Federal Court  Cour fédérale

Date: 20251112

Docket: IMM-9513-24

Citation: 2025 FC 1811

Ottawa, Ontario, November 12, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

A.A., B.B., C.C., D.D., E.E.

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application brought by a Palestinian family living in the Gaza Strip in the context of the ongoing humanitarian crisis in Gaza which persists notwithstanding the recent ceasefire agreement and the continued closure of the Rafah border crossing into Egypt. The family applied for judicial review of the alleged failure of Immigration, Refugees, and Citizenship Canada [IRCC] to process their applications for temporary resident visas [TRV] in a

sufficiently timely manner pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In this respect, the Applicants ask the Court to issue an order of *mandamus* requiring the Minister to process their applications within 15 days of the Court's judgment.

[2] According to binding jurisprudence of the Federal Court of Appeal, an order of *mandamus* may not be issued unless and until an applicant meets all legal requirements to obtain the matter in respect of which *mandamus* is sought. In other words, they must be entitled to the requested matter. Here, while I have every sympathy for the Applicants, given the horrible upheavals generally characterizing the operational context in Gaza since October 7, 2023, and given the specific conditions of the *Temporary public policy to facilitate temporary resident visas for certain extended family affected by the crisis in Gaza* [Policy] which the Applicants are required to fulfill, I am not persuaded the Applicants have established a clear right to *mandamus*. Therefore, and for the reasons which follow, this application must be dismissed.

[3] This case and two others decided today (*A.A., B.B., and C.C. v Canada (Citizenship and Immigration)*, 2025 FC 1812 and *A.B. v Canada (Citizenship and Immigration)*, 2025 FC 1813) for the most part raise issues in many, but not all respects, similar to those addressed in *A.B. v Canada (Citizenship and Immigration)*, 2025 FC 1514 [*A.B.*] to which these Reasons will refer. *Mandamus* was not granted in *A.B.*

II. Facts

A. *The Policy*

[4] On December 22, 2023, the Minister of Citizenship and Immigration [Minister] announced the Policy which came into effect on January 9, 2024.

[5] The Policy was developed pursuant to s. 25.2 of *IRPA* to provide refuge for Palestinian nationals with relatives who are either Canadian citizens or permanent residents. These relatives act as "anchor relatives" for the applicants' TRV applications.

[6] The Policy allows delegated officers to exempt applicants from certain requirements. To be eligible, applicants must satisfy the conditions prescribed in Parts 1-3 of the Policy:

> **Part 1**
>
> 1. The foreign national:
>
> i. has submitted an application for a temporary resident visa;
>
> ii. was in the Gaza Strip on the day they submitted their application;
>
> iii. is a Palestinian Territory passport holder;
>
> iv. has identified an anchor, a Canadian citizen or Permanent Resident, who meets the requirements in Annex A;
>
> v. is the spouse, common law partner, child (regardless of age), grandchild, parent, grandparent or sibling of the anchor identified in condition iv. of Part 1;

vi. has a signed statutory declaration from the anchor identified in condition iv. of Part 1 in which the anchor attests that:

a. they have the intention to provide the support set out in Annex B for the foreign national and their family members as defined in section 1(3) of the Regulations, and

b. they have not accepted, and understand they are not to accept, any financial compensation from the foreign national and their family members;

vii. has submitted the application by electronic means (applied online) or with an alternate application format provided by the department if the foreign national or their representative indicated they are unable to apply online.

Part 2

2. The foreign national:

i. is a family member, as defined in subsection 1(3) of the Regulations, of a foreign national who has applied under this public policy and has been found to meet the conditions listed in Part 1;

ii. has submitted an application for a temporary resident visa; and

iii. has submitted the application by electronic means (applied online) or with an alternate application format provided by the department if the foreign national or their representative indicated they are unable to apply online.

Part 3

3. The foreign national

i. holds a temporary resident visa that was issued following facilitation under Part 1 or Part 2; and

ii. seeks to enter Canada as a visitor.

[7] Applicants who satisfy the above conditions are exempt from the requirements to not be financially inadmissible and to establish they would leave Canada at the end of their authorized period of stay. All other requirements under *IRPA* and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] remain applicable.

[8] The application process under the Policy is divided in three stages, although this Applicant prefers to see it as having eight steps. The first stage is that the anchor relative completes the statutory declaration form and a consent to disclose personal information form and confirms their eligibility to act as an anchor and support the applicants for a year following their arrival in Canada.

[9] Second, the anchor submits a crisis webform with the attached declaration form, the anchor's government photo ID, proof of the anchor's Canadian citizenship or permanent residence, and proof the anchor lives or intends to live in Canada. IRCC reviews these submissions and issues a unique reference code for each applicant.

[10] At the third stage, the anchor submits the applicant's TRV applications through the IRCC portal. Accompanying the regular TRV application is the unique reference code received at the initial application stage, the anchor's statutory declaration, the applicant's proof of relationship to the anchor relative, a copy of the applicant's travel documents or passport indicating their residence in Gaza, a consent to disclose personal information form, and an additional background information form for certain applicants.

