

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

Santas Reyes Avila Garcia v. Kristi Noem et al.

Avila Garcia v. Noem · No. 3:25-cv-06008-DGE · Decided November 22, 2025

SUMMARY

The United States District Court for the Western District of Washington denied Santas Reyes Avila Garcia’s second motion for a temporary restraining order concerning the adjudication of her T visa application and her removal. The court held that the amended claims were within its jurisdiction but that Plaintiff had not shown a likelihood of success on the merits or raised serious questions warranting emergency relief. The court also declined to determine, on the limited record, whether the denial of an administrative stay was arbitrary and capricious.

CASE DETAILS

COURT	United States District Court for the Western District of Washington
WRITING FOR THE COURT	David G. Estudillo
JURISDICTION	United States District Court for the Western District of Washington
DECIDED	November 22, 2025
DOCKET	3:25-cv-06008-DGE
DISPOSITION	denied
PROCEDURAL POSTURE	Plaintiff moved for a second temporary restraining order after amending her complaint to add two APA claims concerning a bona fide determination on her T visa application before denial of a stay of removal.
STANDARD OF REVIEW	A TRO is governed by Federal Rule of Civil Procedure 65(b) and is evaluated under the substantially identical standard applicable to a preliminary injunction: likelihood of success on the merits, likelihood of irreparable harm, balance of equities, and public interest. The movant bears the burden of persuasion. The Ninth Circuit's sliding-scale approach permits a weaker merits showing only when the movant raises serious questions and the balance of hardships tips sharply in the movant's favor, while the remaining Winter factors are satisfied.
PRECEDENTIAL VALUE	nonprecedential district court order

PARTIES

Santas Reyes Avila Garcia v. Kristi Noem et al.

TOPICS

t visa

removal proceedings

injunctions

mandamus immigration

administrative procedure act

PRACTICE AREAS

immigration

administrative law

civil procedure

equitable relief

QUESTIONS PRESENTED

1. Whether the court had jurisdiction under 8 U.S.C. § 1252(g) to consider claims that a bona fide T visa determination was required before ICE decided Plaintiff's request for a stay of removal.
2. Whether Plaintiff showed a likelihood of success on the merits or serious questions warranting a second temporary restraining order.
3. Whether Plaintiff established a due process claim based on the failure to issue a bona fide T visa determination before denial of her stay request.
4. Whether 8 U.S.C. § 1227(d)(1) required USCIS to issue a bona fide determination before ICE exercised discretion on Plaintiff's administrative stay request.
5. Whether the record supported preliminary relief based on an alleged arbitrary-and-capricious denial of Plaintiff's stay request.

HOLDINGS

1. Section 1252(g) did not bar jurisdiction over Plaintiff's claims that Defendants were legally required to issue a bona fide determination before deciding her request for a stay of removal because those claims presented collateral legal questions rather than challenges to discretionary removal authority.
2. Plaintiff was not entitled to a second TRO because she failed to establish a likelihood of success on the merits or raise a serious question going to the merits, and therefore failed to satisfy the applicable preliminary-relief standard.
3. Plaintiff did not establish a likelihood of success or a serious question on her due process theory because she identified no liberty or property interest and did not analyze the *Matthews v. Eldridge* factors; discretionary benefits do not create protected property interests.
4. Plaintiff failed to show a likelihood of success or a serious question that 8 U.S.C. § 1227(d)(1) required USCIS to issue a bona fide T visa determination before ICE decided whether to grant or deny an administrative stay.
5. Even assuming jurisdiction existed, Plaintiff did not establish entitlement to preliminary relief on an arbitrary-and-capricious challenge because the record and briefing were insufficient to evaluate the merits.

KEY QUOTATIONS

“The legal standard for a TRO is substantially identical to the standard for a preliminary injunction.” (at 1)

“To obtain injunctive relief, the moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that the balance of equities tips in favor of the moving party; and (4) that an injunction is in the public interest.” (at 1)

“The Court has jurisdiction to hear the two additional APA claims to the extent they argue that the bona fide determination should have been made prior to ICE deciding on Plaintiff’s request to stay removal.” (at 2)

“a benefit is not a protected entitlement if government officials may grant or deny it in their discretion” (at 3)

“Having considered Plaintiff’s second motion for a TRO (Dkt. No. 15), and for the reasons stated herein, the Court DENIES Plaintiff’s second motion for a TRO.” (at 5)

FACTUAL BACKGROUND

Plaintiff alleged that federal officials unreasonably delayed adjudication of her T visa application and sought a stay of removal while the case proceeded. She later added claims asserting that USCIS had to make a bona fide or prima facie determination before ICE decided whether to grant an administrative stay of removal. The record included one-page stay requests dated March 9, 2016, and September 4, 2025, and ICE denial decisions dated August 1, 2025, and September 9, 2025. The court found that Plaintiff did not identify a protected liberty or property interest, establish that 8 U.S.C. § 1227(d)(1) required the asserted sequence of agency actions, or provide a sufficient record and argument showing that the stay denial was arbitrary and capricious.

