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7 **DETAINED**

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20 **UNITED STATES DISTRICT COURT**
21 **FOR THE WESTERN DISTRICT OF WASHINGTON**
22 **AT SEATTLE, WASHINGTON**

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26 CARLOS VELASCO GOMEZ,
27 Plaintiff,
28 v.
BRUCE SCOTT, *et al.*;
Defendants.

CASE NO.: 2:25-cv-522-JLR-BAT
**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND STAY OF REMOVAL**

Noted for Consideration: April 28, 2025

Agency File No. 

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

I. Introduction

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TRO AND STAY OF REMOVAL

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2 1. This Motion for a Temporary Restraining Order and Stay of Removal is filed in
3 conjunction with a Petition for Writ of Habeas Corpus filed with the Court on March 24, 2025,
4 and a simultaneously filed Complaint Under the APA for Declaratory and Injunctive Relief.
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6 The basis for this motion is explained more fully in the Writ and Complaint.
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10 2. Movant Carlos Velasco Gomez (“Mr. Velasco Gomez,” or “Petitioner”) is a native
11 and citizen of Mexico, who has petitioned this Court for Writ of Habeas Corpus (“Petition”),
12 seeking relief from his unlawful detention at the Northwest ICE Processing Center in Tacoma,
13 Washington (NWIPC), where he has been held by Respondents without just cause since his
14 arrest on January 26, 2025.
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17 3. In his APA Complaint filed against Respondents, Mr. Velasco Gomez challenges
18 their arbitrary and capricious decision to *per se* revoke his grant of deferred action pursuant to
19 his pending I-918 Petition for U Nonimmigrant Status, by detaining him and seeking to execute
20 his removal to Mexico, without “good cause shown,” or notice and the opportunity to respond
21 as required by the applicable regulations, and in so doing, Respondents/Defendants have also
22 violated Plaintiff’s right to due process under the law.
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25 4. Respondents filed a motion to dismiss Mr. Velasco Gomez’s habeas petition,
26 alleging that his detention is lawful, that they are seeking to remove him to Mexico pursuant to
27 a reinstated removal order, and that his “removal is imminent;” however, legal and factual
28 disputes remain regarding whether his detention is lawful, and whether Respondents can
lawfully remove Petitioner to Mexico. [cite] Thus, Mr. Velasco Gomez files this emergency

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1 motion for TRO herein, and seeks a stay of removal until these legal and factual issues can be
2 resolved by this Court.
3
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5 **II. Basis for Motion**
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8 5. On April 25, 2025, Respondents filed a motion to dismiss Mr. Velasco Gomez's petition
9 for writ of habeas, stating that they were seeking to remove him to Mexico pursuant to an October
10 2024 reinstatement of his 2011 removal and 1996 deportation order, and that his "removal is
11 imminent," prior to the final adjudication of his I-918 for a U Nonimmigrant Status, which was
12 filed on October 3, 2018. Gov. MTD, at 4; *see also* Pet., Exh. 3.
13
14

15 6. Respondents seek to effectuate Mr. Velasco Gomez's removal by circumventing the
16 applicable regulations and policies concerning the proper adjudication of I-918 petitions for U
17 nonimmigrant status, contrary to Congress's clear mandate to protect vulnerable victims of crime,
18 regardless of immigration status.
19
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21 7. On May 25, 2023, USCIS/Vermont Service Center issued a determination that Mr.
22 Velasco Gomez's I-918 Petition was *bona fide*, and he thereafter submitted an application for an
23 employment authorization document. Pet., Exh. 3.
24
25

26 8. On November 14, 2024, DHS issued a Bona Fide Employment Authorization Document
27 ("BFD EAD") to Mr. Velasco Gomez, thereby granting deferred action, and deferring his removal
28 to Mexico, while he awaits a U visa to become available under the statutory cap. Pet., Exhs. 4, 7.
29

1 9. On January 21, 2025, Mr. Velasco Gomez attended his second regularly scheduled ICE
2 check-in as required by OSUP without incident and was scheduled to return for his next check-in
3 on June 18, 2025. Pt., Exh. 8.
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5

6 10. On January 31, 2025, Mr. Velasco Gomez filed an I-246 Request for Stay of Removal and
7 Request to End OSUP with the Tacoma Office of ICE.
8
9

10 11. On March 11, 2025, less than two weeks before Plaintiff/Petitioner filed his habeas action,
12 Defendants/Respondents denied his I-246 Request for Stay of Removal, and request to end OSUP
13 because Mr. Velasco Gomez *has been granted deferred action* and had also claimed fear of return
14 while in detention, and therefore his removal is not imminent. Pet., Exh. 9.
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16

17 12. At no time was Mr. Velasco Gomez notified that his grant of deferred action or that his
18 BFD EAD had been revoked or terminated.
19
20