[11] Once IRCC confirms the applicant is eligible and not inadmissible, it will forward the applicant's name to the Israeli and Egyptian governments to facilitate their exit through the Rafah border crossing so they may provide their biometric information to a collection facility. There are no collection facilities in Gaza.

B. *The Applicants' TRV applications*

[12] The Applicants are a family of five including a mother, father, and three children. When they applied, they were living in one room in their partially destroyed home. The Applicants live among rats and insects and are exposed to the rain due to damage to their roof.

[13] The situation they describe is seriously wanting and heartbreaking.

[14] Several of the Applicants have sustained physical ailments because of the ongoing bombings and war in this humanitarian crisis. The Court appreciates there is a ceasefire in place, but the situation is fluid.

[15] The first female Applicant has lost her hearing while the second male Applicant has a skin infection, knee injury, and nerve damage requiring surgery. These physical ailments prevent the second male Applicant from going outside. One of the daughters has a gland condition and finds it difficult to breathe as a result and the youngest often faints from hunger. All female Applicants have lost their hair. The Applicants do not have access to medical care, receive little food, and only have access to untreated and dirty water.

[16] Applications under the Policy opened on January 9, 2024. The Applicants' anchor relative [Anchor] submitted a webform for the Applicants' unique reference codes on the same day and received these codes on March 22, 2024.

[17] The Anchor submitted applications for the five Applicants on April 3, 2024. On the same day, the Applicants received biometric instructions letters.

[18] The Global Case Management System [GCMS] notes indicate IRCC commenced a "high priority security screening" regarding the adult male Applicant because of concerns surrounding his past employment in transport. "High priority security screenings" for the adult female Applicant and the two adult children Applicants were commenced on May 10, 2024.

[19] The adult male Applicant received a letter from IRCC on June 12, 2024, requesting information for all his social media accounts. The Anchor sought an extension of time because they had difficulty communicating with the Applicants to gather this information. The Anchor provided this information to IRCC by letter on August 5, 2024. Additional information was being gathered in respect of this individual as recently as September 2025.

[20] For one of the female Applicants, her sister's passport and birth certificate were mislabelled and submitted as her own. This error was corrected on November 10, 2024, at which time the Anchor submitted the female Applicant's passport and birth certificate using the crisis webform.

[21] No decision has been rendered on the Applicants' applications. At the present time, which is when the Court is to assess *mandamus*, the GCMS notes indicate preliminary security screenings are underway and have been since April 24, 2024, in respect of three of the five applicants. These are all "high priority security [screenings]."

III. Issue

[22] The issue is whether the Applicants have met the test for the issuance of *mandamus.* The Court concludes they have not.

IV. Relevant legislation

[23] Section 18.1(3)(a) of the *Federal Courts Act;* RSC 1985, c F-7 confirms the power of the Federal Court to grant an order of *mandamus:*

Powers of Federal Court	**Pouvoirs de la Cour fédérale**
(3) On an application for judicial review, the Federal Court may	**(3)** Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	**a)** ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;

[24] Section 25.2(1) of *IRPA* authorizes the Minister to exempt foreign nationals who are inadmissible or otherwise do not meet the requirements on public policy grounds:

Public policy considerations	**Séjour dans l'intérêt public**
25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.	**25.2 (1)** Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.

[25] Section 12.8 of *IRPR* exempts the provision of biometric data among other things where it is impossible or not feasible. S 12(8) is raised by the Applicant in this case:

Exemption — collection of biometric information impossible or not feasible	**Dispense — collecte de renseignements biométriques impossible ou impraticable**
12.8 A person who makes a claim, application or request referred to in any of paragraphs 12.1(a) to (m) is not required to provide, with respect to the claim, application or request in question, the information referred to in subparagraph 12.3(b)(i) or (ii), as the case may be, if the collection is impossible or not feasible.	**12.8** La personne qui fait une demande visée à l'un ou l'autre des alinéas 12.1a) à m) n'est pas tenue de fournir, à l'égard de la demande en cause, les renseignements prévus aux sous-alinéas 12.3b)(i) ou (ii), selon le cas, dont la collecte est impossible ou impraticable.
[Emphasis added]	[Je souligne]

V. Submissions of the parties

A. *Admissibility of the Applicants' evidence*

(1) Affidavit of the lawyer

[26] The Applicants rely on the affidavit of the lawyer for evidence on the state of the humanitarian crisis in Gaza. The Applicants submit these facts are so obvious this Court may assume their existence. In the alternative, the Applicants ask the Court to take judicial notice of the humanitarian crisis in Gaza because these facts are "so notorious or generally accepted as not to be the subject of debate among reasonable persons": *R v Find*, 2001 SCC 32 at paragraph 48.

