

DETAINED

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE, WASHINGTON

ARTURO SEPULVEDA AYALA,

Plaintiff,

v.

PAMELA BONDI, *et al.*;

Respondents.

CASE NO.: 2:25-cv-1063

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND STAY OF REMOVAL**

AGENCY FILE NO: A 

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND STAY OF REMOVAL**

I. Motion

1. Under FRCP 65 and 5 U.S.C. §705, the plaintiff moves this Court for an Emergency Temporary Restraining Order and Stay of Removal, preventing his removal from the United States and his transfer to another detention facility while these proceedings are pending.

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II. Basis for Motion

2. The petitioner, Mr. Arturo Sepulveda Ayala (“Mr. Sepulveda Ayala” or “Petitioner”), is a native and citizen of Mexico.

3. In his habeas petition, Mr. Arturo Sepulveda Ayala seeks release from confinement and protection from removal because he has deferred action.

4. Mr. Arturo Sepulveda Ayala has been detained at the Northwest ICE Processing Center in Tacoma, Washington, since February 2, 2025, when ICE reinstated a 2004 removal order. The Northwest ICE Processing Center is a privately-owned and operated immigration detention center run by the GEO Group, a private contractor for Immigration and Customs Enforcement.

5. Mr. Sepulveda Ayala was granted deferred action on February 19, 2025, following a bona fide determination of his U visa application. He also applied for a Stay of Removal, but USCIS denied the stay in March 2025, saying that the deferred action made a stay of removal “redundant.” In April 2025, ICE *sua sponte* conducted a “secondary review” and determined that the initial denial was not accurate. Instead, the same ICE officer issued a second denial, stating that, “Although I am sympathetic to the emotional and financial hardships associated with this case, they do not rise to the level of exceptional...”

6. On April 25, 2025, the government informed plaintiff’s counsel that Mr. Sepulveda Ayala was “manifested for removal for the middle of next week.” Mr. Sepulveda already had a pending mandamus complaint, 3:25-cv-5185-JNW, and he moved for an emergency temporary restraining order in that case that afternoon. The court granted the TRO

1 the next morning. The court extended the TRO until yesterday, June 5, 2025, when it denied
2 Mr. Sepulveda Ayala's motion for a preliminary injunction.

3 7. In the mandamus case, the government has moved for dismissal, in part arguing
4 that the grant of deferred action does not bar removal. Mr. Sepulveda Ayala submitted his
5 response to the motion to dismiss yesterday, and the government's reply and court's decision
6 are still pending.

7 8. Additional procedural history is contained in the Declaration of Kelly Vomacka,
8 filed with the petition and this motion.

9
10 **III. Argument**

11 ***A. Standards for Temporary Restraining Order***

12 9. To grant a Temporary Restraining Order, the plaintiff must meet one of two
13 tests. The more recent test, known as the *Winter* test, requires the plaintiff to prove as follows:

- 14 [1] that he is likely to succeed on the merits,
15 [2] that he is likely to suffer irreparable harm in the absence of
16 preliminary relief,
[3] that the balance of equities tips in his favor, and
[4] that an injunction is in the public interest.

17 *Sherley v. Sibelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (alteration in original, quoting *Winter*
18 *v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). "The same standard applies to both
19 temporary restraining orders and to preliminary injunctions." *Sterling Commercial Credit-*
20 *Michigan, LLC v. Phoenix Industries I, LLC*, 762 F. Supp. 2d 8, 12 (D.D.C. 2011) (quoting
21 *Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009)).

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1 10. The traditional test, which remains viable in the Ninth Circuit, is known as the
2 “sliding scale” test and requires the plaintiff to prove “serious questions going to the merits”
3 and “a hardship balance that tips sharply toward the plaintiff.” *Alliance For The Wild Rockies*
4 *v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As under the *Winter* test, the plaintiff must also
5 show a likelihood of irreparable injury and that the injunction is in the public interest. “Under
6 this approach, the elements of the preliminary injunction test are balanced, so that a stronger
7 showing of one element may offset a weaker showing of another.” *Alliance For The Wild*
8 *Rockies*, 632 F.3d at 1131.

9 11. Mr. Sepulveda Ayala meets both of these tests.

10
11 ***B. Mr. Sepulveda Ayala is likely to succeed on the merits and has raised serious legal***
12 ***questions.***

13 12. As the Petition sets out, Mr. Sepulveda Ayala has deferred action, and deferred
14 action bars removal. In the mandamus case, the government has argued that deferred action
15 does not bar removal. This is a novel legal argument that contradicts the history and plain
16 language of deferred action. The following quotes Mr. Sepulveda Ayala’s argument on this
17 point in the petition for habeas corpus:

18 Historically, deferred action originated as a “commendable exercise in
19 administrative discretion,” by which, “To ameliorate a harsh and unjust outcome,
20 the INS may decline to institute proceedings, terminate proceedings, or *decline to*
21 *execute a final order of deportation.*” *Reno v. Am.-Arab Anti-Discrimination*
 Comm., 525 U.S. 471, 484 (1999) (emphasis added). Today, USCIS (and
 therefore DHS) policy defines deferred action as “a form of prosecutorial and
 enforcement discretion to *defer removal* (deportation) against a noncitizen for a
 certain period of time.” 1 USCIS-PM H.2(A)(4) (emphasis added). In the context

