UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV-18-6267-MWF (ASx)** **Date: August 15, 2018**
Title: Yea Ji Sea v. U.S. Department of Homeland Security, et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

| Deputy Clerk: | Court Reporter: |
|---|---|
| Rita Sanchez | Not Reported |
| **Attorneys Present for Plaintiff:** | **Attorneys Present for Defendant:** |
| None Present | None Present |

**Proceedings (In Chambers):** ORDER RE: PRELIMINARY INJUNCTION

On July 19, 2018, Plaintiff Yea Ji Sea commenced this action and filed an Ex Parte Application for a Temporary Restraining Order (the "Application"), by which she requested that Defendants, the United States Department of Homeland Security, et al., be ordered to hold a naturalization interview for Plaintiff within 10 days of the filing of her Application, and then provide a final determination on Plaintiff's naturalization application within 20 days of the filing of her Application. (*See* Complaint (Docket No. 1); Application (Docket No. 4-1)). Initially, the Court denied the Application for a Temporary Restraining Order, and instead construed it as a Motion for a Preliminary Injunction. (*See* Docket No. 7).

Plaintiff was ordered to immediately serve Defendants with the papers in this action. (*Id.*). Defendants have now filed an Opposition (Docket No. 10), and Plaintiff has filed a Reply. (Docket No. 11). The Court has read and considered the papers filed, and held a hearing on **August 14, 2018**.

For the reasons set forth below and discussed at the hearing, the Motion for a Preliminary Injunction is **DENIED *without prejudice***.

As set forth below, the Court believes Plaintiff has made an adequate showing for preliminary injunctive relief. However, at the hearing, the parties notified the Court that Plaintiff is now present in Los Angeles and is scheduled for a naturalization interview on August 15, 2018. It is therefore not necessary for the Court to order the requested relief as to the naturalization hearing.

Instead, Defendants are **ORDERED TO SHOW CAUSE**, in writing, three weeks after the interview, by **September 5, 2018**, why a Preliminary Injunction or Writ of Mandamus should not issue. If Plaintiff's naturalization application is adjudicated before that date, Defendants may so inform the Court. If it has not yet been adjudicated by that date, Defendants should explain how much more time they need and why. The Court will then determine whether to grant that additional time, or to issue a Preliminary Injunction or Writ of Mandamus ordering Defendants to adjudicate Plaintiff's naturalization application forthwith.

## I. BACKGROUND

Plaintiff is a 29-year-old Korean national and resident of Gardena, California, who has honorably served in the Armed Forces of the United States as a Specialist, last stationed at Fort Sam Houston, Texas. (Compl. ¶ 1). Plaintiff moved from South Korea to the United States when she was nine years old, lawfully admitted on a B-2 visitor visa. (*Id.* ¶ 18). In March 2008, through an attorney, Plaintiff filed an I-539 Application to Extend/Change Nonimmigrant Status to change her B-2 status to an F-1 student based on her application to study at the Neo-America Language School. (*Id.* ¶ 20). Defendant United States Citizenship & Immigration Services ("USCIS") granted Plaintiff's application in October 2008. (*Id.*). Unbeknownst to Plaintiff at the time, the owner of the Neo-America Language School was working with a corrupt U.S. Customs & Border Protection ("CBP") agent to create false I-94 forms for use in applications to obtain F-1 status. (*Id.* ¶ 41).

In October 2013, Plaintiff enlisted in the U.S. Army through MAVNI, a recruitment program that enlists noncitizens who are lawfully present and hold skills critical to the national interest. (*Id.* ¶¶ 21-23). Plaintiff was eligible to enlist because she was lawfully present on an F-1 student visa, could speak Korean, and was qualified to be a healthcare specialist. (*Id.* ¶ 23). She began active duty in February 2014, and served as an ambulance aid driver, a pharmacy technician, and a translator for doctors, among other roles. Because of her outstanding service, she received two Army Achievement Medals from the Secretary of the Army. (*Id.* ¶¶ 24-31). In September 2015, she was promoted from Private First Class to Specialist. (*Id.* ¶ 32). Since her

promotion, she has served as a medic and as an Operation Specialist at the Brooke Army Medical Center at Fort Sam Houston. (*Id.* ¶ 33). As a Specialist, she received free housing from the Army and a salary of $2,270.50 per month. (*Id.* ¶ 35).

