

DETAINED

District Judge Jamal N. Whitehead
Chief Magistrate Judge Theresa L. Fricke

Kelly Vomacka
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Attorney for Petitioner

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

ARTURO SEPULVEDA AYALA,

Petitioner,

v.

PAMELA BONDI, *et al.*;

Respondents.

CASE NO.: 2:25-cv-01063-JNW-TLF

**MOTION FOR PRELIMINARY
INJUNCTION AND STAY OF REMOVAL**

NOTED FOR CONSIDERATION:
JULY 7, 2025

MOTION FOR PRELIMINARY INJUNCTION AND STAY OF REMOVAL

I. Motion

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1 Under FRCP 65 and 5 U.S.C. §705, the petitioner moves this Court for a Preliminary
2 Injunction and Stay of Removal, preventing his removal from the United States and his transfer
3 to another detention facility while these proceedings are pending.

4
5 **II. Basis for Motion**

6 The petitioner, Mr. Arturo Sepulveda Ayala (“Mr. Sepulveda Ayala” or “Petitioner”), is
7 a native and citizen of Mexico. In his habeas petition, Mr. Arturo Sepulveda Ayala seeks
8 release from confinement and protection from removal because he has deferred action.

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

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

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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, case 3:25-cv-5185-JNW, and he moved for an emergency temporary restraining order in that case that afternoon. The court granted the TRO the next morning. The court extended the TRO until June 5, 2025, when it denied Mr. Sepulveda Ayala's motion for a preliminary injunction. Mr. Sepulveda Ayala filed this habeas petition the next day and moved for a TRO. The Court granted the TRO on the following court day, June 9, 2025.

In the mandamus case, the government has moved for dismissal, in part arguing that the grant of deferred action does not bar removal. Case 3:25-cv-05185 Dkt. 15-1 at 12-13. It made a similar argument in its response to the motion for TRO in this case. Dkt. 9 at 13-17. Mr. Sepulveda Ayala has submitted his response to the motion to dismiss the mandamus case, and the government's reply and court's decision are still pending.

Additional procedural history is contained in the Declaration of Kelly Vomacka, filed with the petition and the motion for TRO. Dkt. 1-2; Dkt 2-1.

III. Argument

A. Standards for Preliminary Injunction

"[T]he basic function of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits." *Los Angeles Memorial Coliseum Com. v.*

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1 *National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). “[T]he legal standards
2 applicable to TROs and preliminary injunctions are ‘substantially identical.’” *Washington v.*
3 *Trump*, 847 F.3d 1151, 1159 (9th Cir. 2017) (*quoting, Stuhlbarg Int’l Sales Co., Inc. v. John*
4 *D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)). The legal standard requires the
5 petitioner to show “(1) that he is likely to succeed on the merits, (2) that he is likely to suffer
6 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his
7 favor, and (4) that an injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d
8 1109, 1127 (9th Cir. 2009) (*citing, Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20
9 (2008)). In the Ninth Circuit, the court also “employs an alternative ‘serious questions’
10 standard, also known as the ‘sliding scale’ variant of the *Winter* standard.” *Frailhat v. United*
11 *States Immigration & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021). Under that standard,
12 “‘serious questions going to the merits’ and a balance of hardships that tips sharply towards
13 the plaintiff[s] can support issuance of a preliminary injunction, so long as the plaintiff[s] also
14 show[] that there is a likelihood of irreparable injury and that the injunction is in the public
15 interest.” *Id.* (*quoting, All. for the Wild Rockies*, 632 F.3d 1127, 1135 (9th Cir. 2011)).

16 Mr. Sepulveda Ayala meets both of these tests.

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

As his petition and his Motion for Temporary Restraining Order set out, Mr. Sepulveda Ayala has deferred action, and deferred action bars removal. Dkt. 1 at 8-9; Dkt. 2 at 4-6. He relies on the same argument here. Mr. Sepulveda Ayala relies on the USCIS Policy Manual, USCIS Frequently Asked Questions, various regulations, and Supreme Court precedent.¹ *Id.* The government argues to the contrary in both the related mandamus case and in its response to the Motion for TRO, relying on various regulations and on a comparison to T visas.² Dkt. 9 at 13-17; case 3:25-cv-05185 Dkt. 15-1 at 12-13. Both parties may rely on additional authorities as the briefing on the merits proceeds. In the TRO, the Court found, “These regulatory ambiguities and conflicting agency interpretations raise serious questions about the scope and meaning of Sepulveda Ayala’s deferred action status, and thus the merits of his habeas claim.” Dkt. 11 at 10.