PROCEDURAL HISTORY

Plaintiff filed claims for mandamus and APA relief alleging unreasonable delay in adjudicating her T visa application and sought a TRO staying removal. The court denied the first TRO, concluding that the requested stay exceeded the scope of the pleaded claims and that Plaintiff had not sufficiently shown entitlement to relief. Plaintiff then amended her complaint, added two APA claims, and filed a second TRO motion. The court denied the second motion and directed the parties to file a status report concerning further proceedings on the amended complaint.

DISPOSITION

denied

CASES CITED

- Raghav v. Jaddou, 2025 WL 373638, at *1 (E.D. Cal. Feb. 3, 2025)
- Facebook, Inc. v. BrandTotal Ltd., 499 F. Supp. 3d 720, 732 (N.D. Cal. 2020)
- Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20, 22 (2008)
- Hill v. McDonough, 547 U.S. 573, 584 (2006)
- Nken v. Holder, 556 U.S. 418, 435 (2009)
- Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-1135 (9th Cir. 2011)
- Farris v. Seabrook, 677 F.3d 858, 864 (9th Cir. 2012)

- Barahona-Gomez v. Reno, 236 F.3d 1115, 1118 (9th Cir. 2001)
- United States v. Hovsepian, 359 F.3d 1144, 1155 (9th Cir. 2004)
- Fatty v. Nielsen, 2018 WL 3491278, at *1-*2 & n.1 (W.D. Wash. July 20, 2018)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- Ching v. Mayorkas, 725 F.3d 1149, 1155 (9th Cir. 2013)
- Jimenez v. Department of Homeland Security, 2022 WL 19410308, at *1 (C.D. Cal. Nov. 14, 2022)
- Barrios Garcia v. U.S. Department of Homeland Security, 25 F.4th 430, 444 (6th Cir. 2022)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 WESTERN DISTRICT OF
WASHINGTON AT TACOMA 9 10 SANTAS REYES AVILA GARCIA, CASE NO. 3:25-cv-
06008-DGE 11 Plaintiff, ORDER DENYING PLAINTIFF’S 12 v. SECOND MOTION FOR A
TEMPORARY RESTRAINING 13 KRISTI NOEM et al., ORDER (DKT. NO. 15) 14
Defendants. 15 16 After denial of Plaintiff’s first motion for a temporary restraining order
 (“TRO”) (Dkt.

17 No. 13), Plaintiff filed an amended complaint (Dkt. No. 14) and a second motion for TRO (Dkt.
18 No. 15). For the reasons stated herein, Plaintiff’s second motion for a TRO is DENIED. 19 I
BACKGROUND 20 On November 11, 2025, Plaintiff filed a complaint asserting a claim for
Mandamus and a 21 claim for violation of the Administrative Procedure Act (“APA”), alleging
that Defendants have 22 unreasonably delayed the adjudication of Plaintiff’s T visa application.

(Dkt. No. 1.) Plaintiff 23 filed a simultaneous motion for a TRO seeking to enjoin her removal
throughout the pendency of 24 1 the proceedings. (Dkt. No. 2.) On November 20, 2025, the Court
denied Plaintiff’s first motion 2 for a TRO. (Dkt. No. 13.)

The Court concluded that, although it has jurisdiction to hear 3 Plaintiff’s claims, “Plaintiff’s
request to stay removal until the issuance of a bona fide decision of 4 her T visa application is
beyond the scope of the relief requested in Plaintiff’s complaint.” (Id. at 5 9.) This was because the
“scope of Plaintiff’s claims concerns the reasonableness of the delay in 6 issuing a decision, which
is a limited inquiry that does not involve the determination of whether 7 Plaintiff’s T visa
application should be granted or denied or whether it is a bona fide 8 application.” (Id. at 7) (citing
Raghav v. Jaddou, No. 2:25-cv-00408-DJC-JDP, 2025 WL 9 373638, at *1 (E.D.