The law provides that aliens who serve honorably in an active-duty status in the military, air, or naval forces of the United States during a period of hostilities as designated by Executive Order may be naturalized if they enlisted while in the United States. 8 U.S.C. § 1440(a). In the course of evaluating a naturalization application, USCIS is required to complete a full background investigation of the applicant, and cannot schedule a naturalization interview until the background check is complete. *See* 8 U.S.C. §§ 1446(a)-(b); 8 C.F.R. §§ 335.1, 335.2(b). By statute, USCIS then has 120 days from the date of the interview to render a decision on the N-400 application. 8 U.S.C. § 1446(b). The United States has been designated by Executive Order as in a period of hostilities since September 11, 2001. (Compl. ¶ 39).

Plaintiff's enlistment contract required that she agree to apply for naturalization as soon as the Army certified her honorable service. (*Id.*). In February 2014, upon enlisting, Plaintiff filed her first N-400 naturalization application. (*Id.* ¶ 40). Upon reviewing her application, USCIS claimed her F-1 student visa had been obtained as part of the larger fraudulent scheme involving the Neo-America Language School and the corrupt CBP agent. (*Id.* ¶ 41). In interviews in April 2, 2014, and April 17, 2015, USCIS officers questioned Plaintiff about the allegedly fraudulent I-94 form included in her I-539 application. Plaintiff was not represented by counsel during those interviews, and stated that she had not given false information to any U.S. government official in her immigration applications. (*Id.* ¶ 46).

On June 4, 2015, USCIS denied Plaintiff's naturalization application because it found she provided false testimony during her interviews when she testified that she had never previously given false information to the government and that her I-94 form was accurate. Accordingly, USCIS found that Plaintiff had not established she was of "good moral character", as was required for naturalization under 8 U.S.C. § 1440(a). However, she was permitted to re-apply for naturalization after having demonstrated good moral character for at least one year. (*Id.* ¶ 47).

On July 26, 2016, Plaintiff filed her second N-400 naturalization application. USCIS acknowledged receipt of her application on August 5, 2016. (*Id.* ¶ 48). Plaintiff completed her biometrics at a USCIS office in San Antonio on December 5, 2016. (*Id.* ¶ 49). Her application has now been pending for over two years, and she has not been scheduled for an interview or received any further correspondence regarding her application. (*Id.* ¶ 50). Defendants acknowledge that Plaintiff's background checks were completed in December 2016. (Declaration of Robert A. Sanders ("Sanders Decl.") ¶ 10 (Docket No. 10-1)). On January 10, 2017, Plaintiff also filed an I-821D application for Deferred Action for Childhood Arrivals ("DACA"); that application has not yet been adjudicated. (*Id.* ¶ 61).

While her second N-400 application was pending, Plaintiff continued to serve honorably in the U.S. Army. (*Id.* ¶¶ 51-52). However, on June 21, 2018, the U.S. Army initiated a separation action against Plaintiff, alleging that she improperly enlisted through MAVNI because her F-1 status was not valid when she enlisted. (*Id.* ¶ 63). On July 19, 2018, the Army made a final determination that Plaintiff would be honorably discharged from the Army. Because she has no valid immigration status, she is unable to lawfully work in the United States to support herself, or to obtain a driver's license where she is currently stationed in Texas, and she is subject to arrest, detention, and deportation by immigration authorities. (*Id.* ¶ 64). As of the filing of her Reply, Plaintiff had been ordered to report to a transition point for discharge from the Army on August 3, 2018. (Declaration of Yea Ji Sea ("Sea Decl. II") ¶ 6 (Docket No. 13)).

Based on the allegations set forth above, Plaintiff alleges two claims for relief: (1) Unreasonable delay in violation of the Administrative Procedure Act ("APA"); and (2) Writ of Mandamus. (*See id.*).