1 of deferred action for childhood arrivals, USCIS policy states that the action that
2 is deferred is removal:

3 Deferred action is a discretionary determination *to defer removal*
4 of an individual as an act of prosecutorial discretion. For purposes
5 of future inadmissibility based on prior periods of unlawful
6 presence in the United States, an individual is not considered to be
7 unlawfully present during the period when deferred action is in
8 effect. An individual who has received deferred action *is*
9 *authorized by DHS to be in the United States* for the duration of
10 the deferred action period. Deferred action recipients are also
11 considered to be lawfully present as described in 8 C.F.R. §
12 1.3(a)(4)(vi) for purposes of eligibility for certain public benefits
(such as certain Social Security benefits) during the period of
deferred action.

9 DACA Frequently Asked Questions (<https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions>) (emphasis added). Recipients of deferred action are also deemed to be
10 lawfully present in the United States for a variety of purposes, including domestic
11 security, 6 C.F.R. § 37.3; Social Security benefits, 8 C.F.R. § 1.3(a)(4)(vi); and
12 public benefits, 45 C.F.R. § 155.20. Also, if a person has deferred action through
the U visa waitlist, he does not accrue unlawful presence. 8 C.F.R. § 214.14(d)(3).

13 In the mandamus case, the government has moved to dismiss in part by arguing
14 that deferred action is not a bar to removal. It cites there to a single regulation,
15 which refers to deferred action as “an act of administrative convenience to the
16 government which gives some cases lower priority.” 8 C.F.R. § 274a.12(c)(14).
17 However, this phrase is not a definition of “deferred action.” It is only a
18 descriptive subordinate clause in a regulation setting out that people with deferred
19 action can also get employment authorization. The clause is accurate, in that a
20 “commendable exercise in administrative discretion” that “ameliorate[s] a harsh
21 and unjust outcome” is likely convenient to the government, and because the
effect of deferred action is indeed to give some cases lower priority. *Am.-Arab Anti-Discrimination Comm., supra*. But the government could give some cases lower priority for its own convenience without also granting deferred action. Nothing requires the government to make every case a high priority. So, the subordinate clause is not granting USCIS authority that it otherwise lacks. Instead, the clause serves only to describe collateral consequences of the deferred-action policy, not to define deferred action itself. The only definition of deferred

1 action is in USCIS policy, and that policy makes explicitly plain that deferred
2 action “defer[s] removal.” 1 USCIS-PM H.2(A)(4).

3 Additionally, if Sepulveda Ayala is granted a U visa and deferred action ends, his
4 removal will be “deemed canceled by operation of law as of the date of USCIS’
5 approval of Form I-918.” 8 C.F.R. § 214.14(c)(5)(i).

6 13. Because his detention and removal contradict the grant of deferred action, Mr.
7 Sepulveda Ayala is likely to succeed on the merits, as *Winter* requires, and he has raised
8 serious legal questions, as the sliding scale test requires.

9 **C. *Mr. Sepulveda Ayala faces irreparable harm, and a hardship balance tips sharply***
10 ***toward him.***

11 14. Mr. Sepulveda Ayala faces substantial hardships and irreparable harm if he is
12 removed from the United States.

13 15. Mr. Sepulveda Ayala, who is 53 years old, has lived in the United States for
14 most of his life, and continuously for more than 20 years. Four months ago, the government
15 found that his U visa application is bona fide, meaning it is legally sufficient and is awaiting
16 only the availability of a visa. With that finding, the government granted Mr. Sepulveda Ayala
17 deferred action and employment authorization. That should have been sufficient to prevent
18 removal and detention until his U visa was adjudicated.

19 16. But instead, Mr. Sepulveda Ayala has been swept up in the current dragnet to
20 detain and deport immigrants. Instead of being granted a visa that the government agrees he is
21 legally entitled to, he has instead been separated from his wife, five children, and two
stepchildren, who range in age from 12 to 28 years old. He has been placed in detention,

1 forced into constant fear over what his future now holds, and placed at risk of imminent
2 removal. He has missed his daughter's April wedding. Mr. Sepulveda Ayala is a recovering
3 alcoholic with 22 years of hard-won sobriety, recently selected to speak at a regional AA
4 convention in California, who is now facing extreme suffering and instability. If he is
5 removed, he will suffer the irreparable harm of separation from his family, his home, his
6 support network, and the only life he has known for more than 20 years. And although his
7 commitment to his sobriety is strong, if these stressors overwhelm him, they will cause him
8 the irreparable harm of relapse.

9 17. The probability of removal is high. On April 25, 2025, the government informed
10 petitioner's counsel that Mr. Sepulveda Ayala was "manifested for removal for the middle of
11 next week." Mr. Sepulveda moved for an emergency temporary restraining order in his
12 mandamus case that afternoon. The court granted the TRO the next morning. The court
13 extended the TRO until yesterday, June 5, 2025, when it denied Mr. Sepulveda Ayala's
14 motion for a preliminary injunction. The probability of removal is likely as high now as it was
15 on the morning of April 25.

