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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIDHARTHA DATTA, et al.,

Plaintiffs,

v.

UR M. JADDOU, Director, U.S. Citizenship
and Immigration Services, et al.,

Defendants.

CASE NO. 2:22-cv-1302-JHC

ORDER DENYING PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER

I.

INTRODUCTION

This matter comes before the Court on Plaintiffs' Motion for Temporary Restraining Order. Dkt. # 5. Defendants oppose the motion. Dkt. # 9. Having reviewed the submissions of the parties, the case file, and the applicable law, the Court hereby DENIES the motion.

II.

BACKGROUND

Plaintiffs comprise approximately 200 families lawfully living and working in the United States in non-immigrant status. Dkt. # 1 at 7–49; Dkt. # 5 at 8. They are all adjustment of status applicants—some are principal applicants and others are derivative applicants—with approved

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1 immigrant visas under 8 U.S.C. § 1153(b)(2) (“EB2”) chargeable to India. Dkt. # 1 at 55; Dkt.
2 # 5 at 8. Plaintiffs’ priority dates for their visa petitions range between April 2, 2012, and
3 December 1, 2014. Dkt. # 5 at 8.

4 As of the Department of State’s (“DOS”) September 2022 visa bulletin, which identified
5 the “current date” for Plaintiffs’ preference category as December 1, 2014, all Plaintiffs had EB2
6 immigrant visas immediately available to them. Dkt. # 5 at 8. However, the recently released
7 October 2022 visa bulletin identifies the “current date” for Plaintiffs’ preference category as
8 April 1, 2012, indicating a “retrogression” of 32 months. Dkt. # 5 at 9. Defendants have
9 announced that they will apply this retrogression policy to Plaintiffs beginning on October 1,
10 2022, and as a result Plaintiffs’ adjustment of status applications will not be adjudicated until
11 their priority dates become current again. Dkt. # 1 at 57–58. Plaintiffs argue that Defendants’
12 retrogression policies are unlawful and must be enjoined. Dkt. # 1 at 63; Dkt. # 5 at 10.

13 Plaintiffs initiated this lawsuit on September 14, 2022, bringing two causes of action
14 under the Administrative Procedure Act (“APA”), one directed at United States Citizenship and
15 Immigration Services (“USCIS”) and the other directed at DOS. Dkt. # 1 at 60–63. They ask
16 this Court to declare both USCIS’s and DOS’s retrogression policies unlawful and to enjoin the
17 agencies from applying them. Dkt. # 1 at 63. They also ask the Court to order USCIS to issue
18 final decisions on Plaintiff’s Forms I-485 within six months, and to order DOS to issue available
19 visa numbers to Plaintiffs upon approval of their Forms I-485. *Id.* Lastly, Plaintiffs ask the
20 Court to award attorney fees and costs under the Equal Access to Justice Act (“EAJA”). *Id.*

21 On September 15, 2022, Plaintiffs moved this Court for a Temporary Restraining Order
22 (“TRO”) enjoining Defendants from applying their retrogression policies on October 1, 2022, to
23 “ensure Plaintiffs remain eligible for adjustment of status when fiscal year 2023 immigrant visas
24 become available.” Dkt. # 5 at 3.

1 **III.**

2 **ANALYSIS**

3 The legal standards that apply to injunctions apply to TROs as well. *Stuhlberg Int'l Sales*
4 *Co. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839, n. 7 (9th Cir. 2001) (preliminary injunction
5 and temporary restraining order standards are “substantially identical”). A TRO is an
6 “extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
7 entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain
8 a TRO, Plaintiffs must show that they are (1) likely to succeed on the merits, (2) likely to suffer
9 irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their
10 favor, and (4) an injunction is in the public interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109,
11 1127 (9th Cir. 2009). The first two factors are the most important. *Nken v. Holder*, 556 U.S.
12 418, 434 (2009). The third and fourth factors typically “merge when the Government is the
13 opposing party.” *Id.* at 435.

14 With respect to the first factor, the Court notes that Plaintiffs here are requesting
15 affirmative conduct that would stretch beyond simply maintaining the status quo. Although they
16 frame their request in the negative, by stating that they are asking the Court to “restrain, enjoin,
17 and invalidate Defendants’ Retrogression Policies,” Dkt. # 5 at 21, the practical effect of a
18 temporary restraining order would be to order Defendants to take affirmative steps on Plaintiffs’
19 adjustment of status applications, as they acknowledge in their briefing. *See* Dkt. # 5 at 10–12,
20 17. Because the purpose of a preliminary injunction is to preserve the status quo and the rights
21 of the parties until a final judgment on the merits can be rendered, *see U.S. Philips Corp. v. KBC*
22 *Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010), a motion for such mandatory preliminary relief
23 “is subject to heightened scrutiny and should not be issued unless the facts and law clearly favor
24 the moving party.” *Dahl v. HEM Pharms. Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993); *see also*

1 *Martin v. Int’l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984) (when a party “seeks
2 mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*,
3 courts should be extremely cautious about issuing a preliminary injunction.”).