[27] The Respondent submits the Court should only rely on the affidavit of the lawyer and its exhibits for general background information. While the Respondent submits news articles as generally inadmissible hearsay, the Respondent also acknowledges I accepted these articles as evidence in *A.B.* because they provide relevant and necessary background on the evolving situation in Gaza. I do so again here. As in *A.B.*, this affidavit is admissible for the purpose of providing general background information on the state of the crisis in Gaza. I will also take judicial notice of a serious humanitarian crisis in Gaza for the legal reasons set out in *A.B.* at paragraph 41, notwithstanding the intervening ceasefire. Notably the Rafah crossing – essential in relation to biometrics – remains closed.

(2) Affidavit of the law professor

[28] The Applicants also rely on an affidavit of Dr. Jamie Liew who they offered as an expert witness. Dr. Liew is a Professor of Law at the University of Ottawa. After objections were raised and after some back and forth at the very start of the hearing, the Applicants (properly in my view because no expert certificate was filed as required) withdrew their claim that the professor's evidence should be considered as that of an expert. After discussion at the hearing, the professor's affidavit was offered and accepted by the Respondent as only lay evidence. It was also agreed the only relevant exhibit was that setting out a previous IRCC policy, namely the *Temporary public policy for foreign nationals being airlifted from Afghanistan*[the Afghanistan Airlift Policy]. Paragraphs 16 and 17 were agreed to be struck as impermissible opinion from a lay affiant.

B. *Mandamus*

[29] The Applicants seek *mandamus* to compel IRCC to render a decision on the Applicants' pending TRV applications. In this connection, I agree with and again adopt Justice Little's determinations in *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at paragraph 76:

> [76] *Mandamus* is an order that compels the performance of a public legal duty. The duty is typically set out in a statute or regulation. An order of *mandamus* is the Court's response to a public decision-maker that fails to carry out a duty, on successful application by an applicant to whom the duty is owed and who is currently entitled to the performance of it. The test for *mandamus* thus requires careful consideration of the statutory, regulatory or other public obligation at issue, to determine whether the decision-maker has an obligation to act in a particular manner as proposed by an applicant and whether the factual circumstances have triggered performance of the obligation in favour of the applicant.

[30] The Applicants submit and I agree the test for *mandamus* is set out by the Federal Court of Appeal in *Apotex v Canada (Attorney General)*, [1994] 1 FC 742 (FCA):

1. There must be a legal duty to act;
2. The duty must be owed to the applicant;
3. There must be a clear right to performance of that duty:
    a. The applicant has satisfied all conditions precedent giving rise to the duty; and
    b. There was
        i. A prior demand for performance of the duty;
        ii. A reasonable time to comply with the demand unless refused outright; and
        iii. A subsequent refusal which can be either expressed or implied, e.g. by unreasonable delay.
4. Where the duty sought to be enforced is discretionary, certain additional principles apply;
5. No adequate remedy is available to the applicant;
6. The order sought will have some practical value or effect;
7. The Court finds no equitable bar to the relief sought; and
8. On a balance of convenience, an order of *mandamus* should be issued.

[31] Notably, this Court must be satisfied on all eight factors to issue *mandamus*: *Cheloei v Canada (Citizenship and Immigration)*, 2025 FC 820 at paragraph 13 [*Cheloei*]. I will now analyse each as relevant.

(1) There is a public legal duty to act but not within a particular timeframe

[32] Section 25.2(1) of *IRPA* allows the Minister to develop exemptions for foreign nationals who are otherwise inadmissible where public policy requires it. Once a policy has been developed under this section, the Applicants submit the Minister has a duty to render decisions in accordance with the policy. This duty is further informed by the statutory framework found in *IRPA*: *Dragan v Canada (Minister of Citizenship and Immigration) (T.D.),* [2003] 4 FC 189 at paragraph 40.

[33] They submit the content of this duty is informed by the objectives in s. 3 of *IRPA* which are concerned with saving lives, providing a safe haven for those who have been displaced and persecuted, and reuniting families in Canada. These objectives are all subject to "consistent standards and prompt processing" through fair and efficient procedures to maintain Canada's immigration system: *IRPA* at ss. 3(1)-(2).

[34] The Respondent concedes, and I agree, there is a legal duty to process TRV applications under the Policy. However, as this Court found in *A.B.* at paragraph 58, while there is a legal duty to process these applications, there is no duty to process these applications within a particular timeframe.

(2) The duty is owed to the Applicants but not within a specific timeframe

[35] The Applicants claim they have a legitimate expectation to their applications being processed and decided in a timely manner. I agree as I did in *A.B.*

[36] A legitimate expectation arises where there is a "clear, unambiguous and unqualified" representation creating the expectation that certain procedures will be followed: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paragraphs 94-97; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 1379 at paragraph 36; *Canada Union of Public Employees v Ontario (Minister of Labour)*, 2003 SCC 29 at paragraph 131. These expectations arise from promises, representations, conduct, and established practices of the administrative decision maker.

