Federal Court  Cour fédérale

Date: 20260318

Docket: IMM-9064-24

Citation: 2026 FC 365

Ottawa, Ontario, March 18, 2026

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

A.A., B.B., C.C., D.D., E.E., F.F., G.G.

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are a Palestinian family of seven currently living in Gaza. In January 2024, they submitted applications for temporary resident visas [TRVs] under the *Temporary Public Policy to Facilitate Temporary Resident Visas for Certain Extended Family Affected by the Crisis in Gaza* [Policy].

[2] Having not received a decision on their application, on May 23, 2024, the Applicants commenced this application for a writ of *mandamus* compelling the Minister of Citizenship and

Immigration [Minister] to complete the processing of the Applicants' applications for TRVs under the Policy, in a timely and lawful manner pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[3] For the reasons that follow, I am not satisfied that the Applicants have demonstrated that all of the prerequisites for the issuance of a writ of *mandamus* have been met. Accordingly, this application for judicial review shall be dismissed.

I. The Policy

[4] On December 22, 2023, the Minister announced the creation of a new temporary resident pathway under the Policy, enacted pursuant to section 25.2 of the *IRPA*, which came into effect on January 9, 2024. The Policy was intended to provide a family-based temporary refuge for Palestinian nationals directly affected by the crisis in the Gaza Strip who have Canadian citizen or permanent resident family members in Canada willing to support them during their temporary stay. These Canadian citizen or permanent resident family members act as "anchor relatives".

[5] The Policy exempts foreign nationals applying for a TRV from listed provisions of the *IRPA* and the *IRPR* provided they meet the following eligibility criteria and conditions prescribed in Part 1 through 3 of the Policy:

Part 1	**Partie 1**
1. The foreign national:	1. L'étranger :
i. has submitted an application for a temporary resident visa;	i. a présenté une demande de visa de résident temporaire;

ii. was in the Gaza Strip on the day they submitted their application;

ii. était dans la bande de Gaza le jour où il a présenté sa demande;

iii. is a Palestinian Territory passport holder;

iii. est titulaire d'un passeport des territoires palestiniens;

iv. has identified an anchor, who meets the requirements in Annex A;

iv. a désigné une personne de soutien qui répond aux exigences de l'annexe 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;

v. est l'époux, le conjoint de fait, l'enfant (quel que soit son âge), le petit-enfant, le parent, le grand-parent ou le frère ou la sœur de la personne de soutien indiquée à la condition iv de la partie 1;

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

vi. dispose d'une déclaration statutaire signée par la personne de soutien identifiée à la condition iv, dans laquelle cette dernière atteste :

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

a. qu'elle a l'intention de fournir le soutien prévu à l'annexe B à l'étranger et aux membres de sa famille tels que définis au paragraphe 1(3) du Règlement;

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

b. qu'elle n'a pas accepté, et qu'elle comprend qu'elle ne doit pas accepter, de compensation financière de la part de l'étranger et des membres de sa famille;

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.

vii. a présenté la demande par voie électronique (en ligne) ou au moyen d'un autre format de demande fourni par le Ministère si l'étranger ou son représentant a indiqué qu'il n'était pas en mesure de présenter une demande en ligne.

Part 2	**Partie 2**
2. The foreign national:	2. L’étranger :
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;	i. est un membre de la famille, au sens du paragraphe 1(3) du Règlement, d’un étranger qui a présenté une demande au titre de la présente politique d’intérêt public et qui a été jugé comme remplissant les conditions énumérées à la partie 1;
ii. has submitted an application for a temporary resident visa; and	ii. a présenté une demande de visa de résident temporaire;
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.	iii. a présenté la demande par voie électronique (en ligne) ou au moyen d’un autre format de demande fourni par le Ministère si l’étranger ou son représentant a indiqué qu’il n’était pas en mesure de présenter une demande en ligne.
Part 3	**Partie 3**
3. The foreign national:	3. L’étranger :
i. holds a temporary resident visa that was issued following facilitation under Part 1 or Part 2; and	i. est titulaire d ’un visa de résident temporaire délivré à la suite d’une mesure de facilitation au titre des parties 1 ou 2;
ii. seeks to enter Canada as a visitor.	ii. cherche à entrer au Canada comme visiteur.

[6] Under the Policy, 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. The Policy makes clear that all other applicable statutory eligibility and admissibility requirements continue to apply, which would include the

requirements to provide biometric information (fingerprints and photographs) and to pass a security screening.

[7] The Policy sets out the following distinct stages in the application process:

A. The first stage requires the Canadian citizen or permanent resident anchor relative to: (a) complete a statutory declaration form and a consent to disclose personal information form; and (b) promise to support their family members for one year after they have arrived in Canada.

B. The second stage requires the anchor relative or their representative to submit a web form attaching the completed statutory declaration form, a copy of the anchor relative's government-issued photo identification, proof of the anchor relative's proof of status in Canada and proof that the anchor relative lives or intends to live in Canada. Once received, IRCC reviews the submission for completeness. If the submission meets the requirements and there are spaces available, IRCC issues a unique reference code for each eligible applicant listed in the statutory declaration.

