

DETAINED

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

FELIPE AGUILAR GAMA,
Plaintiff,

v.

PAMELA BONDI, *et al.*;
Respondents.

CASE NO.: 3:25-cv-5897

**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.

1 **II. Basis for Motion**

2 2. The petitioner, Mr. Felipe Aguilar Gama (Mr. Aguilar Gama or Petitioner), is a
3 native and citizen of Mexico.

4 3. In his habeas petition, Mr. Aguilar Gama seeks release from confinement and
5 protection from removal because he has deferred action.

6 4. Mr. Aguilar Gama has been detained at the Northwest ICE Processing Center in
7 Tacoma, Washington, since September 15, 2025, when ICE reinstated a 2005 removal order.
8 The Northwest ICE Processing Center is a privately-owned and operated immigration
9 detention center run by the GEO Group, a private contractor for Immigration and Customs
10 Enforcement.

11 5. Mr. Aguilar Gama was granted deferred action on April 20, 2025, following a
12 bona fide determination of his Petition for Qualifying Family Member of U-1 Recipient that
13 accompanied his wife's U visa application.

14 6. Additional procedural history is contained in the Declaration of Hilary Smith,
15 filed with the habeas petition and this motion.

16
17 **III. Argument**

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

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

21 [1] that he is likely to succeed on the merits,

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

4 *Sherley v. Sibelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (alteration in original, quoting *Winter*
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 *Michigan, LLC v. Phoenix Industries I, LLC*, 762 F. Supp. 2d 8, 12 (D.D.C. 2011) (quoting
8 *Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009)).

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

17 9. Mr. Aguilar Gama meets both of these tests.

18 **B. *Mr. Aguilar Gama is likely to succeed on the merits and has raised serious legal***
19 ***questions.***

1 10. As the Petition sets out, Mr. Aguilar Gama has deferred action, and deferred
2 action bars removal. The following quotes Mr. Aguilar Gama's argument on this point in the
3 petition for habeas corpus:

4 Historically, deferred action originated as a "commendable exercise in
5 administrative discretion," by which, "To ameliorate a harsh and unjust outcome,
6 the INS may decline to institute proceedings, terminate proceedings, or *decline to*
7 *execute a final order of deportation.*" *Reno v. Am.-Arab Anti-Discrimination*
8 *Comm.*, 525 U.S. 471, 484 (1999) (emphasis added). Today, USCIS (and
9 therefore DHS) policy defines deferred action as "a form of prosecutorial and
10 enforcement discretion to *defer removal* (deportation) against a noncitizen for a
11 certain period of time." 1 USCIS-PM H.2(A)(4) (emphasis added). In the context
12 of deferred action for childhood arrivals, USCIS policy states that the action that
13 is deferred is removal:

14 Deferred action is a discretionary determination *to defer removal*
15 of an individual as an act of prosecutorial discretion. For purposes
16 of future inadmissibility based on prior periods of unlawful
17 presence in the United States, an individual is not considered to be
18 unlawfully present during the period when deferred action is in
19 effect. An individual who has received deferred action *is*
20 *authorized by DHS to be in the United States* for the duration of
21 the deferred action period. Deferred action recipients are also
considered to be lawfully present as described in 8 C.F.R. §
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.

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 lawfully present in the United States for a variety of purposes, including domestic security, 6 C.F.R. § 37.3; Social Security benefits, 8 C.F.R. § 1.3(a)(4)(vi); and 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).

Additionally, if Mr. Aguilar Gama is granted a U visa and deferred action ends, his removal will be "deemed canceled by operation of law as of the date of USCIS' approval of Form I-918." 8 C.F.R. § 214.14(c)(5)(i).

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2 11. Because his detention and removal contradict the grant of deferred action, Mr.
3 Aguilar Gama is likely to succeed on the merits, as *Winter* requires, and he has raised serious
4 legal questions, as the sliding scale test requires.

5
6 **C. *Mr. Aguilar Gama faces irreparable harm, and a hardship balance tips sharply toward him.***

7 12. Mr. Aguilar Gama faces substantial hardships and irreparable harm if he is
8 removed from the United States.

9 13. Mr. Aguilar Gama, who is 51 years old, has lived in the United States for most
10 of his life, and continuously for about 20 years. Over five months ago, the government found
11 that his Petition for Qualifying Family Member of U-1 Recipient is bona fide, meaning it is
12 legally sufficient and is awaiting only the availability of a visa. With that finding, the
13 government granted Mr. Aguilar Gama deferred action and employment authorization. That
14 should have been sufficient to prevent removal and detention until his U visa was adjudicated.