Cal. Feb. 3, 2025). The Court also held Plaintiff did not make a sufficient 10 showing on the
merits. (Id. at 9.) 11 On November 20, 2025, Plaintiff filed an amended complaint. (Dkt. No. 14.)
The 12 amended complaint includes the two claims from the original complaint and now asserts
two 13 additional claims under APA: “withholding appropriate consideration of whether Plaintiff
14 established a prima facie case for approval of her T-visa application before deciding whether to
15 grant or deny a stay” (id. at 12), and “refusal to make a prima facie determination of Plaintiff’s

16 T-visa before denying her stay of removal... because denying a stay of removal to a T visa 17 petitioner without first determining whether they are prima facie eligible for relief violated 8 18 U.S.C. § 1227(d)” (id. at 14).

Plaintiff also filed a second motion for a TRO based on this 19 amended complaint. (Dkt. No. 15.) 20 II DISCUSSION 21 A. Legal Standard 22 Federal Rule of Civil Procedure 65(b) governs the issuance of a TRO. “The legal 23 standard for a TRO is substantially identical to the standard for a preliminary injunction.” 24 1 Facebook, Inc. v. BrandTotal Ltd., 499 F. Supp. 3d 720, 732 (N.D.

Cal. 2020). To obtain 2 injunctive relief, the moving party must show: (1) a likelihood of success on the merits; (2) a 3 likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that 4 the balance of equities tips in favor of the moving party; and (4) that an injunction is in the 5 public interest. *Winter v. Nat. Res. Def.*

Council, Inc., 555 U.S. 7, 20 (2008). Generally, a TRO 6 is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is 7 entitled to such relief.” Id. at 22. The moving party has the burden of persuasion. *Hill v. 8 McDonough*, 547 U.S. 573, 584 (2006).

The third and fourth “factors merge when the 9 Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). 10 The Ninth Circuit has also articulated an alternative “sliding scale” approach pursuant to 11 which the first and third Winter factors are analyzed on a continuum; under such standard, a 12 weaker showing on the merits, combined with a stronger demonstration on the balancing test, 13 might warrant preliminary injunctive relief, assuming the second and fourth Winter elements are 14 met.

Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131–1135 (9th Cir. 2011). Under 15 this “sliding scale” method, the movant need only raise “serious questions going to the merits,” 16 but the balance of hardships must tip “sharply” in the movant’s favor. Id. at 1131–1132; see also 17 *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012). 18 B. Analysis 19 1.

Denial based on claims originally asserted 20 To the extent the motion for TRO is based on the two claims asserted in the original 21 complaint, and which are now included as the first two claims of the amended complaint, the 22 motion is denied for the same reasons explained in the order denying Plaintiff’s first motion for 23 TRO. (See Dkt. No. 13.) 24 1 2.

Plaintiff’s new claims 2 The Court has jurisdiction to hear the two additional APA claims to the extent they argue 3 that the bona fide determination should have been made prior to ICE deciding on Plaintiff’s 4 request to stay removal.

As with the two original claims, the Court concludes 8 U.S.C. § 1252(g) 5 does not bar jurisdiction because the claims are characterized as “collateral legal challenges” that 6 “present purely legal questions that do not challenge Defendant’s discretionary authority, even 7 though the

answer to the legal questions may form the backdrop against which the Defendants 8 may later exercise discretionary authority.” (Dkt.

No. 13 at 4–5) (citing *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1118 (9th Cir. 2001); *United States v. Hovsepian*, 359 F.3d 1144, 1155 10 (9th Cir. 2004); *Fatty v. Nielsen*, No. C17-1535-MJP, 2018 WL 3491278, at *1 (W.D. Wash. 11 July 20, 2018)).

The legal questions presented revolve around whether the Defendants were 12 required to issue a bona fide determination before exercising their decision to deny Plaintiff’s 13 request for stay of removal. The Court, therefore, has jurisdiction to hear Plaintiff’s two 14 additional claims.

Accordingly, § 1252(g) does not bar jurisdiction. 15 Notwithstanding, Plaintiff fails to establish a likelihood of success on the merits or a 16 serious question going to the merits. First, Plaintiff’s motion only passingly references due 17 process by stating, “ICE’s failure to follow the statute is a violation of the Administrative 18 Procedures Act, the Immigration and Nationality Act, and due process.” (Dkt.

