his father's Application "that harm does not give [him] a constitutional right to participate in his [father's] consular process." *Id. at 917*. Accordingly, the FAC fails to state a viable due process claim.

IV. Leave to Amend

When assessing whether leave to amend is proper, courts consider "the presence or absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party and futility of the proposed amendment." *U.S. ex rel. Lee v. SmithKline Beecham, Inc., 245 F.3d 1048, 1052 (9th Cir. 2001)* (internal citations and quotations omitted). However, "[f]utility of amendment can, by itself, justify the denial of a motion for leave to amend." Id.; see also *Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1298 (9th Cir. 1998)* ("Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility or where the amended complaint would also be subject to dismissal.") (citation omitted); *Leadsinger, Inc. v. BMG Music Publ'g, 512 F.3d 522, 532 (9th Cir. 2008)*.

In dismissing the original Complaint, the Court noted that it was "skeptical that Plaintiff **[*19]** could amend his allegations to sufficiently allege an APA or mandamus claim" but nevertheless afforded Plaintiff an opportunity to file an amended complaint. (Docket No. 26 at pg. 11.) However, while the FAC offers some new allegations about Plaintiff's illness and his emotional hardship due to his father's absence, these are the same allegations that were included in Plaintiff's opposition to Defendants' motion to dismiss the original Complaint, and the Court previously explained why those facts did not suffice to change the outcome of the TRAC factor analysis. (Docket No. 26 at pg. 9 n.8.)

In lieu of sufficient factual allegations, the FAC asserts new claims and theories of liability, none of which amount to viable claims for the reasons discussed above. Further, Plaintiff has not requested leave to amend, nor has he explained what additional facts he could allege to cure the deficiencies in the FAC. Plaintiff's repeated failure to allege sufficient, nonconclusory facts to support a claim warrant a finding that further leave to amend would be futile. Finally, as discussed above, Plaintiff's repeated violations of Local Rule 11-3.9, despite the Court's prior admonishment, support dismissal of this **[*20]** case. Accordingly, the FAC is dismissed without further leave to amend.

Conclusion

For all of the foregoing reasons, Defendants' Motion to Dismiss is granted. Plaintiff's Complaint is dismissed without leave to amend, and this action is dismissed with prejudice. The Court will enter Judgement consistent with this order.

IT IS SO ORDERED.

JUDGMENT OF DISMISSAL

Pursuant to the Court's December 12, 2024 Minute Order granting the Motion to Dismiss filed by defendants Secretary of State Antony Blinken, United States Department of State, Director of State National Visa Center, and Attorney General Merrick B. Garland,

It is HEREBY ORDERED, ADJUDGED, AND DECREED that the First Amended Complaint filed by plaintiff Seyedkhashayar Mojtabavi is dismissed without leave to amend and that this action is dismissed with prejudice.

DATED: December 12, 2024

/s/ Percy Anderson

Percy Anderson

UNITED STATES DISTRICT JUDGE

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