16 18. In addition, if Mr. Sepulveda Ayala is removed from the United States and is
17 later granted a U visa, he will face additional barriers to returning. Removal will trigger
18 inadmissibility under 8 U.S.C. §1182(a)(9)(A). In order to obtain the U visa from outside the
19 United States, Mr. Sepulveda Ayala would need to seek a waiver for those additional grounds
20 of inadmissibility. A waiver is possible under 8 U.S.C. §1182(d)(14), but it is discretionary
21 and may only be granted in the public or national interest. Processing of the waiver could take

1 additional years past the date of visa availability, which is a harm he would not suffer if he
2 were allowed to remain the United States.

3 19. If the government argues that Mr. Sepulveda Ayala will suffer no harm because
4 he can pursue his visa from anywhere in the world, it would ignore the reality of consular
5 process and the additional hurdles Mr. Sepulveda Ayala would be required to overcome if he
6 has to process through a consulate. If Mr. Sepulveda Ayala is granted a U visa in the United
7 States, his waiver will be adjudicated in conjunction with the visa. If instead he must process
8 through a consulate, the consular officer will make their own determination of inadmissibility
9 and require that a waiver be filed after the interview is conducted. If Mr. Sepulveda Ayala's U
10 visa petition is adjudicated before he is removed, he will not need to clear this significant,
11 additional hurdle.

12 20. Finally, if Mr. Sepulveda Ayala is transferred to another detention facility
13 during the pendency of these proceedings, he will lose contact not only with his family, but
14 also with his attorneys, in both Oregon and Washington. Already he has been placed more
15 than 150 miles from his home. Any further transfer will severely impair, if not cut, his ties
16 with his legal and social supports. And this in turn will limit his ability to succeed on the
17 merits of the litigation and also to manage the stressors that could lead to relapse.

18
19 ***D. The balance of equities tips in favor of Mr. Sepulveda Ayala, and an injunction is in***
20 ***the public interest.***

1 21. The remaining two factors for an injunction are the same under both legal tests,
2 and they both favor Mr. Sepulveda Ayala.

3 22. As to the balance of equities, although Mr. Sepulveda will suffer great harm if
4 he is removed or transferred, the Defendants will suffer no harm if he is not removed or
5 transferred. The Defendants have already determined that Mr. Sepulveda Ayala qualifies for a
6 U visa, but he must wait until one becomes available. The government's only potential
7 counter-argument is that they have an interest in the law being enforced, but that is the same
8 interest Mr. Sepulveda Ayala has. He would like the government to follow its own policies
9 and regulations regarding deferred action.

10 23. As to the public interest, it is in the public interest for the government to follow
11 its own laws. Having failed to protect Mr. Sepulveda Ayala and other immigrants from crime,
12 the government has at least offered them the succor of a U visa, if only to further its own
13 interest in fighting crime. Now, having determined that Mr. Sepulveda Ayala qualifies for the
14 U visa and having granted him deferred action, it has detained him without legal justification
15 and placed him in legal limbo. Instead of offering safety, it threatens him with deportation. It
16 is in the public's interest to offer assistance to crime victims, to accept their help in fighting
17 crime, to allow litigants to remain in touch with their lawyers, to allow to prisoners to stay in
18 touch with their families and their lawyers, and to have a government that follows its own
19 policies and regulations.

20 24. Further, this administration is developing a pattern of deporting individuals
21 from the United States without providing proper process and without allowing them access to

1 federal review. That is exactly what Defendants will accomplish if they are permitted to
2 remove Mr. Sepulveda Ayala. Mr. Sepulveda Ayala seeks the opportunity to access the laws
3 that were passed by Congress and the regulations that were promulgated by the very agencies
4 that now seek to overstep.

5
6 **IV. Conclusion**

7 25. Under FRCP 65, the petitioner moves this Court to issue an Emergency
8 Temporary Restraining Order and Stay of Removal:

- 9 1. Enjoining and restraining the Respondents and all of their respective
10 officers, agents, servants, employees, attorneys and persons acting on
11 their behalf in concert or in participation with them from:
- 12 a. Removing or deporting Mr. Sepulveda Ayala from the United States
 - 13 while these proceedings are pending;
 - 14 b. Transferring Mr. Sepulveda Ayala from the Northwest ICE
 - 15 Processing Center to any other facility during the pendency of these
 - 16 proceedings.

17 WHEREFORE, for the reasons set forth in his Petition for Writ of Mandamus, and in
18 this Motion the Petitioner respectfully requests this Court:

- 19 1. Grant this Emergency Motion for Temporary Restraining Order and Stay of
20 Removal today, June 6, 2025;

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2. Enter the Proposed Order Granting Petitioner's Emergency Motion for Temporary Restraining Order and Stay of Removal today; and
3. Grant such other and further relief as justice may require.

Dated this 6th day of June, 2025.

/s/ Kelly Vomacka

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