At the hearing, the parties informed the Court that Plaintiff has now arrived in Los Angeles, and has a naturalization interview scheduled for the morning of August 15, 2018. Defendants represented at the hearing and in their papers that after the interview, USCIS will adjudicate Plaintiff's N-400 application within 120 days as

required by statute. (Sanders Decl. ¶¶ 11-12; Declaration of Earnest C. Bridges ("Bridges Decl.") ¶ 7 (Docket No. 10-2)).

## II. LEGAL STANDARD

To show that they she is entitled to injunctive relief, Plaintiff must demonstrate that (1) she is likely to succeed on the merits; (2) she is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of the equities tips in her favor; and (4) an injunction is in the public interest. *Toyo Tire Holdings of Ams. Inc. v. Cont'l Tire N. Am., Inc.*, 609 F.3d 975, 982 (9th Cir. 2010) (citing *Winter v. Nat. Res. Def. Council*, 555 U.S. 7 (2008)).

Plaintiff must "make a showing on all four prongs." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). The Ninth Circuit employs the "serious questions" version of the "sliding scale" approach when applying the four-element *Winter* test. *Id.* at 1134. "That is, 'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* at 1135.

## III. DISCUSSION

By the Application, Plaintiff seeks an order requiring USCIS to: (1) hold a naturalization interview for Plaintiff within 10 days; and (2) provide a final determination on Plaintiff's naturalization within 20 days. (App. at 1).

As a preliminary matter, Defendants contend that the Application should be denied because it improperly requests an injunction that does not preserve the status quo, but would grant Plaintiff all of the relief she seeks through her Complaint. (Opp. at 5). In support of this contention, Defendants rely upon *Arce v. Douglas*, 793 F.3d 968, 976 (9th Cir. 2015). In that case, the Ninth Circuit held that it was inappropriate for the district court to *sua sponte* convert the plaintiffs' preliminary injunction motion into a basis on which to grant summary judgment to the defendants, without giving

notice of its intent to convert the preliminary injunction motion into a summary judgment motion. *Id.* at 976. The Ninth Circuit noted that, "despite the court's power to grant summary judgment *sua sponte*, it is generally inappropriate for a court to issue such a final judgment on the merits of a claim at the preliminary injunction stage, because it is unlikely that the merits of a claim will be fully ventilated at the early stage of a litigation at which a preliminary injunction is normally addressed. . . . A party is not required to prove her case in full on preliminary injunction, but only such portions as will enable her to obtain the injunction." *Id.*

The Court does not find that *Arce* precludes granting the preliminary injunction Plaintiff seeks, if it is otherwise warranted. *Arce* stands for the proposition that plaintiffs should not be required to prematurely prove their entire case when they seek a preliminary injunction. Here, all parties are on notice of the nature of the relief sought, and Defendants have had the opportunity to oppose Plaintiff's Application. If Plaintiff proves the portions of her case that enable to obtain the preliminary relief sought, the Court will grant the relief.

That said, the Court is mindful that the relief Plaintiff seeks is mandatory, not prohibitory, and that such relief is "subject to heightened scrutiny and should not be issued unless the facts and the law clearly favor [Plaintiff]." *Dahl v. HEM Pharm. Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (plaintiff's "burden here is doubly demanding" because she sought a mandatory preliminary injunction). "Mandatory injunctions should not issue in doubtful cases." *Garcia*, 786 F.3d at 740.

Plaintiff contends that the relief she seeks is prohibitory, not mandatory, because she seeks an injunction requiring Defendants to carry out their duties in accordance with the law and their own policies. (Reply at 4). The Court disagrees. Injunctions may be characterized as prohibitory where they forbid enforcement of new, likely illegal, policies. *See, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017) (injunction prohibitory where "it prohibits the government from conducting new bond hearings under procedures that will likely result in unconstitutional detentions"); *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014) (holding that an

injunction against enforcement of a likely unconstitutional state policy was prohibitory rather than mandatory).