No. 15 at 3.) 19 However, nowhere in her motion or amended complaint does she identify a liberty or property 20 interest. Nor does she ever attempt to analyze and apply the familiar *Matthews v. Eldridge* 21 factors. See 424 U.S. 319 (1976). And importantly, there is no protected property interest in 22 discretionary decisions. *Ching v. Mayorkas*, 725 F.3d 1149, 1155 (9th Cir.

2013) (“a benefit is 23 not a protected entitlement if government officials may grant or deny it in their discretion” 24 1 (citation omitted)); see also *Fatty*, 2018 WL 3491278, at *2 n.1 (“The Court concurs with the 2 Report and Recommendation’s finding that Mr. Fatty does not have a protected property interest 3 in his T visa or its adjudication.”). Plaintiff offers no basis to analyze any alleged due process 4 violation.

5 Second, Plaintiff argues 8 U.S.C. § 1227(d)(1) requires United States Citizenship & 6 Immigration Services (“USCIS”) to issue a bona fide determination of her T visa application 7 before ICE exercises its discretion to grant or deny an administrative stay request. (Dkt. No. 15 8 at 5.)

As support for this proposition, Plaintiff cites *Jimenez v. Dept. of Homeland Security*, No. 9 2:22-cv-00967-SSS-JPRx, 2022 WL 19410308, at *1 (C.D. Cal. Nov. 14, 2022). But the Court 10 already rejected this argument and concluded *Jimenez* was not persuasive. (See Dkt. No. 13 at 11 8.) Similarly, Plaintiff cites *Barrios Garcia v. U.S. Dep’t of Homeland Security*, 25 F.4th 430, 12 444 (6th Cir.

2022); beyond the fact this case is not binding in this circuit, it is in the context of 13 work authorization and not removal. 14 Third, Plaintiff asserts “there is a serious legal question

regarding whether ICE is retaliating against those with final orders of removal who apply for victim-centered relief, such as T or U visas. (Dkt. No. 15 at 6.)

As support, Plaintiff cites to an ICE interim guidance memorandum dated January 30, 2025 and “anecdotal evidence that ICE is specifically targeting those who have filed T and U visas.” (Id.) But deciding in January 2025 that its “agents are not required to affirmatively seek to identify indicia or evidence suggesting an alien is a victim of a crime or consider such guidance as a positive discretionary factor in determining whether to take civil immigration enforcement” (Dkt.

No. 15-1 at 4–5) is not evidence that ICE decided to enforce a years-old removal order in this case because Plaintiff submitted a T visa application. 1 Lastly, to the extent Plaintiff asserts the denial of her September 4, 2025 request for stay was arbitrary and capricious,¹ the Court questions whether 8 U.S.C. § 1252(g) would bar review of such claim.

See *Fatty*, 2018 WL 3491278, at *2 (“[w]here Mr. Fatty challenging his removal or the discretionary denial of his request for stay of removal, review of that challenge clearly would be precluded by Section 1252(g)”). But even if the Court does have jurisdiction, the record is insufficient for the Court to evaluate Plaintiff’s likelihood of success on the merits or whether a serious question as to the merits is raised.

The record contains only a copy of Plaintiff’s one-page stay requests filed on March 9, 2016 and September 4, 2025 (Dkt. Nos. 18-1 at 2; 18-2 at 2) and copies of ICE’s denial decisions (Dkt. Nos. 18-1 at 3–4; 18-2 at 3–4). 10 Plaintiff offers no argument for why the denial was arbitrary and capricious other than the fact 11 that a T visa bona fide determination was not issued prior to the denial.

12 III CONCLUSION 13 Having considered Plaintiff’s second motion for a TRO (Dkt. No. 15), and for the reasons 14 stated herein, the Court DENIES Plaintiff’s second motion for a TRO. Pursuant to the Court’s 15 previous order, the Parties shall file a status report no later than November 24, 2025 informing 16 the Court of their thoughts on how the adjudication of Plaintiff’s amended complaint shall 17 proceed.

18 Dated this 22nd day of November, 2025. 19 a 20 David G. Estudillo 21 United States District Judge 22 1 Defendants provide rejections of Plaintiff’s requests for administrative stay. One denial is 23 dated August 1, 2025, before Plaintiff filed her T visa application. (Dkt. No. 18-1.)

The other is dated September 9, 2025. (Dkt. No. 18-2.) 24