21 13. Now, the Government argues that Plaintiff/Petitioner's grant of deferred action does not
22 protect him from removal, and they intend to remove him. The government is speaking out of
23 both sides of his mouth, and its actions are arbitrary, capricious, and unlawful.
24
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III. Legal Argument

A. Standards for Temporary Restraining Order

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

- [1] that he is likely to succeed on the merits,
- [2] that he is likely to suffer irreparable harm in the absence of
preliminary relief,
- [3] that the balance of equities tips in his favor, and

1 [4] that an injunction is in the public interest.
2

3 *Sherley v. Sibelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (alteration in original, quoting *Winter*
4
5 *v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The same standard applies to both
6 temporary restraining orders and to preliminary injunctions.” *Sterling Commercial Credit-*
7
8 *Michigan, LLC v. Phoenix Industries I, LLC*, 762 F. Supp. 2d 8, 12 (D.D.C. 2011) (quoting
9
10 *Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009)).

11
12 15. The traditional test, which remains viable in the Ninth Circuit, is known as the
13
14 “sliding scale” test and requires the plaintiff to prove “serious questions going to the merits”
15 and “a hardship balance that tips sharply toward the plaintiff.” *Alliance For The Wild Rockies*
16
17 *v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As under the *Winter* test, the plaintiff must also
18 show a likelihood of irreparable injury, and that the injunction is in the public interest. “Under
19 this approach, the elements of the preliminary injunction test are balanced, so that a stronger
20 showing of one element may offset a weaker showing of another.” *Alliance For The Wild*
21
22 *Rockies*, 632 F.3d at 1131.

23
24 16. Mr. Velasco Gomez meets both of these tests.
25
26

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

27
28 17. As argued in his habeas petition, Mr. Velasco Gomez has been granted “deferred
action,” which serves as an administrative stay of removal, deferring his removal until it is
revoked under the procedures set forth in the applicable regulations. 3 USCIS-PM C.5; *see also* 8 U.S.C. § 1182(a)(3); 8 C.F.R. § 214.14(c)(2); 8 C.F.R. § 274a.14(b)(1)-(2). Mr.

1 Velasco Gomez does not challenge his 1991 deportation order or its 2024 reinstatement, rather
2 his detention by Defendants and their attempt to execute that reinstatement in light of
3 Defendant DHS's subsequent, unrevoked grant of deferred action and agreement to defer his
4 removal.

5 18. Mr. Velasco Gomez's deferred action and BFD EAD have not been revoked or
6 terminated. Thus, his detention is not reasonably related to a legitimate government purpose.
7 For these reasons, Mr. Velasco Gomez's ongoing detention violates the Due Process Clause of
8 the Fifth Amendment.

9 19. Likewise, in his APA Complaint, Mr. Velasco Gomez, challenges Respondents'/
10 Defendants' arbitrary and capricious decision to *per se* revoke Plaintiff's grant of deferred
11 action, by detaining him and seeking to execute his removal to Mexico, without "good cause
12 shown," notice and opportunity to respond as required by the applicable regulations. In so
13 doing, Defendants also violated Plaintiff's right to due process under the law.

14 20. Because he has shown a clear claim for habeas and APA relief, Mr. Velasco
15 Gomez is likely to succeed on the merits, as *Winter* requires, and he has raised serious legal
16 questions, as the sliding scale test requires.

C. Mr. Velasco Gomez faces irreparable harm, and a hardship balance tips sharply toward him.

17 21. Mr. Velasco Gomez faces substantial hardships and irreparable harm if he is
18 removed from the United States before receiving adjudications of his applications.

1 22. Respondents have refused to return noncitizens to the U.S. who have been
2 unlawfully removed in other high-profile cases. *See, e.g., Garcia v. Noem*, Civil Action No.
3 8:25-cv-00951-PX, 2025 U.S. Dist. LEXIS 68129, at *1 (D. Md. Apr. 4, 2025). Thus, it is
4 paramount to the administration of justice that every effort be made to prevent unlawful or
5 potentially unlawful removals.

6
7 23. Mr. Velasco Gomez is 53 years old and has lived in the United States for most of
8 his life, and continuously for more than 14 years. Nearly two years ago, the government found
9 that his I-918 petition for U nonimmigrant status is bona fide, meaning it is legally sufficient
10 and is awaiting only the availability of a visa. Even so, Mr. Velasco Gomez has been swept up
11 in the current dragnet to detain and remove immigrants. Instead of being granted U
12 nonimmigrant status, which the government agrees he is legally entitled to, he has instead
13 been separated from his U.S. citizen wife of 30 years, their two adult U.S. citizen children,
14 and a number of U.S. citizen grandchildren, is in detention, and at risk of imminent removal.
15 If Mr. Velasco Gomez is removed, he will suffer the irreparable harm of separation from his
16 family, his home, his support network, his business, and the only life he has known for more
17 than 14 years.