C. The third stage requires applicants to submit their TRV applications through the IRCC portal. The unique reference code issued in the second stage must be used when completing this stage. Applicants are also required to provide a copy of the stage one statutory declaration, proof of their relationship to the anchor relative, a copy of their passport or travel document issued by the Palestinian Authority

showing their residence in Gaza, consent to disclose personal information form and an additional background information form.

[8] Upon receiving the TRV application, IRCC conducts a preliminary eligibility and security screening while an applicant is in Gaza. Upon successful completion of the preliminary eligibility and security screening, IRCC will forward an applicant's name to the Israeli and Egyptian governments and will work with the local authorities to advocate for the applicant's exit from the Gaza Strip, as Palestinians cannot freely exit the Gaza Strip. Canada does not decide who can leave the Gaza Strip and cannot guarantee that an applicant will be authorized to leave. Once an applicant has exited the Gaza Strip, an applicant who is between the ages of 14 and 79 and who has not previously provided biometric data in the last 10 years needs to provide their biometrics to IRCC. This biometric data enables IRCC to complete a full admissibility assessment. Unfortunately, biometrics can only be provided after an applicant exits the Gaza Strip as there is no biometric collection facility in Gaza.

II. Exiting the Gaza Strip

[9] As noted above, Palestinians cannot freely exit the Gaza Strip. They must obtain exit permits from Israel, which are issued by the Coordinator of Government Activities in the Territories [COGAT], a unit within the Israeli Ministry of Defense.

[10] Prior to the conflict, there were three operational border crossing in Gaza: (i) Rafah (which borders Egypt), Beit Hanoun (which borders Israel) and Karem Abu Salem/Kerem Shalom (which borders Israel). During the course of the conflict, some Palestinians were able to flee Gaza through the Rafah border by paying large bribes to Egyptian companies. However, in

May 2024, the Israeli military seized and shut down the Rafah border crossing. Between July 2024 and October 2024, COGAT only permitted a small number of medical evacuees and their companions to exit the Gaza Strip.

[11] From early 2025 to the present, COGAT has allowed foreign visa holders and, in some cases, visa applicants, to exit the Gaza Strip through the Karem Abu Salem/Kerem Shalom border crossing, provided that a foreign government can ensure their onward travel to a third country. The foreign government must share the individual's name with COGAT, who then forwards it to Israel's intelligence agency to perform a security screening. If the security screening is passed, COGAT issues an exit permit to the individual.

[12] In 2025, the Government of Canada evacuated 41 Palestinians through the Karem Abu Salem/Kerem Shalom border crossing. Each of these individuals had pending TRV applications under the Policy, had passed preliminary security screening and had previously provided biometrics.

[13] On the day of the hearing of this matter, it was reported that the Rafah border was set to reopen on a limited basis, with a daily limit on the number of individuals permitted to exit the Gaza Strip, and following the same process as noted above.

III. The Applicants' Applications under the Policy

[14] The Applicants are a family of seven, consisting of a father (AA), mother (BB) and five children (13-year old CC, 14-year-old DD, 17-year-old EE, 20-year-old FF and 7-year-old GG). The anchor relative is the father's sister [Anchor]. According to the Applicants, since the

outbreak of the conflict in October 2023, their home was bombed and destroyed and AA was seriously injured by a piece of shrapnel from an airstrike. The Applicants currently live in a camp for displaced Palestinians, which has also been previously bombed. They have no clean water or electricity and are ill from a lack of food and water. They live under the constant threat of being killed by Israeli Defense Forces airstrikes while they wait for the outcome of their TRV applications.

[15] On January 9, 2024, the Anchor submitted the web form and, on January 23, 2024, unique reference codes for the Applicants were sent by IRCC to the Anchor. The final step of the application process was completed on January 24, 2024, when the Anchor submitted the Applicants' TRV applications through the IRCC portal. Six of the seven Applicants were unable to provide their passports.

[16] All Applicants (other than CC and GG, who are under the age of 14) received biometric instruction letters advising that, in order to complete their biometrics, they are required to have their fingerprints scanned and their photographs taken at a biometric collection service point.

[17] On April 21, 2024, IRCC requested further information regarding AA's employment history. The Anchor responded on April 24, 2024, stating that AA had been self-employed as a driver from February 2010 until October 2023.

[18] In June of 2024, IRCC determined that all of the Applicants passed the preliminary eligibility requirements.

[19] On October 14, 2024, IRCC requested further information regarding EE's social media accounts, employment history and history of schools attended. The Anchor responded on October 21, 2024, providing EE's social media accounts and school information from Grades 1 to 11 and further noted that EE has no employment history as he was then just 17 years old. This information was then forwarded by IRCC to its partner agencies for security screening.

[20] In late November 2025, the Anchor requested from IRCC a biometrics exemption for all of the Applicants pursuant to section 12.8 of the *IRPR*, which allows for biometric exemptions in circumstances where biometric collection is impossible and/or not feasible. IRCC has not provided a substantive response to this request.

[21] On January 5, 2025, IRCC requested additional information regarding DD's social media accounts and history of schools attended. The Anchor responded on January 11, 2025, providing DD's school information from Grades 1 to 9 and her Instagram account.