4 While the Court is troubled by the retrogression of the visa bulletin, as well as the opaque
5 and apparently confusing nature of the immigration visa system in general for applicants, it finds
6 that Plaintiffs have not shown that the facts and law *clearly* favor their position such that
7 issuance of a TRO would be appropriate. Questions remain regarding whether there is a
8 statutory or regulatory “specific, unequivocal command” to take discrete agency action that is
9 judicially enforceable under the APA, *see Vietnam Veterans of Am. v. Cent. Intel. Agency*, 811
10 F.3d 1068, 1078 (9th Cir. 2016), whether the agencies’ retrogression policies represent a lawful
11 exercise of the discretion granted them by Congress, and whether adhering to Plaintiffs’ position
12 would force the agencies to violate other statutory provisions.

13 With respect to the second factor, the “irreparable harm” that Plaintiffs cite is too vague
14 and speculative to warrant a temporary restraining order at this stage. Plaintiffs argue that, if
15 Defendants’ retrogression policies go forward on October 1, 2022, they will be deprived of their
16 “right to receive a final decision on their pending adjustment of status petitions,” they will face
17 an “indeterminate delay on the adjudication of their adjustment of status applications,” they will
18 be deprived of the benefits of lawful permanent residency, and they will risk family separation.
19 Dkt. # 5 at 18–20. However, Plaintiffs will not lose their priority dates or their place in the
20 immigration visa queue on October 1, 2022, and they will remain eligible for adjustment of
21 status through the pendency of their applications, which they seem to concede in their briefing by
22 referencing an “indeterminate delay” as opposed to a termination or automatic denial of their
23 applications. Dkt. # 5 at 19. And any such delay would not represent a concrete deprivation, as
24 there is no statutory or regulatory deadline for the adjudication of adjustment applications. *See*

1 *generally* 8 U.S.C. § 1255; *Skalka v. Kelly*, 246 F.Supp.3d 147, 153–54 (D.C.C. 2017). In
2 addition, the allegation that Plaintiffs will be deprived of the benefits of lawful permanent
3 residency is speculative as it assumes that Plaintiffs’ applications will ultimately be approved,
4 and the risk of family separation is similarly speculative as it assumes that multiple members of
5 the same family will have their applications adjudicated differently. Lastly, Plaintiffs do not
6 allege that they are at imminent risk of removal from the United States, that they will lose the
7 ability to work or travel, or that any of the rights currently afforded to them will be stripped away
8 on October 1, 2022. *See generally* Dkt. # 5. While the Court understands that Plaintiffs are
9 facing substantial uncertainty while their Forms I-485 remain pending, they have not met the
10 high bar of demonstrating immediate threatened injury, which is required for TRO relief.
11 *Caribbean Marine Serv. Co., Inc. v. Balridge*, 844 F.2d 668, 674 (9th Cir. 1988). The Court also
12 notes that, should Plaintiffs ultimately succeed on the merits of their arguments, the Court may
13 order Defendants to process their applications. *See Sampson v. Murray*, 415 U.S. 21, 90 (1974)
14 (harm is irreparable when it cannot be undone by a later order of the court).

15 With respect to the last two factors, the Court recognizes that the United States public
16 appears to benefit from Plaintiffs’ presence in the country, and that the balance of equities
17 appears to favor noncitizen professionals with advanced degrees or an “exceptional ability”
18 receiving immigrant visas. However, the Court also finds that ordering a temporary restraining
19 order could cause a significant disruption to the legal framework for visa issuance that may result
20 in the loss of visas, the risk of Defendants being forced to violate other statutory provisions, and
21 the ultimate possibility that Plaintiffs may not benefit at all due to Congress’s mandate that
22 immigrant visas be issued in chronological order based on priority date. *See* 8 U.S.C. § 1153(e).
23 Finally, the Ninth Circuit has held that injunctive relief may not issue without a “threshold
24 showing of irreparable harm...regardless of the petitioner’s proof of the other...factors.” *Leiva-*

1 *Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011); *see also Germon v. Times Mirror Co.* 520
2 F.2d 786, 788 (9th Cir. 1975) (“Because [Plaintiff] failed to sustain his burden of showing a
3 likelihood of success on the merits, we need not consider the issue of irreparable injury since
4 [Plaintiff] would not be entitled to the relief sought even if he were to prevail on this issue.”). As
5 discussed above, Plaintiffs have not met their burden of proof on the first two factors; thus, even
6 if they were able to do so with respect to the last two factors, the Court could not grant a TRO.

7 **IV.**

8 **CONCLUSION**

9 For the foregoing reasons, the Court DENIES Plaintiff’s Motion for Temporary
10 Restraining Order. Dkt. # 5. The Court recognizes the challenges facing individuals who await
11 decisions on their adjustment of status applications. However, Plaintiffs have not overcome the
12 high bar required for immediate injunctive relief.

13 Dated this 29th day of September, 2022.

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16 John H. Chun
17 United States District Judge