[37] The Applicants submit the test for determining whether a legitimate expectation exists is "would a reasonable person think that the promise was serious, and should a reasonable person be entitled so to think?": *Apotex Inc. v Canada (C.A.)*, [2000] 4 FC 264 at paragraph 128.

[38] The Applicants submit their legitimate expectation that the TRV applications would be decided in a timely manner is based on their compliance with conditions of the Policy, the language and representations made by the Minister, the Government of Canada website, and prior temporary policies. The Applicants submit the purpose of the Policy is to provide a refuge from the "volatile and unpredictable" crisis in Gaza. The Applicants submit the language of the Policy reflects the seriousness of the situation in Gaza. The Government of Canada website outlines the eligibility criteria, procedures, and Minister's representations as to the "new measures" to provide a "pathway to safety" which would be closely monitored and adapted as required:

> The IRCC website clearly set out the Policy criteria and application procedures. This website was the only source of information for the Applicants. IRCC did not issue guidance to the Applicants aside from its website information. The first iteration of

> the public-facing instructions was published in January 2024 and indicated that Canada would endeavour to assist the applicants in exiting Gaza. Facilitated exit from Gaza was a critical part of the public-facing instructions, given that biometrics can only be collected from applicants when they are outside of the Gaza Strip. The January 2024 instructions advise applicants that the Government of Canada "will" seek approval from local authorities for their departure from Gaza and "will put forward" the names of applicants to the governments of Israel and Egypt. The same January 2024 instructions advise applicants that Canada "will" contact them with information about exiting Gaza if their applications pass the eligibility phase.
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> The current version of the instructions, dated October 10, 2025, no longer references the Rafah border crossing but states as follows: "If your application passes a preliminary eligibility and admissibility assessment, we'll work with local authorities to advocate for your exit out of Gaza."

[39] The Applicants submit these representations are evidence of "an understanding of the urgent nature of the crisis unfolding in Gaza as well as a commitment from Canada to advocate for the exit of eligible applicants from Gaza."

[40] The Applicants also identify past temporary policies which were "created rapidly in an ad hoc manner, frequently in response to chaotic and dangerous emergency situations." They rely on the professor's affidavit where she refers to a number of these policies as evidence of Canada processing applicants "within relatively short timeframes in response to emergency situations":

> Professor Liew notes Canada's success in other special immigration measures to process applicants "within relatively short timeframes in response to emergency situations". These include the issuance of 9,357 visas in a period of eight months for nationals of Türkiye and Syria affected by the earthquakes in the region; the resettlement of more than 25,000 Syrian refugees in a period of four months following the war in Syria; and most notably, the issuance of 71,000 visas under the CUAET program in 40 days in response to Russia's invasion of Ukraine. To Professor Liew, the success of the aforementioned special immigration

> measures demonstrates Canada's "expertise, experience and operational capacity to design and implement temporary resident visas and permits to persons fleeing dangerous situations.

[41] This affidavit is now that of a lay witness and I find it and the Applicants' other evidence sufficient to support their legitimate expectations: *A.B.* at paragraph 63.

[42] The Applicants also rely on s. 12.8 of the *IRPR* which grants an exemption to the requirement to provide biometric data where collection of biometrics is either "impossible or not feasible." The Applicants argue this exemption may be used on a case-by-case basis or broadly applied to anticipated applications or applications in progress: Canada Gazette, Part II, Volume 152, Number 14, "Regulations Amending the *Immigration and Refugee Protection Regulations*: SOR/2018-128" (July 11, 2018).

[43] I agree, noting however that none of the Applicants in the three cases decided today asked IRCC to consider s. 12.8, which is raised for the first time in this Court in this case. While raised only by counsel for the Applicants in this case, it is now relied upon by counsel in all three of today's cases albeit only discussed in detail here.

[44] The Respondent acknowledges the situation in Gaza but correctly submits prior temporary policies such as the Policy are insufficient to establish the clear, unambiguous, and unqualified representation the jurisprudence requires. Moreover, the Respondent notes the Government of Canada website stated there were no guarantees the Applicants' applications would be processed or approved and, in addition, stated the obvious and uncontested fact that Canada does not decide who can leave Gaza.

[45] In reply, the Applicants argue this information was not listed on the Government of Canada website when they applied. That may be true, but I take it as a given that policies may be rendered inapplicable by the changed operational context on the ground. That, with respect, is what happened here after October 7, 2023, generally and what happened after the eventual closure of the Rafah border crossing in May 2024.

[46] With that closure, for the most part, that which was possible and contemplated by the Policy when it was written in December 2023, became impossible May 7, 2024, and remains so.

[47] In terms of the need for biometrics stipulated in the Minister's Policy, the Applicants have been in a terrible and desperate catch-22 since the Rafah border was closed: they are unable to leave Gaza until they leave Gaza to provide biometrics which they cannot do because they cannot leave Gaza because the border is closed. This is a direct consequence of the way the Policy is written and the changed operational context on the ground with the border closure.