[22] On January 6, 2025, IRCC requested FF's history of schools attended, which was provided by the Anchor on January 11, 2025.

[23] As of the date of the hearing, all of the Applicants, with the exception of EE, have passed preliminary security screening, or are otherwise exempt, and five of the Applicants have not provided their biometrics (the other two being exempt given their age).

IV. Preliminary Evidentiary Issues

A. The Liew Affidavit

[24] In their Further Memorandum of Fact and Law, the Applicants advised that they were no longer relying on the affidavit of Dr. Jamie Liew sworn November 9, 2024 [Liew Affidavit], as an expert affidavit. Dr. Liew is Professor of Law at the University of Ottawa. No expert certificate, as required by Rule 52.2 of the *Federal Courts Rules,* SOR/98-106, accompanied her affidavit. The Applicants requested leave of the Court to have the Liew Affidavit admitted as a lay affidavit for "the purposes of retaining the policies and news articles exhibited therein." In their written submissions, the Applicants did not specify which paragraphs of, and/or exhibits to, the Liew Affidavit should be struck. At the hearing, the Applicants proposed that paragraph 17 of the Liew Affidavit, wherein she offers an opinion on the effectiveness of the Policy, should be struck.

[25] The Respondent takes issue with more than just paragraph 17 of the Liew Affidavit, asserting that other paragraphs of the affidavit "appeal" to her expertise, offer a comparison between the Policy and other temporary policies enacted by the Minister and opines on Canada's reliance on temporary policies, all of which the Respondent asserts is inappropriate for a lay affidavit. The Respondent is content to have Exhibits G, L, M and N to the Liew Affidavit remain as part of the evidentiary record.

[26] In response to the Respondent's concerns, the Applicants stated that they really only want to rely on the exhibits to the Liew Affidavit and are content to only keep those paragraphs that introduce the exhibits plus the exhibits themselves.

[27] I find that nothing in this case turns on any of the evidence contained in the Liew Affidavit. The effectiveness (or lack thereof) of the Policy and any other temporary policies that the Government of Canada has enacted in relation to Afghanistan, Sudan, Ukraine, Turkey or Syria, are not relevant to the issues before the Court. I also note that the Applicants did not even attempt to advance any arguments in support of their relevance.

[28] I find that the opinions offered by Dr. Liew are not limited to paragraph 17 as suggested by the Applicants, as, for example, paragraphs 15 and 16 also provide clear expressions of her opinion. However, as the Applicants are content to only rely on the exhibits to the affidavit, I need not go further in my analysis of each paragraph.

[29] With respect to the exhibits, while the Respondent is content to leave Exhibit G in the evidentiary record (an article from *The Hill Times* about Turkish earthquake victims), I fail to see how it is relevant, but given that no request has been made to strike it, I will leave it in, together with the limited language of subparagraph (a) of paragraph 12 that introduces the exhibit. I am satisfied that Exhibits K through N are properly before the Court as providing necessary general background information to this case and may remain in the evidentiary record, together with only that portion of paragraph 16 that introduces those exhibits. While repetitive of evidence already in the record, I find there is no basis to strike paragraph 14 and Exhibit J. The balance of the Liew Affidavit, with the additional exception of paragraph 1, is hereby struck.

B. Ezeddin Affidavit

[30] The Respondent takes issue with Exhibits S through DD of the affidavit of Tala Ezeddin sworn December 25, 2025 [Ezeddin Affidavit]. Ms. Ezeddin is a legal assistant for counsel for

the Applicants. Her affidavit exhibits a compilation of news articles, reports and press releases, without any commentary thereon. Exhibits S through DD consist of various news articles related specifically to the evacuation of Palestinians from Gaza.

[31] The Respondent asserts that the disputed exhibits are inadmissible to the extent that the Applicants are relying on them to suggest that it is within Canada's ability to facilitate the exit of Palestinians from the Gaza Strip, which goes to the merits of the *mandamus* application. The Respondent asserts that these exhibits go beyond background information and, in any event, are unnecessary as there is other evidence before the Court from those who claim to have personal knowledge of the means that have been used to facilitate the exit of Palestinians from the Gaza Strip.

[32] I find that there is no merit to the Respondent's objection. The news articles address the freedom of movement across the Gaza border; namely, that limited evacuations are occurring, as described above, and that the situation has changed from what it was in May 2024, when none of the border crossings were open. I find that these articles provide useful background information to this case. Moreover, the current state of the border crossings and the limited exits of Palestinians from the Gaza Strip is not a point of controversy between the parties. While it should go without saying, the fact that this evidence may appear elsewhere in the evidentiary record from those with greater personal knowledge is not a basis to strike this evidence. Accordingly, I reject the Respondent's request to strike Exhibits S through DD to the Ezeddin Affidavit.