Here, Plaintiff seeks an order requiring Defendants to take a specific action that would change the status quo between her and Defendants; she does not challenge implementation of a wider policy. *See Brewer*, 757 F.3d at 1060-61 ("'A mandatory injunction orders a responsible party to take action,' while '[a] prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits.' The relevant status quo is that 'between the parties pending a resolution of a case on the merits.'" (internal citations omitted)).

With the standards discussed above in mind, the Court evaluates the contentions made in connection with Plaintiff's Application.

**A. Likelihood of Success on the Merits**

Both of Plaintiff's claims arise from USCIS's alleged delay in resolving her naturalization application. As discussed below, Plaintiff has demonstrated that she is likely to succeed on the merits of her APA and Mandamus Act claims.

**1. Claim 1: Violation of the APA**

The APA requires administrative agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555(b). A district court reviewing agency action may "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). "Agency action" includes "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

District courts have found that the APA, in conjunction with the citizenship regulations, "establish[es] a duty on the part of USCIS to adjudicate N-400 applications within a reasonable time frame." *Abdulmajid v. Arellano*, No. CV 08-796-GHK (VBKx), 2008 WL 2625860, at *2 (C.D. Cal. June 27, 2008) (denying motion to dismiss plaintiff's action for mandamus and violation of APA seeking order

compelling USCIS to adjudicate his application); *Sidhu v. Chertoff*, No. CV 07-1188-AWI (SMSx), 2008 WL 540685, at *5 (E.D. Cal. Feb. 25, 2008) (holding, under the APA, USCIS "has a non-discretionary duty to act on [naturalization] applications before it by processing them"); *Jiang v. Chertoff*, No. CV 08-332-SI, 2008 WL 1899245, at *3 (N.D. Cal. Apr. 28, 2008) ("This Court agrees with plaintiff and the many district courts that have held that, taken together, the APA, and the statu[t]es and regulations governing immigration establish a clear and certain right to have [N-400] applications . . . adjudicated within a reasonable time frame.").

Both parties agree that the *TRAC* factors apply to the determination of whether, under the APA, the unreasonably delayed adjudication of Plaintiff's N-400 application warrants relief. (*See* App. at 9; Opp. at 7). The *TRAC* 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 and extent of the interests prejudiced by the delay[;] and (6) the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

*Independence Mining Co. v. Babbitt*, 105 F.3d 502, 507, 511 n.7 (9th Cir. 1997) (quoting *Telecomm'ns Research & Action Ctr. v. FCC ("TRAC")*, 750 F.2d 70, 80 (D.C. Cir. 1984)).

Plaintiff contends that each of the *TRAC* factors supports a determination that USCIS has unreasonably delayed Plaintiff's application by failing to adjudicate it for

two years. (App. at 9). Defendants contend that the first, second, third, and sixth factors do not support such a finding. (Opp. at 7-8).

**a. Rule of Reason & Congressional Intent (Factors 1 & 2)**

Plaintiff addresses the first two *TRAC* factors together, and contends that they weigh in her favor because Congress has stated that, "It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application." 8 U.S.C. § 1571(b). This statute does not provide a mandatory timeline, but courts have found it "highly relevant" in evaluating the second *TRAC* factor. *See, e.g.*, *Khan v. Johnson*, 65 F. Supp. 3d 918, 930 (C.D. Cal. 2014) (finding first and second factors favored plaintiffs seeking adjudication of their asylum applications, which had been pending for seven years).

Accordingly, many courts have found delays of "around two years" in the processing of civilian naturalization applications to be "presumptively unreasonable as a matter of law under *TRAC*." *Daraji v. Monica*, No. CV 07-1749, 2008 WL 183643, at *5 (E.D. Pa. Jan. 18, 2008) (citing cases); *Reddy v. Mueller*, 551 F. Supp. 2d 952, 954 (N.D. Cal. 2008) ("[W]here a naturalization application has been pending for two years (as is the case here), it is appropriate to remand the case with instructions to adjudicate by a particular deadline.").