[48] The Applicants argue each step of the Policy must be respected. In particular, they ask step 4 be completed (the Applicants' preliminary eligibility assessments) so that step 5 may be completed (advocacy by IRCC to allow the Applicants to exit Gaza to provide their biometrics). With respect, the screening of the group will likely be delayed until IRCC completes its screening of the adult male Applicant, in respect of which information was being gathered as recently as September 2025. This line of argument concedes the Applicants have not yet met the Policy condition they provide their biometrics. To the extent it may assist, they may raise s. 12.8 of *IRPR* with IRCC.

[49] It seems to me the Applicants' proposed step-by-step approach is problematic, as discussed at the hearing. It is too formalistic, a basis on which judicial review was recently rejected in relation to the human health of Canadians in *Halton (Regional Municipality) v Canada (Environment)*, 2024 FCA 160 at paragraph 43. I say formalistic because this approach and with respect, seems to ignore the very significant changes in the operational context in Gaza since the Policy was adopted. I cannot accept that Canadian officials are obliged to follow "steps" in a Policy to the letter, strictly and without flexibility or alteration, because they are "self-imposed" conditions even where the operational context frustrates the Policy's intended functioning. That is what has happened here, through no fault of the Applicants, and with respect, through no fault of IRCC either. There is no authority for this line of argument; the decision in *A.B.C.D. v Canada (Citizenship and Immigration)*, 2025 FC 1296 has no application because there is nothing to suggest the operational context before Gascon J is comparable to that here.

[50] Moreover, as the Respondent notes, a step-by-step approach is not consistent with how the Applicants decided to frame their Application for Leave and for Judicial Review which requested an order to compel the "complete" processing of the Applicants' applications in accordance with *IRPA*. In this connection, the Applicants seemed to fault IRCC for not undertaking exit advocacy per step 5, but under their step theory, that could not take place until screening under step 4 is complete. This again militates in favour of a holistic view of the implementation of the Policy on judicial review.

[51] The Respondent further submits if any representations were made by the Minister, they are not binding and do not entitle the Applicants to an order of *mandamus*. Again, I agree. In my view, the Court should follow *Jia v Canada (Citizenship and Immigration),* 2014 FC 596 [*Jia*] at paragraph 92 per Justice Mary Gleason (then of this Court, now of the Federal Court of Appeal):

> [92] In addition to having no entitlement to have their applications processed in the way they wish by reason of the relevant statutory criteria, discussed above, the statements made to them in form letters, manuals or websites simply do not give rise to any representation that would bind the respondent in respect of how long IIP applications would be in process or as to the priority within which they would be considered, for several reasons.

[52] The Applicants emphasize the website was considered an authoritative source as this was where the Policy was announced and updated. The Applicants ask to distinguish *Jia,* alleging the Respondent's reliance on this case is misplaced. In *Jia*, this Court held statements made on websites are distinct from representations made by the Minister and have been treated differently by this Court:

> [94] Secondly, there is no basis to conclude that any representations that should be viewed as binding were made to the applicants. The applicants argue that the June 8, 2006 Operational Instruction and the form letters should be viewed as creating such representations and should be given the same binding effect as the Minister's statements were given in *Liang*.
>
> [95] I disagree because there are several important differences between the statements that Justice Rennie found to be binding in *Liang* and the documents the applicants rely on here.
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> [96] Most importantly, the statements in *Liang* were made by the Minister, himself, in a report he laid before Parliament in discharge of his duties under the *IRPA*. Such a commitment cannot be likened to general statements made in departmental form letters or general comments on processing made in an Operational Instruction that was overtaken by legislative amendments and further Bulletins.

[53] I see no reasoned basis on which I should reject the considered determination of Justice Gleason, which I consider to be as good law now as it was then.

[54] I also note, as the Respondents submit, there is no evidence an exemption under s. 12.8 was before the TRV officer. It was not. The parties now dispute who should raise it, whether the Applicants should raise it or whether IRCC officers should scour *IRPA* and *IRPR* on behalf of Applicants' counsel or their consultants.

[55] I have noted s. 12.8 was not raised in either *A.B.* or in the other two cases decided today. In fact, s. 12.8 of *IRPR* is raised for the first time in the Applicants' Further Memorandum dated October 14, 2025, where it is mentioned in respect of the Afghanistan Airlift Policy (although in error I referred to this regulation in *A.B.* as the *Temporary Public Policy for the Resettlement of Afghan Nationals with a Significant and/or Enduring Relationship to Canada*).

[56] No decision has been made on these five applications which are still before IRCC. This is, after all, a *mandamus* and not a review of a decision. This case is very much still in the system. I see no reason why the Applicants may not bring s. 12.8 to the attention of IRCC in these cases. I see no need to decide whether officers are obliged to consider s. 12.8 as the Applicants argue, or whether s. 12.8 is a matter the Applicants must raise.