C. Behrens Affidavit

[33] The Respondent takes issue with Exhibit A to the affidavit of Matthew Behrens sworn December 15, 2025 [Behrens Affidavit]. Mr. Behrens, the coordinator of the Rural Refugee Rights Network, has been working with many Palestinian families in Canada trying to bring their family members to Canada under the Policy and has been in direct contact with applicants under the Policy who remain in Gaza and/or are stranded in Egypt. Exhibit A to his affidavit is a compilation of Canadian news articles reporting on cases that he and his colleagues have been involved with. The Respondent takes issue with any opinions expressed by Mr. Behrens on the efficacy of the Policy, as reported in the news articles, although the Respondent has not identified the particular pages of Exhibit A on which such opinions are expressed. The Applicants acknowledge that they are not relying on any such opinions and thus have no issue with those portions of any articles being struck. However, as the Respondent has not proposed specific portions of Exhibit A to be struck, I will simply assign no weight to any such opinions.

[34] At the hearing, the Respondent advised that they also take issue with paragraphs 33-36 of the Behrens Affidavit and Exhibits E and F on the basis that this evidence relates to experiences of Palestinians under a different temporary policy in 2021. The Applicants did not respond to the Respondent’s criticism of this evidence. I agree with the Respondent that this earlier policy and the experiences of applicants thereunder are not relevant to the issues before the Court. As such, paragraphs 33-36 and Exhibits E and F of the Behrens Affidavit shall be struck.

V. Analysis

A. The Test for *Mandamus*

[35] In *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 76, Justice Little concisely explained the discretionary equitable remedy of *mandamus*:

> *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.

[36] A writ of *mandamus* is an extraordinary remedy and *mandamus* applications must be assessed on the particular facts of each case [see *Tapie v Canada (Citizenship and Immigration)*, 2007 FC 1048 at para 7].

[37] The legal test for an order of *mandamus* is well-established. The following eight preconditions must be satisfied by an applicant for the Court to issue a writ of *mandamus*:

(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;

(4) Where the duty sought to be enforced is discretionary, certain additional principles apply;

(5) No other 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:

[see *Apotex v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 (CA) at 766–769, aff'd 1994 CanLII 47 (SCC), [1994] 3 SCR 1100; *AR v Canada (Citizenship and Immigration)*, 2025 FC 236 at paras 28–29].

[38] To satisfy the third requirement above, a clear right to the performance of a public legal duty to act, applicants must establish that: (i) they have satisfied all the requirements for a decision to be made; (ii) they have made a prior request that a decision be made; (iii) there was a reasonable time to comply with the demand; and (iv) the decision-maker has either expressly refused to make a decision or has taken unreasonably long to do so [see *Apotex*, *supra* at 767].

[39] Furthermore, three additional requirements must be met for a delay to be considered unreasonable: (i) the delay in question has been longer than the nature of the process required, *prima facie*; (ii) the applicant is not responsible for the delay; and (iii) the authority responsible for the delay has not provided a satisfactory justification [see *Conille v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9097, [1999] 2 FC 33 at 43]. There is no uniform

standard for what constitutes a reasonable length of time. Each case turns on its facts, especially in light of the relevant immigration regime [see *Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 at para 33].

B. The Relief Sought on this Application

[40] In their Notice of Application, the Applicants sought the following relief:

A. A declaratory order for a finding that the Minister refused to process the applications in a timely manner and has unreasonably delayed the processing of the applications;

B. An order for a writ of *mandamus* to compel the Minister to complete the processing of the Applicants' applications in accordance with the *IRPA*;

C. A declaratory order that the processing of the Applicants' applications be completed within five days of the Court's determination of the application for judicial review;

D. A declaratory order that the Minister has inordinately delayed the conclusion of this case and acted unfairly in failing to disclose to the Applicants the reason for delay in concluding the processing of this case;

E. The Applicants' costs for this proceeding; and

F. Such further and other relief as may be advised and as this Court considers appropriate in the circumstances.

[41] However, in their written representations and at the hearing of the application itself, the Applicants sought entirely different relief, namely:

A. An order compelling IRCC to expedite the preliminary security screening of the Applicant, EE, within 15 days of receipt of this order;

B. Provided that the preliminary security assessments of the Applicants are complete, an order compelling IRCC to work with local authorities to advocate for the exit of the Applicants out of the Gaza Strip in accordance with the updated Policy within 15 days of the completion of the preliminary security assessments; and

C. Provided that the admissibility assessments of all Applicants are completed, an order compelling IRCC to issue TRVs, or, in the alternative, temporary resident permits for all Applicants within 15 days of the completion of the admissibility assessments.

[42] In essence, the Applicants are now breaking down the processing of their TRV applications into several steps and asking this Court for a series of *mandamus* or mandatory orders compelling the performance of acts by IRCC that are dependent upon the outcome of prior steps in the processing of their applications. This new relief is problematic for a number of reasons.

[43] The first problem is that the Applicants did not seek this relief in their Notice of Application. At the hearing, the Applicants argued that their failure to plead the relief now

sought should not be an impediment to the Court's consideration thereof. Relying on Justice Grant's decision in *Leung v Canada (Minister of Public Safety and Emergency Preparedness)*, 2025 CanLII 69305 (FC), the Applicants assert that a more relaxed approach is taken when considering pleadings in immigration matters and that the same relaxed approach should be taken here given the context.