On the merits of the underlying petition, the Court is presented both with a straightforward question regarding the meaning of “deferred action,” and also with an array of regulations, policies, cases, and comparisons that shape the contours of that term. On the central question of the meaning of “deferred action,” the law is well-settled and in Mr.

¹ 1 USCIS-PM H.2(A)(4); DACA Frequently Asked Questions (<https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions>); 6 C.F.R. § 37.3; 8 C.F.R. § 1.3(a)(4)(vi); 8 C.F.R. § 214.14(c)(5)(i); 8 C.F.R. § 214.14(d)(3); 45 C.F.R. § 155.20; *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999).

² 8 C.F.R. § 214.14(c)(1)(ii); 8 C.F.R. § 274a.12(c)(14).

1 Sepulveda Ayala’s favor. Therefore, Mr. Sepulveda Ayala is likely to succeed on the merits,
2 as *Winter* requires.

3 But if instead the Court finds that the law is not well-settled, then it is ambiguous and
4 conflicting. Dkt. 11 at 10. The legal arguments are novel and far-reaching, and their resolution
5 in this Court and others will affect the many thousands of people who have deferred action,
6 either because of a pending U visa or for other reasons.³ Therefore, Mr. Sepulveda Ayala has
7 raised serious questions, which merit thorough substantive briefing and careful consideration.
8 If Mr. Sepulveda Ayala is removed, his habeas petition will become moot. He seeks a
9 preliminary injunction to preserve the status quo until a determination on the merits.

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

13 As he argued successfully in his TRO motion, Mr. Sepulveda Ayala faces substantial
14 hardships and irreparable harm if he is removed from the United States. These include
15 “deportation, family separation, and additional hurdles in the U-visa process if removed.” Dkt.
16 11 at 11. As this Court found, “These harms are severe, concrete, and cannot be remedied
17 through monetary compensation.” *Id.*

18
19

³ Deferred action can also be granted to people with pending T visas, 3 USCIS-PM B.6; with Deferred
20 Action for Childhood Arrivals (DACA), 8 C.F.R. § 236.21-236-25; and, until recently, with Special
Immigrant Juvenile classification, PA-2022-10, 6 USCIS-PM J.4.G.

Mr. Sepulveda Ayala, who is 53 years old, has lived in the United States for most of his life, and continuously for more than 20 years. Dkt. 2-1 at 18. He is married and has five children and two stepchildren, ages 12 to 28, and they are all US citizens. One of them serves in the military. *Id.* His earlier criminal and immigration problems stemmed from his alcoholism, and he now has more than 20 years of sobriety—a laudable accomplishment that should leave him redeemed, not condemned. Dkt. 2-1 at 6-7, 18-20. Six months ago, he was speaking at a regional AA convention in California, encouraging others in their sobriety. Dkt. 2-1 at 18. And four months ago, the government found that his U visa application is bona fide, meaning it is legally sufficient and is awaiting only the availability of a visa. Dkt. 2-1 at 12.

Even so, Mr. Sepulveda Ayala has been swept up in the current dragnet to detain and deport immigrants. In late January 2025, shortly before Mr Sepulveda Ayala was detained, the press reported that ICE had quotas of 1,200 to 1,500 arrests a day:

President Donald Trump’s administration is pushing U.S. Immigration and Customs Enforcement to increase the number of arrests per day from a few hundred to between at least 1,200 to 1,500 people, according to a new report on Monday.

Citing four sources who spoke on condition of anonymity about a purported internal call with ICE officials on Saturday, The Washington Post first reported about the new objective, categorizing the 1,200 to 1,500 daily targets as “quotas.”

