

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Rafael Bustos-Alonso v. Christopher Chestnut, et al.

Bustos-Alonso v. Chestnut · No. 1:25-cv-01570-DJC-AC · Decided December 22, 2025

OPINION

Chestnut

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RAFAEL BUSTOS-ALONSO, No. 1:25-cv-01570-DJC-AC

12 Petitioner, 13 v. ORDER 14 CHRISTOPHER CHESTNUT, et al., 15 Respondents. 16 17
Petitioner Rafael Bustos-Alonso is a non-citizen presently in the custody of the 18 Department of
Homeland Security. The Court previously granted a Temporary 19 Restraining Order preventing
Petitioner’s removal from the country. That order was 20 based on the information available to the
Court at the time and the representations of 21 counsel. These indicated that Petitioner was
presently on the U Visa waiting list and 22 thus was entitled to deferred action under United States
Citizenship and Immigration 23 Service policy. The parties have now provided the Court with
updated information in 24 connection with the Motion for Preliminary Injunction. 25 For the
reasons stated below, Petitioner’s Motion for Preliminary Injunction is 26 denied, and the
Temporary Restraining Order previously issued by the Court (ECF No. 27 11) is lifted. 28

1 BACKGROUND

2 Much of the relevant factual background was previously summarized by the 3 Court in its prior
order as well as by the parties in their prior briefing. (See ECF No. 4 11; see also ECF Nos. 4, 6.)
This information remains largely unchanged since the 5 initial briefing. The one exception, and of
particular relevance to this Order, is the 6 updated information provided by Respondents regarding
the status of Petitioner’s U 7 Visa application. 8 Previously, Respondents had stated that
Petitioner’s “Bona Fide Determination” 9 had been revoked, and Petitioner had instead been
placed on a waiting list. (See ECF

10 No. 6 at 5.) At oral argument on the Motion for Temporary Restraining Order,

11 Respondents’ Counsel stated this waiting list was the U Visa waiting list. Based on this 12
information, the Court granted Petitioner’s Motion for Temporary Restraining Order, 13 finding
that Petitioner was entitled to deferred action by virtue of his placement on the 14 U Visa waiting
list. (See ECF No. 11 at 4.) 15 Following the issuance of the Temporary Restraining Order, the

Court ordered 16 Respondents to show cause why a preliminary injunction should not issue on the same 17 grounds as the Temporary Restraining Order. (ECF No. 11.) That briefing is now 18 completed.¹ (Response; Reply (ECF No. 16).) This matter was taken under submission 19 without oral argument pursuant to Local Rule 230(g). 20 /// 21 /// 22 /// 23 /// 24 /// 25 26 1 Respondents have subsequently filed a Notice of Supplemental Information to which Petitioner filed a Response. (See ECF Nos. 20–21.) However, the information in Respondents’ Notice appears to 27 exclusively concern the fact that USCIS has issued Petitioner a “Notice of Intent to Deny” as to his U Visa application. As that is not directly relevant to this Order, this Notice and Petitioner’s Response are not 28 addressed here. 1 Respondents now state that these initial representations were made in error. 2 (Response (ECF No. 14) at 2.) Respondents state that Petitioner’s Bona Fide 3 Determination was not revoked, as was previously indicated. They also represent that 4 Petitioner has not been placed on the waiting list identified in 8 C.F.R. § 214.14(d) (2). 5 (Id. at 3.) USCIS has instead “initiated a full waiting list adjudication” to determine 6 whether Petitioner should be placed on the section 214.14(d)(2) U Visa waiting list. 7 (Id. at 4.) 8

9 LEGAL STANDARD

10 An injunction is a matter of equitable discretion and is “an extraordinary 11 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to 12 such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The party 13 seeking a preliminary injunction must establish (1) that they are “likely to succeed on 14 the merits,” (2) that they are “likely to suffer irreparable harm in the absence of 15 preliminary relief,” (3) that “the balance of equities tips in [its] favor,” and (4) “that an 16 injunction is in the public interest.” *Id.* at 20. In cases where “the Government is the 17 opposing party,” the third and fourth factors “merge.” *Nken v. Holder*, 556 U.S. 418, 18 435 (2009). The Ninth Circuit also employs the “serious questions” test, which states 19 “‘serious questions going to the merits’ and a balance of hardships that tips sharply 20 towards the plaintiff can support issuance of a preliminary injunction, so long as the 21 plaintiff also shows that there is a likelihood of irreparable injury and that the 22 injunction is in the public interest.” *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 23 1135 (9th Cir. 2011).

24 DISCUSSION

25 The Court finds that Petitioner has not established that he is likely to succeed 26 on the merits or that there are serious questions going to the merits.² The Court 27 2 The Court previously applied the serious question test in granting Petitioner’s Motion for Temporary 28 Restraining Order. (See ECF No. 11.) While the Court does not consider whether the balance of 1 originally granted Petitioner’s Motion finding there were serious questions going to 2 the merits because it appeared that Petitioner had been placed on the waiting list 3 described in C.F.R. § 214.14(d)(2) and that Petitioner was thus granted deferred action 4 by virtue of that placement. (ECF No. 11 at 4.) However, this appears to have been 5 the result of unclear statements provided in connection with Respondents’ Opposition 6 to the Motion for Temporary Restraining Order. 7 Respondents have now clarified that Petitioner’s Bona Fide Determination was 8 not revoked as was previously