[44] I reject this assertion. Justice Grant's decision considered the sufficiency of the applicant's pleading in that case solely as it related to the grounds of review, not the relief sought. Moreover, his endorsement of a less stringent approach to pleadings in immigration matters (limited as it was to only the grounds of review) was premised on a recognition that, in many cases, applicants must commence an application for leave and judicial review prior to receiving the reasons for decision, which prevents them pleading the grounds of review with precision. Importantly, Justice Grant's decision was also addressing the state of an applicant's pleading in the context of an urgent motion for a stay of removal, where requiring pleading amendments to specify the precise grounds of review may be impractical, if not impossible, due to timing considerations.

[45] Here, the context is very different. It is not the grounds of review that are at issue, but rather the relief sought. Rule 5(1)(e) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, requires that an application for leave shall set out "the precise relief to be sought on the application for judicial review". This language is similar to the language contained in Rule 301(d) of the *Federal Courts Rules* (which applies to other applications for judicial brought before this Court), which requires that a notice of application set out "a precise statement of the relief sought".

[46] The Court's decision on an application for judicial review is limited to the relief set out in the notice of application. While declaratory relief that is necessarily ancillary to the pleaded relief may be granted under a basket clause in circumstances where the party opposite is not taken by surprise, or prejudiced in any way, this exception does not extend to mandatory orders [see *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at paras 36, 40; *SC Prodal 94 SRL v Spirits International BV*, 2009 FCA 88 at para 11; *Native Women's Association of Canada v Canada*, [1994] 3 SCR 627]. The Federal Court of Appeal has recognized that the requirements of Rule 301 are not mere technicalities. They ensure, among other things, that a respondent has adequate notice of the case being brought against them so that they can meaningfully respond [see *Iris Technologies, supra* at para 41].

[47] It is also of note that the change in the relief sought by the Applicants did not occur in urgent circumstances akin to a stay of removal. The Applicants had ample time to consider their legal position and seek an amendment to their pleading. In that regard, I note that counsel for the Applicants appeared before Justice Henry Brown of this Court on November 3, 2025, and argued for similar relief by way of sequential mandatory orders in another *mandamus* application, where they had also not amended their pleading to reflect the relief sought at the hearing [see *AA v Canada (Citizenship and Immigration)*, 2025 FC 1811 [*AA*]]. In his decision, released November 12, 2025, Justice Brown agreed with the Respondent's criticism that the relief sought at the hearing was not consistent with the relief as framed in the notice of application. Thus, counsel for the Applicants were well aware that their failure to amend their pleading in that case was problematic and should have anticipated a similar issue in this case. However, despite having ample time to do so, as this application moved forward to a hearing on February 2, 2026, the Applicants took no steps to amend their pleading.

[48] Second, and importantly, the relief now sought by the Applicants is inherently problematic. As framed, the Applicants seek a series of *mandamus* or mandatory orders that are contingent on a positive outcome in the previous stage of processing. For example, the Applicants ask the Court to compel IRCC to work with local authorities to advocate for the exit of the Applicants out of the Gaza Strip, provided that the outcome of the previously granted order was a positive preliminary security screening.

[49] However, mandatory obligations or *mandamus* cannot be imposed without first determining whether their exacting legal prerequisites are met [see *Canada v Boloh 1(a)*, 2023 FCA 120 at para 63]. That principle applies to each mandatory obligation or *mandamus* sought to be imposed. It is a prerequisite to obtaining a writ of *mandamus* that there be proof that performance of the duty is actually due and incumbent upon the decision-maker because *mandamus* will not be issued to enforce a future obligation. Courts will not simply grant this relief in anticipation of a potential or supposed future omission or refusal of a public officer to discharge their duty. There must be a prior demand that the duty be performed and a refusal to do so [see *Clifton v Hartley Bay Village Council*, 2005 FC 1594 at para 6; *Karavos v Toronto and Gillies*, [1948] 3 DLR 294, 1947 CanLII 326 (ON CA)]. In this case, IRCC would be under no duty to take further steps in the processing of the Applicants' TRV applications if EE does not pass his preliminary security screening. Moreover, unless and until EE passes his preliminary security screening, IRCC cannot be found to have refused or omitted to discharge their public duty to take any subsequent steps in the processing of the Applicants' TRV applications. In issuing *mandamus* relief, the Court must consider the circumstances as they exist as of the date of the hearing [see *Apotex*, *supra* at 770–771]. As of the date of the hearing of this application, I

cannot find that the legal prerequisites exist for the issuance of the sequential orders now sought by the Applicants.

[50] The Applicants assert that the relief now sought is in keeping with similar relief granted by Justice Gascon in *ABCD v Canada (Citizenship and Immigration)*, 2025 FC 1296j. In that case, Justice Gascon was faced with a situation where Global Affairs Canada [GAC] had failed to process an expression of interest received from one of the applicants (Mr. D) to initiate a verification of their eligibility under the Temporary Public Policy for the Resettlement of Afghan Nationals with a Significant and/or Enduring Relationship to Canada, which resulted in IRCC never processing their application before that policy expired. Justice Gascon found that the applicants met the test for the issuance of a writ of *mandamus*. In terms of the precise relief granted, Justice Gascon issued the following orders: (i) an order compelling GAC to process Mr. D's expression of interest and determine whether to refer him to IRCC within 30 days of this Court's decision; (ii) provided that he is referred, an order compelling IRCC to process his referral and determine whether to issue him an Invitation to Apply [ITA] within 30 days of his referral; and (iii) provided that he is issued an ITA, an order compelling IRCC to process and determine his application for permanent residence within 30 days of receipt of his application. While I acknowledge that sequential relief was granted in *ABCD*, *supra*, the reasons for decision do not contain any analysis of the basis for granting such relief and it is unclear if the issue of whether the legal prerequisites for a mandatory or *mandamus* order were met for each order was fully briefed before Justice Gascon. As such, I am not prepared to follow *ABCD*.