[57] To me, and with respect, it is common sense that counsel raise s. 12.8 with IRCC and do so sooner rather than later, especially now they have just raised it with the Court as an important consideration.

[58] While the Applicants are encouraged to ask for urgent consideration of s. 12.8, I agree that may not be the end of this matter because of the "high priority security screening" still being addressed, which is another reason why engaging s. 12.8 now with IRCC is preferable.

[59] Overall, I am satisfied the Applicants have a legitimate expectation to their applications being disposed of in a timely manner. However, this obligation only arises when the Applicants meet all the conditions of the Policy, per *A.B.* at paragraphs 64-66:

> [64] The Applicant also relies on, and I agree *A.B.C.D. v Canada (Minister of Citizenship and Immigration)*, 2025 FC 1296 is an example of legitimate expectations arising from a similar policy for Afghan nationals. Justice Gascon confirmed his applicant had "legitimate expectations by virtue of adopting the Policy, which contains clear, unambiguous, and unqualified representations about the expedited application process" (at para 40).
>
> [65] The Respondent submits that no representations were made as to processing time, approvals, or who may exit Gaza. Having reviewed the record on this point, I am not persuaded any such representation was made.
>
> [66] That said, in the circumstances, I agree with the Applicant and Gascon J. that she had a legitimate expectation her TRV application would be dealt with in a "timely manner." Otherwise, the Policy could be nullified and promises of the Policy emptied of its effective content. However, the obligation to process her application under this Policy in a timely manner only arises when she meets the requirements of the Policy, leaves Gaza and provides her biometrics, albeit through no fault of her own she is unable to do any of this.

(3) <u>There is no clear right to performance</u>

[60] The Applicants submit they have a clear right to the timely processing of their TRV applications. I find they do not.

[61] The Applicants refer to *A.B.* where the applicant did not comply with the Policy because she did not (and could not because the Rafah crossing had been closed) provide her biometric information. The Applicants submit, however, the Policy does not require the Applicants to exit Gaza without some form of assistance from Canada. They submit, since its inception, the Policy has indicated Canada would assist the Applicants in advocating for their exit to provide their biometrics. The Applicants state the GCMS notes do not show the Respondent has taken any steps to advocate for the Applicants' exit from Gaza.

[62] I am not persuaded by this submission. While I have every sympathy for the Applicants, it remains the fact, as the Respondent submits, the Applicants have not satisfied the conditions precedent to issue an order of *mandamus*. A clear condition of the Policy requires the Applicants to submit their biometric information. Due to the Rafah border closure, and through no fault of their own, the Applicants have not done so, nor may the Court, although hopefully that will change as apparently contemplated by the ceasefire.

[63] Notably, under the step-by-step approach the Applicants argued, there would of course be no duty on Canada to engage in exit advocacy under step 5 because step 4 is not complete. This is another reason in support of a holistic approach on judicial review, as encouraged in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 97

[64] The Applicants also submit the assessment of a clear right to performance of the duty in question requires this Court to consider the prejudice to the Applicants and their family: *Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159 [*Vaziri*] citing *Blencoe v*

British Columbia (Human Rights Commission), 2000 SCC 44 at paragraph 101. However, the Respondent submits more recent case law from this Court addresses the issue of prejudice under the balance of convenience assessment. As Justice Grant recently held in *Majidi v (Citizenship and Immigration)*, 2025 FC 680 at paragraph 28:

> [28] I agree that prejudice may, in some cases, be a relevant factor in determining whether a Court should issue a writ of *mandamus*. I am not convinced, however, that the high bar of "significant prejudice" necessarily flows from the abuse of process context to the *mandamus* context, or that a new, independent criterion is necessary to consider the issue of prejudice. As noted above, the mandamus analysis is already characterized by a comprehensive framework involving the 8-part *Apotex* test, plus the 3-part *Conille* test. In my view, the question of prejudice can easily be incorporated into the present framework, most appropriately under the balance of convenience stage of the analysis. Where the question of prejudice does *not* belong, in my respectful view, is in the assessment of unreasonable delay. I note that my colleague Justice Turley has very recently, and coincidentally, come to precisely this conclusion in *Tousi v Canada (Citizenship and Immigration)* 2025 FC 671 [*Tousi*]. I entirely agree with Justice Turley's conclusions on this issue, as set out at paras 13-17 of *Tousi*.
>
> [Emphasis added]

[65] The resulting prejudice to the Applicants and their family will be addressed under the balance of convenience stage.

[66] As a result, I am not persuaded the Applicants have established a clear right to performance of the duty in respect of which they seek *mandamus*. This is fatal to their application.

(a) *Prior demand for performance*

[67] The Applicants submit their compliance with the application instructions should be construed as a prior demand for performance. In January 2024, the Anchor submitted a crisis webform with the required documents and submitted completed applications on April 3, 2024. The Anchor has also responded to requests for further information.

[68] Considering the Applicants have not established a clear right to performance, it is not necessary to consider this issue.