15 14. But instead, Mr. Aguilar Gama has been swept up in the current dragnet to
16 detain and deport immigrants. Instead of being granted a visa that the government agrees he is
17 legally entitled to, he has instead been separated from his wife, four children, two
18 stepchildren, and four step-grandchildren. The children, stepchildren, and step-grandchildren
19 who range in age from two to thirty-three years old. He has been placed in detention, forced
20 into constant fear over what his future now holds, and placed at risk of imminent removal. He
21 is likely going to miss birthdays and holidays that he would otherwise have spent with his

1 family. If he is removed, he will suffer the irreparable harm of separation from his family, his
2 home, his support network, and the only life he has known for nearly than twenty years.

3 15. The probability of removal is high. Mr. Aguilar Gama was detained because
4 DHS/ICE reinstated a final order of removal and Mr. Aguilar Gama has not undergone a
5 credible or reasonable fear interview. Additionally, Petitioner's daughter called counsel in the
6 afternoon of October 3, 2025. She maintains daily phone contact with Petitioner. She
7 informed counsel that her father had just called her and told her that his "commissary account
8 had been drained" and that he was being taken back to a room where others had been told they
9 were being deported. He removal is now imminent. Declaration of Hilary Smith, at 2.

10 16. In addition, if Mr. Aguilar Gama is removed from the United States and is later
11 granted a U visa, he will face additional barriers to returning. Removal will trigger
12 inadmissibility under 8 U.S.C. §1182(a)(9)(A). In order to obtain the U visa from outside the
13 United States, Mr. Aguilar Gama would need to seek a waiver for those additional grounds of
14 inadmissibility. A waiver is possible under 8 U.S.C. § 1182(d)(14), but it is discretionary and
15 may only be granted in the public or national interest. Processing of the waiver could take
16 additional years past the date of visa availability, which is a harm he would not suffer if he
17 were allowed to remain the United States.

18 17. If the government argues that Mr. Aguilar Gama will suffer no harm because he
19 can pursue his visa from anywhere in the world, it would ignore the reality of consular process
20 and the additional hurdles Mr. Aguilar Gama would be required to overcome if he has to
21 process through a consulate. If Mr. Aguilar Gama is granted a U visa in the United States, his

1 waiver will be adjudicated in conjunction with the visa. If instead he must process through a
2 consulate, the consular officer will make their own determination of inadmissibility and
3 require that a waiver be filed after the interview is conducted. If Mr. Aguilar Gama's petition
4 is adjudicated before he is removed, he will not need to clear this significant, additional
5 hurdle.

6 18. Finally, if Mr. Aguilar Gama is transferred to another detention facility during
7 the pendency of these proceedings, he will lose contact not only with his family, but also with
8 his attorneys, in both Oregon and Washington. Already he has been placed about 150 miles
9 from his home. Any further transfer will severely impair, if not cut, his ties with his legal and
10 social supports. And this in turn will limit his ability to succeed on the merits of the litigation.

11
12 ***D. The balance of equities tips in favor of Mr. Aguilar Gama, and an injunction is in the***
13 ***public interest.***

14 19. The remaining two factors for an injunction are the same under both legal tests,
15 and they both favor Mr. Aguilar Gama.

16 20. As to the balance of equities, although Mr. Aguilar Gama will suffer great harm
17 if he is removed or transferred, the Defendants will suffer no harm if he is not removed or
18 transferred. The Defendants have already determined that Mr. Aguilar Gama qualifies for a U
19 visa, but he must wait until one becomes available. The government's only potential counter-
20 argument is that they have an interest in the law being enforced, but that is the same interest
21

1 Mr. Aguilar Gama has. He would like the government to follow its own policies and
2 regulations regarding deferred action.

3 21. As to the public interest, it is in the public interest for the government to follow
4 its own laws. Having failed to protect Mr. Aguilar Gama's wife and other immigrants from
5 crime, the government has at least offered them the succor of a U visa, if only to further its
6 own interest in fighting crime. Now, having determined that Mr. Aguilar Gama qualifies for
7 the U visa as a qualifying family member of an applicant and having granted him deferred
8 action, it has detained him without legal justification and placed him in legal limbo. Instead of
9 offering safety, it threatens him with deportation. It is in the public's interest to offer
10 assistance to crime victims and their family members, to accept their help in fighting crime, to
11 allow litigants to remain in touch with their lawyers, to allow to prisoners to stay in touch with
12 their families and their lawyers, and to have a government that follows its own policies and
13 regulations.

14 22. Further, this administration is developing a pattern of deporting individuals
15 from the United States without providing proper process and without allowing them access to
16 federal review. That is exactly what Defendants will accomplish if they are permitted to
17 remove Mr. Aguilar Gama. Mr. Aguilar Gama seeks the opportunity to access the laws that
18 were passed by Congress and the regulations that were promulgated by the very agencies that
19 now seek to overstep.

20
21 **IV. Conclusion**

PETITIONER'S MOTION FOR
TRO AND STAY OF REMOVAL

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