[51] Turning to the specific orders sought by the Applicants, the third problem relates to the Applicants' request for an order requiring IRCC to "work with local authorities to advocate for

the exit of all Applicants out of the Gaza Strip in accordance with the [Policy] within 15 days of the completion of the preliminary security assessments". The Respondent asserts, relying on the Federal Court of Appeal's decision in *Boloh*, *supra*, that such an order must be denied, as working with local authorities constitutes diplomatic advocacy and is not part of the processing of a visa. The Applicants deny that the relief sought constitutes diplomatic advocacy, as they assert that they are not asking the Court to tell IRCC how they are to work with local authorities. The Applicants stress that the relief sought simply mirrors the language used by IRCC in the Policy and, thus, it is open to IRCC to simply work with local authorities as they originally contemplated under the Policy.

[52] I agree with the Respondent that the Court must defer to the Executive when it acts on matters involving sensitive issues of foreign relations and international affairs [see *Boloh, supra* at para 66]. Compelling the Government of Canada to undertake diplomatic negotiations with the Israeli and Egyptian governments to facilitate the exit of Palestinians within a set time frame, in the context of complex and ever-changing circumstances in the Gaza Strip (as well as the broader context of on-going events in the Middle East), are just such matters. As such, I find that it is not open to the Applicants to seek such an order from the Court.

[53] The fourth problem is that the Applicants now request, by way of alternative relief, that the Court compel IRCC to issue temporary resident permits [TRPs] to the Applicants. However, the Applicants have never applied for TRPs and thus there is no TRP application for which *mandamus* relief can be granted.

[54] For all of the aforementioned reasons, I find that it is not open to the Court to consider the amended relief now sought by the Applicants. Accordingly, the Court will consider this application as originally pleaded, namely, whether a writ of *mandamus* should be issued to compel the Minister to complete the processing of the Applicants' applications, together with related declaratory relief.

C. Horizontal Stare Decisis

[55] Before turning to consider whether the Applicants have demonstrated that they have met all prerequisites for the issuance of a writ of *mandamus*, I want to address the impact of prior jurisprudence specific to the Policy on this determination.

[56] Much of the focus of the parties in their written and oral submissions was spent on the issue of horizontal *stare decisis* and whether there was any basis for this Court to depart from the decisions of Justice Brown in four prior *mandamus* applications brought by applicants awaiting decisions on their TRV applications under the Policy [*AA, supra*; *AB v Canada (Citizenship and Immigration)*, 2025 FC 1514 [*AB*]; *AA v Canada (Citizenship and Immigration)*, 2025 FC 1812; *AB v Canada (Citizenship and Immigration)*, 2025 FC 1813]. In each of those cases, Justice Brown rejected the requests for a writ of *mandamus*, finding that the applicants in those cases had not met all of the prerequisites to be granted a writ of *mandamus*. Of particular note, the applicants had not provided their biometrics and in *AA*, the preliminary security screening remained ongoing at the time of the hearing.

[57] Justification is required to depart from an earlier decision of a different judge of the same court on the same issue and a failure to do so constitutes an error of law [see *Canada v Bowker*,

2023 FCA 133 at para 37]. Horizontal *stare decisis* requires a judge to examine the prior decision and first determine whether the ratio is binding or distinguishable. If binding, the judge must then determine whether the precedent must be followed or can be departed from. The judge can only depart from a binding case if one or more of the exceptions described in *Hansard Spruce Mills Limited (Re)*, [1954] 4 DLR 590, 1954 CanLII 253 (BC SC) apply, namely, (i) the rationale of an earlier decision has been undermined by subsequent appellate decisions; (ii) the earlier decision was reached per incuriam (through carelessness or by inadvertence); or (iii) the earlier decision was not fully considered, e.g., taken in exigent circumstances [see *R v Sullivan*, 2022 SCC 19 at para 75].

[58] The Applicants have not attempted to bring Justice Brown's decisions within the *Spruce Mills* criteria, as they assert that the doctrine of horizontal *stare decisis* has no application due to Justice Brown's decisions being factually distinguishable. The Applicants point to new evidence before the Court that was not before Justice Brown, namely, that: (a) Canada has been able to evacuate Palestinians under the Policy through the Karem Abu Salem/Kerem Shalom border crossings (which was not known to Justice Brown when he made his decisions) and the Rafah border crossing (which was closed at the time of Justice Brown's decisions) has now reopened; and (b) COGAT has loosened requirements for exit from the Gaza Strip.