(b) *Reasonable time to comply with the demand*

[69] The Applicants security screening has been pending since April 24, 2024. The Applicants submit the nearly 18 months since the submission of their applications is sufficient time for the Respondent to comply with their demand for performance. Moreover, the “high priority security screening” regarding the adult male Applicant continues as recently as this September. I am not persuaded a reasonable time has elapsed.

(c) *Unreasonable delay*

[70] More particularly, the assessment of unreasonable delay is informed by the factors from *Conille v Canada (Minister of Citizenship and Immigration) (1998)*, [1999] 2 FC 33 at 43: (1) the delay has been longer than the nature of the process required, prima facie; (2) the applicant

and counsel are not responsible for the delay; and (3) the authority responsible for the delay has not provided a satisfactory justification.

[71] The reasonableness of the delay is a factually infused and highly contextual matter. There is no uniform length considered unreasonable. However, the Respondent reasonably acknowledges delay of two or three years or more has been considered unreasonable by this Court: *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at paragraph 37 [*Almuhtadi*].

[72] The Applicants submit the delay has run longer than is required by the nature of the process. Whether the delay runs longer than what is required should be considered contextually within the immigration scheme: *Vaziri* at paragraph 55. Considering these applications were made under a special immigration measure to respond to a humanitarian crisis, the Applicants submit the nature of the process is necessarily urgent.

[73] The Respondent submits the Applicants have failed to establish the processing time exceeds what is required by the nature of the process. The Applicants submitted their application and received their codes in March and April 2024 respectively. In June 2024, the IRCC requested the adult male Applicant's social media information and received a response in August 2024. A further request was made about the adult male Applicant's employment history. Notably, this request was made at the request of Canada's partners. This information was received and sent to the partners on September 2, 2025.

[74] In *Almuhtadi*, this Court found a delay of two or three years to be unreasonable: at paragraph 37. The Respondent emphasizes this is not a strict threshold but submits the delay has not yet reached this point. I agree.

[75] The Applicants submit they are not responsible for the delay as they have met the conditions for their applications by fulfilling all procedural requirements. The Applicants have submitted the necessary forms and documents. This is true, but obviously the screening continues as recently as September 2025.

[76] The Respondent submits they are not responsible for the delay. The completion of biometrics is beyond both the Applicants' and Minister's control due to the operational context, the continued closure of the Rafah border, and because of the Respondent's obligation to carefully consider all applications. I agree. The Respondent submits, and I again agree, that denying access to persons otherwise inadmissible to Canada on the basis of criminality or a risk to security requires careful consideration and time: *IRPA* at paragraphs 3(1)(h) and (i); *Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at paragraph 10. The process of assessing applications under this Policy requires careful consideration and time to give effect to the objectives of *IRPA*.

[77] The Applicants submit the Respondent has not provided any explanation for the processing delay, let alone any satisfactory justification. The Applicants have not received information about their status except automated emails. No correspondence has been received

since their applications were made 18 months ago. The Respondent submits the above explanation related to the objectives of *IRPA* is sufficient justification for any delay.

[78] The Applicants further submit this Court has held a background or security assessment pending without further explanation is not an adequate explanation for delay: *Vadiati v Canada (Citizenship and Immigration)*, 2024 FC 1056 at paragraphs 18-19.

[79] There is no merit in this line of argument. The Applicants know their applications are not "complete" as set out in their Application for Leave and for Judicial Review (all steps not just step 4 as they now focus on) because of the radical shift in the operational context on the ground since May 7, 2024. They know the "high priority security screening" of the adult male Applicant was active and continuing in September 2025 and, while each is a separate application, his applicant may have negative consequences for all. In all five cases, there is a clear and well understood explanation: the absence of biometrics as required by the Policy and Canada's inability to change the causal operational context brought about by that border closure.

[80] It is important to keep in mind that preliminary security screenings and high priority screenings both involve multiple departments within the Government of Canada, and in addition, multiple foreign states over which Canada has no authority or control. I agree with the following determinations by Justice Blackhawk in *Cheloei* at paragraphs 22-23:

> [22] I accept the submissions of the Respondent that security screening and background checks involve multiple government departments and must be comprehensive to fulfill the Minister's obligations under the Immigration and Refugee Protection Act, SC 2001, c 27 [*IRPA*]. IRCC works with security partners who have

> subject-matter expertise and tools to conduct necessary statutorily required security checks.
>
> [23] While the processing time in this application has been lengthy, it is not unreasonable. The process has been ongoing since September 2023, roughly 18 months. The Applicant is an Iranian citizen and indicated that he had two years of mandatory service in the IRGC. The record for this application demonstrates that the Respondent has been taking steps to move the application forward.
>
> [Emphasis added]

[81] While the processing time of 18 months in *Cheloei* was considered lengthy, it was not unreasonable: paragraph 23. I find the reasoning of Justice Blackhawk in *Cheloei* persuasive and entirely adopt it. There is no unreasonable delay in this case.