However, military naturalization applications are required to be processed on an expedited basis. Executive Order 13269, which authorizes naturalization under 8 U.S.C. §1440, is titled "Expedited Naturalization of Aliens and Noncitizen Nationals Serving in An Active-Duty Status During the War on Terrorism" and was issued by President George W. Bush "solely in order to provide expedited naturalization for aliens and noncitizen nationals serving in an active-duty status in the Armed Forces of the United States." Executive Order 13269—Expedited Naturalization of Aliens and Noncitizen Nationals Serving in An Active-Duty Status During the War on Terrorism, 2002 WL 1833360, at *1 (July 3, 2002). The U.S. Army's own published guidance on the procedures for soldiers applying for citizenship states that "[t]he goal is to

streamline and expedite the handling of their applications." *Kirwa v. United States Dep't of Def.*, 285 F. Supp. 3d 21, 28 (D.D.C. 2017).

Plaintiff noted at the hearing and in her papers that for military naturalization applicants, USCIS often makes a determination on the application on the same day as the interview. (Declaration of Margaret D. Stock ¶ 12 (Docket No. 14)). The relevant immigration regulations do permit decisions on applications to be made at the same time as the initial interview. *See* 8 C.F.R. 335.3(a).

With respect to the first *TRAC* factor, although neither party addresses it, the Court notes that, "length of delay alone is not dispositive." *Khan*, 65 F. Supp. 3d at 929. Courts also look to the "source of the delay—*e.g.*, the complexity of the investigation as well as the extent to which the defendant participated in delaying the proceeding." *Id.* (quoting *Singh v. Still*, 470 F. Supp. 2d 1064, 1068 (N.D. Cal. 2007)). Here, Defendants note that unique circumstances are present – the fraudulent scheme underlying Plaintiff's procurement of the F-1 student visa that permitted her to enlist in the Army – that may contribute to the complexity of processing her application. (Opp. at 7).

At the hearing, Defendants argued that the delay can be partially explained by the fact that Defendants were waiting for proceedings relating to the underlying fraud to be resolved. However, Defendants also stated that those proceedings have since been resolved, and that Plaintiff did not appear to have any culpability in the underlying fraud. Moreover, Defendants acknowledge that the background checks necessary to schedule an interview were completed in December 2016. Ultimately, the Court questions the relevance of fraud that occurred in 2008 to the present delay. Defendants represent that Plaintiff's first naturalization application was denied not because of the fraud itself, but because of statements she made in her interviews about that fraud. (Sanders Decl. ¶ 8).

The first *TRAC* factor therefore in favor of Plaintiff. As to the second *TRAC* factor, the Court concludes that, in light of Congress's intent with respect to the timetable for naturalization applications generally, and the policies that require

expedited processing for military naturalization applications, this factor weighs in favor of Plaintiff.

**b. Human Health and Welfare & the Interests Prejudiced by the Delay (Factors 3 & 5)**

The third and fourth *TRAC* factors are often analyzed together in the context of evaluating delays in adjudicating immigration benefits. *See Khan*, 65 F. Supp. 3d at 930. "Plaintiff['s] interests in pursuing . . . citizenship, or at least a final determination on [her] application so as to end a stressful waiting period, are compelling." *Id.* at 930-31 (analyzing third and fifth *TRAC* factors). Defendants do not seriously argue otherwise, except to note that no removal proceedings have been initiated, and even if they were initiated, Plaintiff could still naturalize during the pendency of those proceedings. (Opp. at 8).

The threat of arrest, detention, and deportation is real, and is alone a serious harm. And in the meantime, once she is discharged, Plaintiff is unable to work or obtain a driver's license, and therefore will be unable to support herself. *See Daraji*, 2008 WL 183643, at *6 (considering harm caused by delay where plaintiffs could not "partake in the benefits of citizenship" and "suffered the stress and 'psychological pressure' of awaiting the outcome of their applications"). The Court concludes that these factors weigh in favor of Plaintiff.