Fox News, January 27, 2025, “Trump officials give ICE goal on number of arrests per day: report” (<https://www.foxnews.com/politics/trump-officials-give-ice-goal-number-arrests-per-day-report>). Around that same time, ICE was arresting nearly 1,000 people a day—a rate that

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1 fell short of their quota but was still more than double the first Trump administration and
2 more than double the eight-year average. CBS News, January 27, 2025, “Tracking
3 administrative arrests by ICE through the Biden, Trump presidencies, in Chicago and
4 nationwide” (<https://www.cbsnews.com/chicago/news/tracking-administrative-arrests-ice/>).
5 In recent days, in the face of protests in Los Angeles and elsewhere, the quotas have been
6 raised to a “minimum” of 3,000 arrests a day. MSNBC, June 3, 2025, “Stephen Miller always
7 planned on deporting immigrant moms” ([https://www.msnbc.com/opinion/msnbc-](https://www.msnbc.com/opinion/msnbc-opinion/trump-mass-deporation-stephen-miller-rcna210396)
8 [opinion/trump-mass-deporation-stephen-miller-rcna210396](https://www.msnbc.com/opinion/msnbc-opinion/trump-mass-deporation-stephen-miller-rcna210396)).

9 Despite the grant of deferred action, the government clearly plans to deport Mr.
10 Sepulveda Ayala as soon as possible. It started the process on April 25, 2025, and it was
11 stopped only by this Court’s TRO in the mandamus case. Dkt. 2-1 at 2; Dkt. 11 at 11. That
12 TRO expired on Thursday, June 5, Dkt. 2-1 at 3, and on Monday, June 9, the government
13 removed all funds from Mr. Sepulveda Ayala’s account, Dkt. 12-1 (Declaration of Kelly
14 Vomacka dated June 16, 2025). This is normally an indication that the person will be
15 removed, transferred, or released within the next 24 hours. *Id.* By then, Mr. Sepulveda Ayala
16 had filed this habeas case, and shortly after 9 a.m. on Monday, the Court issued the TRO in
17 this case. Without a preliminary injunction, the government has both stated and shown that it
18 intends to deport Mr. Sepulveda Ayala as soon as possible.

19 If Mr. Sepulveda Ayala is removed from the United States and is later granted a U visa,
20 he will face additional barriers to returning. Removal will trigger inadmissibility under

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1 8 U.S.C. §1182(a)(9)(A). In order to obtain the U visa from outside the United States, Mr.
2 Sepulveda Ayala would need to seek a waiver for those additional grounds of inadmissibility.
3 A waiver is possible under 8 U.S.C. §1182(d)(14), but it is discretionary and may only be
4 granted in the public or national interest. Processing of the waiver could take additional years
5 past the date of visa availability, which is a harm he would not suffer if he were allowed to
6 remain the United States. If the government argues that Mr. Sepulveda Ayala will suffer no
7 harm because he can pursue his visa from anywhere in the world, it would ignore the reality
8 of consular process and the additional hurdles Mr. Sepulveda Ayala would be required to
9 overcome if he has to process through a consulate. If Mr. Sepulveda Ayala is granted a U visa
10 in the United States, his waiver will be adjudicated in conjunction with the visa. If instead he
11 must process through a consulate, the consular officer will make their own determination of
12 inadmissibility and require that a waiver be filed after the interview is conducted. If Mr.
13 Sepulveda Ayala's U visa petition is adjudicated before he is removed, he will not need to
14 clear this significant, additional hurdle.

15 If Mr. Sepulveda Ayala is transferred to another detention facility during the pendency
16 of these proceedings, he will lose contact not only with his family, but also with his attorneys,
17 in both Oregon and Washington. Already he has been placed more than 150 miles from his
18 home. Any further transfer will severely impair, if not cut, his ties with his legal and social
19 supports.

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1 Removal and transfer, both independently and together with the attendant family
2 separation, stressors on his sobriety, and additional burdens on the U visa, are
3 irreparable harms and hardships. The government faces no hardships if a preliminary
4 injunction is issued, so the balance of hardships tip sharply toward Mr. Sepulveda Ayala.

5
6 ***D. The balance of equities tips in favor of Mr. Sepulveda Ayala, and an injunction is in***
7 ***the public interest.***

8 The remaining two factors for an injunction are the same under both legal tests, they
9 merge when the government is the a party, *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073,
10 1092 (9th Cir. 2014), and they favor Mr. Sepulveda Ayala.

11 As to the balance of equities, as discussed above, Mr. Sepulveda Ayala will suffer great
12 harm if he is removed or transferred. The respondents will suffer no harm if he stays where he
13 is. The government has already determined that he merits a visa as soon as one becomes
14 available.