(4) No adequate remedy is available, no equitable bar to relief exists, and the order will not have practical value

[82] The Applicants submit there is no alternative remedy available because this Policy was designed to circumvent certain barriers in Canada's immigration system. There is no equitable bar to relief as the Applicants have complied with IRCC's instructions and requests. The Respondent concedes there is no alternative remedy available and no equitable bar to relief but submits the order will not have practical value. I agree.

[83] While the Applicants suggest an order of *mandamus* would end their suffering, it seems to me, unfortunately it would not. The Rafah border crossing has been closed since May 7, 2024 and remains closed despite the conditions of the recent ceasefire agreement. Even if the Applicants' TRV applications were successful, they would not be able to leave Gaza as matters presently stand.

[84] Section 12.8 of *IRPR* is relevant here as well. As I understood it, submissions were made that *mandamus* would have practical effect because biometrics may not be necessary given s. 12.8 of *IRPR.* This might open a door for the Applicants. It seems to me this submission has merit, but of course it is for IRCC to weigh and assess the applicability of s. 12.8. Notably, it might be ironic if not contradictory if the Applicants choose not to raise s. 12.8 with IRCC given their arguments in Court were that s. 12.8 might assist their clients.

(5) The balance of convenience does not favour an order of *mandamus*

[85] The Applicants submit the balance of convenience favours granting *mandamus* because the "extreme risk" to the Applicants outweigh any risk experienced by the Minister by processing their TRV applications. The Applicants submit they, along with their family, have experienced significant prejudice:

> It is indisputable that the unreasonable delay in finalizing the Applicants' applications has resulted in significant prejudice to the Applicants. The Applicants are trapped in an apocalyptic warzone. Their only means of escape is the Policy. Over the past 18 months of processing on the part of IRCC, they have fought to stay alive in the face of starvation, thirst, illness, and bombing. Every day of delay on IRCC's part prolongs the Applicants' risk of being killed by the IDF. "A.A." and "B.B." are in dire need of medical attention, and their conditions will only worsen without intervention. The adult Applicants are forced to watch their daughters waste away further from starvation and thirst with each passing day. The prejudice the Applicants have suffered is a heightened risk to their lives - there is no greater prejudice.

[86] The Respondent submits the balance of convenience favours not granting *mandamus.* The Minister has a statutory duty to maintain the integrity of Canada's immigration system which requires diligence and careful consideration of applications. Granting an order of *mandamus*

where security assessments – one a "high priority security screening" regarding the adult male Applicant – are pending and biometrics have not been collected would not be in the interests of justice. The Respondent further submits matters of foreign affairs and Canada's national interests are squarely within the purview of the Executive and not the Courts: *Canada v Boloh 1(A),* 2023 FCA at paragraph 66.

[87] Granting *mandamus*, or indeed the visas requested, where necessary biometrics have not been reviewed entail risks which could be contrary to the interests of justice. This is an issue for the Minister to ponder.

[88] Ultimately, this Court cannot set, vary or grant exemptions for government policies. As noted in *A.B.*:

> [9] While I have every sympathy for the Applicant, given conditions of the Policy, and the Applicant's obligation to meet all of its conditions, I am unable to order *mandamus*. To do so would require the Court to rewrite the Policy, which is beyond the powers of the Court, and may only be done by the Minister. Indeed, the Federal Court of Appeal has just recently held "it is not the role of this Court to set, vary, or grant exemptions from governmental policy."
>
> …
>
> [91] Very regrettably, and while I have every sympathy for the situation the Applicant and others like her find herself in, the Policy requires them to exit Gaza and deliver biometrics in approved manner to the Minister. To hold otherwise would be to impermissibly rewrite the Ministerial Policy. In effect, and with respect, the Applicant asks the Court to rewrite the Policy. That is not permitted on an application for *mandamus*, nor generally. Indeed, this law was very recently considered and confirmed in *Universal Ostrich Farms Inc. v Canadian Food Inspection Agency*, 2025 FCA 147 at paragraph 6: "it is not the role of this Court to set, vary, or grant exemptions from governmental policy." While

> this general proposition is correct, it is of course subject to *Charter* considerations; no *Charter* issues were advanced in this case.

[89] Overall, and in my respectful view, the balance of convenience favours the Respondent.

C. *Relief sought*

[90] The Applicants request a number of orders. It is not necessary to address these because the Applicants have not established their right to *mandamus*.

VI. Conclusion

[91] With respect and with the greatest sympathy for the Applicants, I am not satisfied they are entitled to an order of *mandamus*. The Applicants have not fulfilled all conditions precedent to the processing of their applications. Therefore the Application will be dismissed.

VII. Certified Question

[92] Neither party proposes a question for certification, and I agree none arises.

VIII. Costs

[93] At the hearing the Applicants abandoned their request for costs. Properly so: this is not a case for costs.

JUDGMENT in IMM-9513-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

3. There is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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