18
19 24. In addition, if Mr. Velasco Gomez is removed from the United States and is later
20 granted a U nonimmigrant status, he will face additional barriers to returning. Removal will
21 trigger inadmissibility under 8 U.S.C. §1182(a)(9)(A). In order to obtain his U visa from
22 outside the United States, Mr. Velasco Gomez would need to seek a waiver for those

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

12

13 ***D. The balance of equities tips in favor of Mr. Velasco Gomez, and an injunction is in the***
14 ***public interest.***

15 25. The remaining two factors for an injunction are the same under both legal tests,
16 and they both favor Mr. Velasco Gomez.

17 26. As to the balance of equities, although Mr. Velasco Gomez will suffer great harm
18 if he is removed, and Defendants will suffer no harm if he is not removed. The Defendants
19 have already determined that Mr. Velasco Gomez qualifies for a U visa, but he must wait until
20 one becomes available under the statutory cap. The government's only potential
21 counterargument is that they have an interest in the law being enforced, but that is the same

1 interest Mr. Velasco Gomez has. The government is legally bound to follow its own
2 regulations regarding the U visa waitlist and deferred action.
3

4 27. The fact that a visa is not available now is due entirely to the fact that the
5 government has set the annual cap far too low to accommodate the number of immigrants who
6 have suffered violent crime, and it has left cap low for many years now, allowing a backlog to
7 form. 8 C.F.R. §214.14(d)(1). The government could either raise the cap or narrow the visa
8 qualifications, but instead it allows the current backlog to continue. Instead of fixing its own
9 system, it instead visits harm on applicants like Mr. Velasco Gomez while claiming it has an
10 interest in justice. The reality is that Defendants will suffer no inequity if Mr. Velasco Gomez
11 waits in the United States for his U visa petition to be adjudicated.
12

13 28. It is in the public interest for the government to follow its own laws and
14 regulations and to protect victims of crime as Congress has mandated. Having failed to protect
15 Mr. Velasco Gomez and other immigrants from crime, the government has at least offered
16 them the succor of a U visa, if only to further its own interest in fighting crime. The
17 government has also created the U visa backlog. Now, having determined that Mr. Velasco
18 Gomez qualifies for U nonimmigrant status, having granted him deferred action, and having
19 denied his application for a stay of removal on the grounds that he was granted deferred action
20 and his removal was “not imminent,” Respondents have detained him without legal
21 justification, moved to dismiss his habeas action, stated that his removal is in fact “imminent,”
22 and are seeking to remove him to Mexico. Instead of offering safety, it threatens him with
23

1 removal. It is in the public's interest to offer assistance to crime victims, to accept their help in
2 fighting crime, and for the government to follow its own regulations.
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5 29. Further, this administration is developing a pattern of deporting individuals from
6 the United States without providing proper due process and denying them access to federal
7 judicial review. That is exactly what Respondents/Defendants will accomplish if they are
8 permitted to remove Mr. Velasco Gomez. As this court, a Federal District Court, is reviewing
9 their actions, they instead seek to remove the noncitizen Plaintiff/Petitioner and deprive this
10 court of jurisdiction. Permitting the executive to eschew federal review and run rough-shod
11 over the judiciary by removing Mr. Velasco Gomez without a decision in the merits of his writ
12 and complaint sets a terrible precedent for the power of the courts to review, and restrain, the
13 actions of an overzealous executive. Mr. Velasco Gomez, like all individuals on U.S soil,
14 must be afforded equal opportunity to access the laws enacted by Congress and to the
15 regulations promulgated by the very agencies that now seek to circumvent them.
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IV. Conclusion

30. Under FRCP 65, the plaintiff moves this Court to issue an Emergency Temporary
Restraining Order 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. Velasco Gomez from the United States while he has an unrevoked grant of deferred action pursuant to his

1 pending petition for U nonimmigrant status is, and both his Petition
2 for Writ of Habeas Corpus and APA Complaint remain unresolved;
3

4 2. As stated in the Complaint, there is a likelihood of irreparable harm to
5 Mr. Velasco Gomez if this order is not issued, and there is no adequate
6 alternative remedy at law available to him. The balance of harm clearly
7 favors him while these proceedings are pending. His presence in the
8 United States and in Washington will serve to facilitate the adjudication
9 of his petitions.

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

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16 1. Grant this Emergency Motion for Temporary Restraining Order and Stay of
17 Removal today, April 28, 2025;

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19 2. Enter the Proposed Order Granting Petitioner's Emergency Motion for Temporary
20 Restraining Order and Stay of Removal today; and

21

22 3. Grant such other and further relief as justice may require.

23

24 Dated this 28th day of April, 2025.

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28 /s/ Minda A. Thorward

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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 Defendant's counsel, Michelle Lambert. I am also sending the foregoing to Ms. Lambert by email on this day.

Dated this 28th day of April, 2025.

/s/ Minda A. Thorward

Minda A. Thorward
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