15 As to the public interest, Mr. Sepulveda Ayala urges the Court to adopt its finding in
16 the TRO that “[t]he public interest also favors ensuring that the Government does not detain
17 or deport individuals without a legal basis.” Dkt. 11 at 12. The public also has an interest in
18 the government following its own laws, and in being seen to follow its own laws, in good
19 faith, in order to have confidence that the government is upholding the social contract and our
20 political order. And finally, the public, whether citizens or not, has an interest in ensuring that

immigrants are treated with dignity and respect, instead of being given false hope of either a visa or deferred action.

IV. Conclusion

Under FRCP 65, the petitioner moves this Court to issue a Preliminary Injunction and Stay of Removal:

1. Enjoining and restraining the respondents and all of their respective officers, agents, servants, employees, attorneys and persons acting on their behalf in concert or in participation with them from:
 - a. Removing or deporting Mr. Sepulveda Ayala from the United States while his Petition for Writ of Habeas Corpus is pending;
 - b. Transferring Mr. Sepulveda Ayala from the Northwest ICE Processing Center to any other facility during the pendency of these proceedings.

WHEREFORE, for the reasons set forth in his Petition for Writ of Habeas Corpus, and in this motion, the petitioner respectfully requests this Court:

1. Grant a Preliminary Injunction and Stay of Removal;
2. Grant such other and further relief as justice may require.

1 Dated this 16th day of June, 2025.

2
3 /s/ Kelly Vomacka

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DECLARATION OF KELLY VOMACKA

I, Kelly Vomacka, declare as follows:

1. I am counsel for the petitioner, Mr. Arturo Sepulveda Ayala.

2. On the evening of Monday, June 9, 2025, I received a phone call from the petitioner's daughter, Ivette Sepulveda Solis. She maintains daily phone contact with the

DECLARATION OF KELLY
VOMACKA

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1 petitioner. She informed me that her father had just called her and told her that his “account
2 had been drained.” I understood this to mean that the money on his books at the Northwest
3 ICE Processing Center had been removed. Ms. Sepulveda Solis informed me that the money
4 had been on her father’s books the day before, Sunday.

5 3. She also informed me that Mr. Sepulveda Ayala has seen the pattern of
6 accounts being drained when a removal, transfer, or release is set to occur within the next 24
7 hours. My own understanding of the process is the same, and I have confirmed it with
8 colleagues.

9 4. The account was drained when the TRO was already in effect, which caused
10 concern to the petitioner, his daughter, and me. I believe that the deportation process had
11 started by the time the TRO was issued and that it took a few hours for everyone in that
12 process to get word of the TRO.

13
14 Dated this 16th day of June, 2025.

15 /s/ Kelly Vomacka
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Respondents.

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AGENCY FILE NO: A097-812-214

PROPOSED PRELIMINARY INJUNCTION AND STAY OF REMOVAL

Petitioner, through counsel, has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. The Court granted an emergency temporary restraining order on June 9, 2025, preventing Petitioner's deportation or transfer to another facility. Petitioner has filed a motion

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1 for preliminary injunction and stay of removal. The petitioner is currently detained by U.S.
2 Immigration and Customs Enforcement (“ICE”) at the Northwest ICE Processing Center in
3 Tacoma, WA.

4 The Court ORDERS that:

5 (1) Petitioner's Motion for a Stay of Removal is GRANTED, and Petitioner’s removal is
6 STAYED until further order of the Court.

7 (2) Respondents and all of their officers, agents, servants, employees, attorneys and
8 persons acting on their behalf in concert or in participation with them are
9 immediately enjoined from:

10 (a) Removing or deporting Petitioner from the United States; and

11 (b) Transferring Petitioner from the Northwest ICE Processing Center to any
12 other detention facility during the pendency of these proceedings.

13
14 Dated: _____

United States District Judge

15
16 Presented by:

17 /s/ Kelly Vomacka

18 Kelly Vomacka

19 Attorney for Petitioner
20

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that today I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to Respondents' counsel, Michelle Lambert.

Dated this 16th day of June, 2025.

/s/ Kelly Vomacka

KELLY VOMACKA

Attorney for Petitioner

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**CERTIFICATE OF
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