**c. Effect on the Agency (Factor 4)**

Plaintiff contends that this factor weighs in her favor because there is no "higher or competing priority" on USCIS's activities that would be affected by processing Plaintiff's application. (App. at 13). Defendants do not contest this proposition in their Opposition. The Court concludes that this *TRAC* factor weighs in favor of Plaintiff. *See Qureshi v. Napolitano*, No. CV 11-5814-YGR, 2012 WL 2503828, at *7 (N.D. Cal. June 28, 2012) ("Because Plaintiff merely seeks a ruling on his Application [for legal permanent residency] (even if a denial), does not seek to force the USCIS to

affirmatively provide him with an exemption, and does not seek to otherwise change the USCIS policy, this factor weighs in Plaintiff's favor.").

**d. Bad Faith (Factor 6)**

Last, Plaintiff contends that, even though 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 80, the delay in adjudication of Plaintiff's application "fits a troublesome pattern where the Government has unlawfully delayed and prevented MAVNI enlistees . . . from obtaining U.S. citizenship." (App. at 13). Plaintiff points to news articles to suggest that MAVNI recruits are being discharged in an attempt to prevent them from obtaining U.S. citizenship. (App. at 14 n.6; Declaration of Sameer Ahmed (Docket No. 12)). However, as the Court stated at the hearing, it is only the timing with respect to Plaintiff's particular naturalization application that is at issue – not the question of whether the government is more generally attempting to undermine MAVNI. Moreover, as Defendants point out, there is a reasonable explanation for Plaintiff's discharge: the fraud underlying her F-1 student visa, without which she would not have been eligible for MAVNI in the first place. (Opp. at 8).

Although Defendants have not fully explained the delay in processing Plaintiff's application, the Court cannot conclude they have acted in bad faith. However, as noted above, a finding of bad faith is not necessary for a conclusion that the agency action is unreasonably delayed.

**e. Balancing of Factors**

As set forth above, with the exception of the sixth factor, all of the *TRAC* factors weigh in favor of granting relief to Plaintiff under the APA for the unreasonable delay in processing her naturalization application. Plaintiff has demonstrated a likelihood of success on her APA claim.

At the hearing, Plaintiff argued that, considering the prejudice Plaintiff faces and the balancing of the *TRAC* factors, USCIS should not be allowed another 120 days to adjudicate Plaintiff's naturalization application after her interview on September 15. Defendants indicated that they do intend to adjudicate the application as quickly as possible after the interview, and might not need the 120 days permitted by statute, but that they could not commit to a specific deadline at this time because they do not yet know what Plaintiff will say in her interview. Therefore, although the Court concludes that Plaintiff is likely to succeed on her APA claim, at this time, the Court issues the OSC described above rather than injunctive relief.

**2. Claim 2: Mandamus Act**

The Mandamus Act permits district courts "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. "Mandamus is an extraordinary remedy, and is available to compel a federal official to perform a duty only if: "(1) the individual's claim is clear and certain; (2) the official's duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt, and (3) no other adequate remedy is available." *Kildare v. Saenz*, 325 F.3d 1078, 1084 (9th Cir. 2003).

Plaintiff contends that her claim requesting the Court compel USCIS to adjudicate her naturalization application is clear and certain. (App. at 14). She contends her claim meets the second requirement because other district courts have routinely found that USCIS has a nondiscretionary and ministerial duty to adjudicate naturalization applications within a reasonable time period. (*Id.*). Multiple California district courts have found such a nondiscretionary, ministerial duty. *See, e.g.*, *Abdulmajid*, 2008 WL 2625860, at *1-2 ("the citizenship regulations establish a duty on the part of USCIS to adjudicate N-400 applications within a reasonable time frame"); *Sidhu*, 2008 WL 540685, at *8 ("Defendants have a clear and non-discretionary duty to adjudicate Plaintiff's N-400 application within a certain time period); *Jiang*, 2008 WL 1899245, at *5 (same). Plaintiff contends the third requirement is met because she has no other adequate remedy available; the naturalization statutes provide for a remedy based on delay only ***after*** a naturalization

interview is held. Here, Plaintiff has not yet had an interview, so the naturalization statutes provide no relief.

