NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTEM LATUSHKIN, Plaintiff - Appellant, v. DAVID RADEL, Los Angeles District Director U.S. Citizenship and Immigration Services, Defendant - Appellee.	No. 25-1440 D.C. No. 8:23-cv-02478-FMO-ADS MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Submitted October 27, 2026[**]

Before: SILVERMAN, FORREST, and VANDYKE, Circuit Judges.

Artem Latushkin appeals pro se from the district court's order dismissing without prejudice his Administrative Procedure Act ("APA") action alleging unreasonable delay in the adjudication of his asylum application. We have

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011). We affirm.

The district court properly dismissed Latushkin's APA claim because Latushkin failed to allege facts sufficient to show that the delay was unreasonable. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that to avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" (citation and internal quotation marks omitted)); *Vaz v. Neal*, 33 F.4th 1131, 1137 (9th Cir. 2022) (setting forth factors to determine if an agency action is unreasonably delayed).

The district court properly dismissed Latushkin's claim under the Mandamus Act because it sought the same relief as Latushkin's APA claim. *See Vaz*, 33 F.4th at 1135 (noting that "[b]ecause mandamus relief and relief under the APA are in essence the same," the court "may elect to analyze the APA claim only" (citation and internal quotation marks omitted)).

The district court did not abuse its discretion in dismissing Latushkin's complaint without leave to amend because amendment would have been futile. *See Cervantes*, 656 F.3d at 1041 (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

We do not consider matters not specifically and distinctly raised and argued

in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.