[59] The Respondent concedes that this evidence was not before Justice Brown but argues that these factual differences are not material as the Policy has not changed. Applicants must still pass preliminary security screening prior to their exit from the Gaza Strip and applicants must continue to provide biometrics under the Policy. The new evidence demonstrates that those

applicants that Canada has been able to evacuate had, unlike the Applicants here, passed their preliminary security screening and had already previously provided biometrics.

[60] I accept that there are factual distinctions between the circumstances that existed in the Gaza Strip at the time of Justice Brown's decisions and today. I have considered those factual distinctions in rendering my decision. However, for the reasons that follow, I agree with the Respondent that those factual distinctions are not determinative of the issues before the Court and do not render Justice Brown's decisions distinguishable.

[61] The Applicants further assert that Justice Brown's determinations that the applications before him were not complete given the absence of biometrics, and therefore the conditions precedent for the issuance of a writ of *mandamus* were not met, was based on an "incorrect premise". The Applicants assert that biometrics are not required at this stage of processing and only need to be provided once the Applicants exit the Gaza Strip, with the assistance of the Canadian Government. The Applicants assert that the creation of a multi-step process cannot shield the Minister from their responsibility to act at the preliminary steps of the process.

[62] I agree with the Respondent that this argument, when properly considered, is tantamount to arguing that Justice Brown's decisions were wrong, not simply that they are distinguishable. The Applicants' argument is rooted in their staged approach to the processing of their applications and request for sequential relief. However, I have rejected this approach, just as it was rejected by Justice Brown in *AA*.

[63] While the Respondent urged the Court to dismiss this application solely on the basis that the Applicants had failed to demonstrate that they meet one of the narrow exceptions to depart from Justice Brown's decisions, I am not prepared to do so. *Mandamus* applications must be assessed on the particular facts of each case, as they relate to the status of the applications of the applicants, the terms of the Policy and the current circumstances in the Gaza Strip. In considering whether the Applicants have met the prerequisites for the issuance of a writ of *mandamus*, I have considered Justice Brown's decisions, together with the other relevant jurisprudence.

D. The Applicants have not met all prerequisites for the issuance of a writ of *mandamus*

[64] The Applicants seek a writ of mandamus compelling the Minister to complete the processing of their TRV applications. The processing of an application is completed by the rendering of a decision on the application. While the Applicants would rather separate the processing of the application into sequential steps or stages, for the reasons already given above, I am not satisfied that relief of that nature can be granted. Moreover, I find that it would be inherently problematic to endorse an approach to *mandamus* applications in immigration matters whereby the government's legal duty to act is broken down into subcategories that are considered by the Court individually. I agree with Justice Brown that such an approach would be too formalistic and that the government's legal duty to act should be considered holistically [see *AA*, *supra* at para 48–49].

[65] As such, I find that the Court must approach this matter as the Applicants requesting an order compelling the Minister to make a decision on their TRV applications.

[66] In order to grant a writ of *mandamus*, the Court must be satisfied that all eight of the aforementioned prerequisites are met [see *Cheloei v Canada (Citizenship and Immigration)*, 2025 FC 820 at para 13; *AA*, *supra* at para 31].

[67] In this case, the problematic prerequisite is the third one; namely, that there must be a clear right to the performance of IRCC's duty to process the Applicants' TRV applications. To satisfy this requirement, the Applicants must establish that: (i) they have satisfied all the requirements for a decision to be made; (ii) they have made a prior request that a decision be made on their TRV applications; (iii) there was a reasonable time to comply with the demand; and (iv) the decision-maker has either expressly refused to make a decision or has taken unreasonably long to do so. I find that there are two deficiencies that render the Applicants unable to meet this prerequisite. Each of these deficiencies provide a sufficient basis upon which to deny the Applicants' request for a writ of *mandamus*. As such, I will not go on to consider the remaining prerequisites that must be met for a writ of *mandamus* to be granted.

[68] First, I find that the Applicants have not satisfied all of the requirements for a decision to be made on their TRV applications, as biometrics remain outstanding for five of the Applicants. The Policy provides no exemptions from the requirement to provide biometrics and requires the Applicants to exit the Gaza Strip to provide them, which I acknowledge they cannot freely do. I appreciate that with the opening of the Karem Abu Salem/Kerem Shalom border crossing (evidence that was not before Justice Brown), there is now another border crossing available to the Applicants to exit the Gaza Strip, provided the required permission is obtained for the foreign authorities. However, that does not change the fact that the Applicants have not yet provided their biometrics, which is a prerequisite to obtaining their TRVs.

[69] I appreciate that the Applicants are caught in an unworkable situation where they want to provide their biometrics but, for reasons outside of their control, are prevented from doing so. As sympathetic as I am the Applicants' circumstances, as recognized by Justice Brown, it is not open to the Court on this application for judicial review to set, vary or grant exemptions to the Policy's requirement to provide biometrics [see *AA*, *supra* at para 66; *AB*, *supra* at para 91; *Universal Ostrich Farms Inc v Canada (Food Inspection Agency)*, 2025 FCA 147 at para 6].