represented. (Response at 3–4; Pano Decl. (ECF No. 9 14-1) ¶ 10; Kaczynski Decl. (ECF No. 14-2) ¶¶ 14–15.) Petitioner’s U Visa Application 10 has instead been set for a full waiting list adjudication. (Id.) This places this case and 11 Petitioner’s status on different factual footing. 12 If Petitioner is not on the waiting list as previously stated, the determination that 13 Petitioner is entitled to deferred action no longer applies. Instead, Petitioner appears 14 to have received a Bona Fide Determination, but not an Employment Authorization 15 Document (“EAD”), which might entitle him to deferred action. Petitioner has also not 16 been placed on the waiting list for a U Visa. Instead, due to the fact that Petitioner had 17 not received an EAD, Petitioner has been referred for waiting list adjudication. This 18 conforms with the process described in the USCIS Policy Manual, “USCIS initiates 19 waiting list adjudication for petitioners who do not receive BFD EADs. When USCIS 20 determines a principal petitioner will not receive a BFD EAD, USCIS proceeds to a full 21 adjudication for waiting list placement for the principal petitioner and his or her 22 qualifying family members.” USCIS Policy Manual Vol. 3, Part C, Ch. 5.3 Here, as 23 Petitioner has not received an EAD, USCIS proceeded to a full adjudication for waitlist 24 25 ultimately unnecessary for the Court to do so as even if the balance of equities did tip clearly in 26 Petitioner’s favor, Petitioner has not established that there are serious questions going to the merits. 27 3 A current version of the USCIS Policy Manual can be found at <https://www.uscis.gov/policy-manual/>. A permanent version of Volume 3, Part C, Chapter 5 of the USCIS Policy Manual, as it exists at the time 28 of this Order, can be found at <https://perma.cc/U43U-TPJN>. 1 placement. Thus, Petitioner does not appear entitled to deferred action either by 2 virtue of receiving an EAD or by virtue of waitlist placement. 3 In his Reply, Petitioner argues that “in granting the BFD, USCIS also conferred 4 deferred action status to Mr. Bustos-Alonso.” (Reply at 7.) But this assertion does not 5 appear supported by any statutory or regulatory authority. Petitioner cites 8 C.F.R. 6 § 274a.12(c)(14) in support. Section 274a.12(c) lists “class[es] of aliens” who must 7 apply for employment authorization. Subsection 14, cited by Petitioner, indicates that 8 one class of noncitizens who must apply for employment authorization are those who 9 have received deferred action. From this, Petitioner argues that Respondents have 10 the order of operations wrong; Petitioner believes that employment authorization 11 must follow after a grant of deferred action and that Petitioner has deferred action 12 simply by virtue of receiving a Bona Fide Determination. This is simply unsupported 13 by the cited regulation. Section 274a.12(c)(14) simply indicates that where an 14 individual has been granted deferred action — which is an exercise of prosecutorial 15 discretion used throughout the United States immigration scheme, not just in the U 16 Visa context — must apply for employment authorization and are not granted such 17 authorization as a matter of right.⁴ That those already granted deferred action must 18 apply to receive employment authorization does not mean that deferred action must 19 always precede employment authorization. More importantly, section 274a.12(c)(14) 20 does not show that Petitioner automatically receives deferred action because he 21 received a Bona Fide Determination. Petitioner does not point to any statute, 22 regulation, or

other authority that establishes Petitioner's entitlement to deferred 23 action by virtue of his Bona Fide Determination. Petitioner thus fails to establish a 24 likelihood of success on the merits or satisfy the serious questions test. 25 26 4 As further evidence of this, section 274a.12(a) sets out certain "classes of aliens" that are granted 27 employment authorization simply by virtue of their immigration status. Thus, subsection (c) only designates statuses where a noncitizen would have to apply for employment authorization as opposed 28 to receiving it automatically because of their status. 1 In his Reply, Petitioner also notes the inaccuracy of the representations made in 2 connection with the original Motion for Temporary Restraining Order. The factual 3 errors are certainly a source of concern for the Court. The Court understands that the 4 parties and counsel are handling numerous similar cases under time constraints. But 5 this does not absolve the Government of its obligation to ensure the accuracy of the 6 representations it makes to the Court. This is especially true where these 7 representations can have an actual impact on the Court's determination of the 8 lawfulness of detention and removal efforts undertaken by the Government. 9 Nevertheless, Respondents have now made affirmative efforts to correct the 10 errors that accompanied their briefing on the Motion for Temporary Restraining 11 Order. Based on the documentation Respondents have now provided, it is also 12 apparent how the original confusion occurred. Petitioner has not presented any 13 evidence to dispute the factual representations made by Respondents and the Court 14 has no reason at this point to doubt the accuracy of these facts. Thus, the 15 misstatements made by Respondents in connection with the Motion for Temporary 16 Restraining Order do not warrant issuance of a preliminary injunction. 17 As Petitioner has not established a likelihood of success on the merits or serious 18 questions going to the merits, Petitioner's request for issuance of a preliminary 19 injunction must be denied. The other Winter factors need not be addressed, given 20 the failure to satisfy the first factor. See *Sports Form, Inc. v. United Press Intern., Inc.*, 21 686 F.2d 750, 753 (9th Cir. 1982). 22 23 24 25 26 27 28 1

2 CONCLUSION

3 Accordingly, and for the reasons stated above, IT IS HEREBY ORDERED that: 4 1. Petitioner's request for issuance of a preliminary injunction is DENIED. 5 2. The Temporary Restraining Order previously issued by the Court (ECF 6 No. 11) is lifted.

7 3. This matter is referred to the assigned Magistrate Judge for all further 8 pretrial proceedings.

9 4. Petitioner's Motion to Extend TRO (ECF No. 22) is DENIED AS MOOT. 10 11 Dated: December 22, 2025 /s/ Daniel J. Calabretta

THE HONORABLE DANIEL J. CALABRETTA

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UNITED STATES DISTRICT JUDGE

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