Defendants do not dispute these arguments in Opposition. The Court concludes that Plaintiff has demonstrated a likelihood of success on the merits of her Mandamus Act claim.

**B. Irreparable Harm**

Courts have held that "delaying naturalization applications after applicants have been promised an expedited path to citizenship constitutes irreparable harm." *Kirwa*, 285 F. Supp. 3d at 42 (citing *Nio v. United States Dep't of Homeland Sec.*, 270 F. Supp. 3d 49, 63 (D.D.C. 2017); *Vargas v. Meese*, 682 F. Supp. 591, 595 (D.D.C. 1987)). As in *Kirwa*, Plaintiff's naturalization application has been delayed after she was promised an expedited path to citizenship through MAVNI. And, as in *Kirwa*, without legal status, each day of delay "leaves [Plaintiff] in limbo and in fear of removal." *Kirwa*, 285 F. Supp. 3d at 43 (finding that delay constituted irreparable harm).

Plaintiff further notes that without legal status, she will be unable to lawfully work in the United States, which means she will be unable to pay for her basic necessities. (App. at 15-16). The Supreme Court has "recognized the severity of depriving a person of the means of livelihood." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543 (1985).

Defendants blame any harm that might result from Plaintiff's lack of legal status on the immigration fraud underlying her F-1 status. (Opp. 9-10). However, Plaintiff points out that 8 U.S.C. § 1440 only requires Plaintiff to demonstrate good moral character for one year prior to her naturalization application, and therefore contests the relevance of how she obtained her F-1 status in 2008. (Reply at 12). As noted above, the Court also doubts the relevance of the underlying fraud to the delay. Plaintiff also points out that, regardless of how their immigration status was obtained, every MAVNI recruit has only temporary immigration status when they enlist; if their naturalization

applications are not adjudicated within a reasonable time, the recruits will lose their temporary status, as she now has. (*Id.*).

The Court concludes that Plaintiff will suffer irreparable harm if her naturalization application is not adjudicated promptly.

### C. Balance of Equities and the Public Interest

These factors merge when, as here, the government is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Again, Defendants contend that these factors do not support injunctive relief because the delay of which Plaintiff complains and the harm she alleges are the result of the immigration fraud underlying her F-1 status, not the delay in the adjudication of her N-400 application. (Opp. at 10). But Defendants have not pointed to any connection between the delay in processing this second N-400 application and the immigration fraud. Plaintiff's first N-400 application was adjudicated in just over one year despite the fraud. The background checks required for her current application were completed in December 2016.

Plaintiff contends the balance of equities weigh in her favor because she will suffer immediate irreparable harm because of USCIS's delay, and USCIS has provided no concrete justification for the delay. (App. at 18 (citing *Kirwa*, 285 F. Supp. 3d at 44 (concluding balance of equities favor plaintiffs where they "are suffering, and will continue to suffer, irreparable harm due to DOD's inaction" and "defendants have not offered sufficient justification"). Moreover, "The public interest is served when administrative agencies comply with their obligations under the APA." *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015).

The Court concludes these favors weigh in favor preliminary injunctive relief.

## IV. CONCLUSION

As set forth above, Plaintiff has demonstrated that she may be entitled to injunctive relief. However, as noted above, based on updated information received at

the hearing regarding Plaintiff's scheduled naturalization interview, the Court concludes that injunctive relief may not be necessary at this time. The Motion is therefore **DENIED *without prejudice***.

Defendants are **ORDERED TO SHOW CAUSE** in writing by **September 5, 2018**, why a Preliminary Injunction or Writ of Mandamus should not issue. If Plaintiff's naturalization application is adjudicated before that date, Defendants may so inform the Court. If it has not yet been adjudicated by that date, Defendants should explain how much more time they need and why. The Court will then determine whether to grant that additional time, or to issue a Preliminary Injunction or Writ of Mandamus ordering Defendants to adjudicate Plaintiff's naturalization application forthwith.

IT IS SO ORDERED.