[70] Second, I am not satisfied that the Applicants have demonstrated that the delay in deciding their applications has been unreasonable. The reasonableness of the delay is factually infused and a highly contextual matter. As such, there is no uniform length of time considered unreasonable [see *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para 37].

[71] As mentioned in paragraph 39 above, three requirements must be met for a delay to be considered unreasonable: (i) the delay in question has been longer than the nature of the process required, *prima facie*; (ii) the applicant is not responsible for the delay; and (iii) the authority responsible for the delay has not provided a satisfactory justification [see *Conille*, *supra* at 43].

[72] Under the first *Conille* factor, the Applicants must demonstrate that the delay in question has been longer than the nature of the process required, *prima facie*. Here, the Applicants assert that the Policy was enacted to respond to a humanitarian crisis and thus the delay must be assessed in a manner that reflects the urgency of the Applicants' situation. The Applicants assert that the delay in question (just over two years from the date of filing) has been much longer than the nature of the process required.

[73] Unfortunately, I cannot agree with the Applicants. The majority of the delay, up until this point, has arisen due to the need to complete preliminary security screening and, in particular, the need to complete the screening of EE (who is now an 18-year-old man). IRCC requested additional information regarding EE in mid-October 2024 and his security screening has been with IRCC's partner agencies since then (i.e., for approximately 16 months).

[74] While the Policy recognizes that there is a humanitarian crisis in Gaza, the Minister did not exempt applicants under the Policy from the need to undergo security screening. This is not surprising given that the objectives of the *IRPA* with respect to immigration include "to protect public health and safety and to maintain the security of Canadian society" and "to promote international justice and security…by denying access to Canadian territory to persons who are criminals or security risks" [see paragraphs 3(1)(h) and (i) of the *IRPA*]. As noted by the Supreme Court of Canada in *Medovarski v Canada (Minister of Citizenship and Immigration); Esteban v Canada (Minister of Citizenship and Immigration)*, [2005] 2 SCR 539, 2005 SCC 51 at paragraph 10, the objectives as expressed in the *IRPA* indicate an intention to prioritize security. I find that the urgency of the humanitarian crisis in Gaza cannot take precedence over the statutory requirement to complete comprehensive security screenings of applicants seeking entry into Canada.

[75] Security screenings require that IRCC work with its security partners (who may have to work with foreign agencies), such that the amount of time a security screening takes is not entirely under IRCC's control. I appreciate that the amount of time that EE's security screening has taken thus far is at the longer end of the spectrum, but I cannot find that it is *prima facie*

unreasonable given the broader context in which these applications arise (i.e., the October 7, 2023 attacks and the ongoing conflict).

[76] That said, considering the issue of unreasonable delay based solely on how long it has taken to conduct the security screening is problematic; it improperly breaks down the determination of the application into its constituent steps rather than considering it as a whole. This approach taken by the Applicants is not surprising given that, in most *mandamus* applications that this Court sees, the delay is occasioned by the need to complete security screening. Once the security screening is complete, the underlying applications are generally ready for a determination.

[77] However, *mandamus* applications under the Policy are distinct, as the preliminary security screening is not the final step before a decision can be rendered and there may well be further delays that arise during the facilitation of the exit of applicants from the Gaza Strip. Canada has no control over the amount of time that it will take to facilitate an applicant's exit from the Gaza Strip and, with the demonstrated volatility in the region and the limited border crossings now occurring, it is impossible to estimate when any given application may be ready for a decision. As such, it is not surprising that IRCC has not made any representations on its website or in the Policy regarding estimated processing times (as it does with other types of temporary resident visas). To the contrary, Canada's guidance related to the Policy warns applicants about the lack of control that Canada has over the time that it will take the complete the processing of their applications, stating that "the Government of Canada does not decide who can leave Gaza and cannot guarantee that [an applicant] will be authorized to cross". This will

make it difficult for any applicant to establish the three *Conille* factors necessary to demonstrate that the overall delay in deciding their application has been unreasonable.

[78] Turning to the balance of the *Conille* factors, five of the seven Applicants, through no fault of their own and no fault of IRCC, have been unable to provide their biometrics. Until such time as they have done so (or until the Policy is amended), I find that IRCC cannot be faulted for the delay in making a determination on their TRV applications.

VI. Conclusion

[79] As the Applicants have not demonstrated that all of the prerequisites for the issuance of a writ of *mandamus* have been met to compel the Minister to complete the processing of their TRV applications, this application for judicial review shall be dismissed.

[80] The parties proposed no question for certification and I agree that none arises.

JUDGMENT in IMM-9064-24

THIS COURT'S JUDGMENT is that:

1. The following portions of the affidavit of Dr. Jamie Liew sworn November 9, 2024, are hereby struck: (a) paragraphs 2-11, 13, 15 and 17 in their entirety; (b) paragraph 12, except the subparagraph that introduces Exhibit G; (c) paragraph 16, except the subparagraphs that introduce Exhibits K, L, M and N; and (d) Exhibits A, B, C, D, E, F, H and I.

2. Paragraphs 33-36 and Exhibits E and F to the affidavit of Matthew Behrens sworn December 15, 2025, are hereby struck.

3. The application for judicial review is dismissed.

4. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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