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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 RED EAGLE LAW, L.C.,
13 Plaintiff,
14 v.
15 MARCO RUBIO,
16 Defendant.

Case No.: 26-cv-4738-JO-VET
EX PARTE MOTION TO STAY
INJUNCTION

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18
19 **I. Introduction**

20 Plaintiff, Red Eagle Law, L.C., filed this action to compel the Secretary of State
21 to open the registration period for the fiscal year 2027 (“FY 27”) diversity visa lottery.
22 *See generally* Dkt. 1. On October 14, 2026, the Court granted Plaintiff’s motion for a
23 preliminary injunction. Dkt. 21. The Court ordered Defendant and the United States
24 Department of State to open the registration period and otherwise conduct the FY 27
25 diversity visa program “in accordance with its usual procedures and standards” and
26 “subject to applicable law.” *See generally id.* At the parties’ joint request, the Court
27 thereafter slightly modified the deadlines imposed under the injunction. Dkt. 22, 23.

28 In a written memorandum issued October 19, 2026, the Court expanded on its

1 prior order. *See generally* Dkt. 24. Defendant now moves the Court to stay the
2 injunction pending appeal of the Court’s order granting the injunction.

3 Prior to filing this ex parte application, counsel for the parties met and conferred
4 by telephone. Dkt. 26–1 ¶ 2. Plaintiff opposes any stay in this action. *Id.* ¶ 2. Although
5 counsel discussed options to resolve the issue of the stay, Plaintiff will not agree to stay
6 enforcement of the injunction for any time period under any conditions. *Id.* Given
7 counsel’s inability to resolve the matter informally, Defendant’s counsel informed
8 Plaintiff’s counsel this motion would be filed on October 19, 2026. *Id.* ¶ 3.

9 **II. Argument**

10 This Court has discretion to stay an injunction pending appeal. Fed. R. Civ. P.
11 62(d). “[T]he factors regulating the issuance of a stay are . . . (1) whether the stay
12 applicant has made a strong showing that he is likely to succeed on the merits; (2)
13 whether the applicant will be irreparably injured absent a stay; (3) whether issuance of
14 the stay will substantially injure the other parties interested in the proceeding; and (4)
15 where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *accord*
16 *Nken v. Holder*, 556 U.S. 418, 434 (2009). The first two factors are typically “the most
17 critical.” *See Nken*, 556 U.S. at 434.

18 In the Ninth Circuit, a “flexible approach,” under which a stronger showing on
19 one of the factors can offset a weaker showing as to another factor, is “*more* appropriate
20 in the stay context” than it would be for resolving the underlying injunction. *See Al Otro*
21 *Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) (citing *Leiva-Perez v. Holder*, 640
22 F.3d 926, 966 (9th Cir. 2011) (per curiam)). The Court should stay the injunction here
23 because this was a close case on the merits, the Department of State will need to shortcut
24 it’s security procedures if it must adhere to the Court’s timelines, and the feathers (as
25 the saying goes) cannot be shoved back into the pillow if the Department of State must
26 conduct the entire FY 27 diversity visa program before it can feasibly obtain review of
27 the Court’s order granting the injunction.

28 ////

(1) Defendant has a sufficient probability of prevailing on appeal

The standard for showing a probability of prevailing is imprecise. *See Leiva-Perez*, 640 F.3d at 966. “Better than negligible” or a “mere possibility” is not enough. *See Nken*, 556 U.S. at 434–35. At the same time, “the standard does not require the [moving party] to show that ‘it is more likely than not that they will win on the merits.’” *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012) (quoting *Leiva-Perez*, 640 F.3d at 966). The many different formulations courts have proposed in the path amount to the same thing: a party seeking a stay pending appeal “must show, at a minimum, that [it] has a substantial case for relief on the merits.” *Leiva-Perez*, 640 F.3d at 967–68; *accord Lair*, 697 F.3d at 1204. The Court should find Defendant more than satisfies that standard in this “complex and meaty” matter of first impression. *See Ex. B* at 42.

Defendant acknowledges the Court ultimately declined to accept Defendant’s arguments on the merits of this action, Defendant maintains the government is likely to prevail on each and every argument raised in opposition to Plaintiff’s motion for a preliminary injunction. Particularly with regard to standing (both under Article III and as a matter of statutory standing) and as to the Court’s authority to issue an injunction under the APA. The Court ruled Plaintiff had suffered an Article III injury based on lost future billings over Defendant’s objection that Plaintiff has no legally protected interest against the government in its future billings. Dkt. 24 at 6–9. The Court also held private law firms are within the zone of interests created by the diversity visa statute solely because they “provide[] legal assistance to the very individuals the program was designed to benefit.” *Id.* at 16. And the Court ruled it could issue injunctive relief under the APA even where doing so would require Defendant to comply with one law by explicitly violating another. *See id.* at 24–25.

Defendant contends the Court’s reasoning, while ultimately a close call on these issues, is ultimately unsupported by the case law. After all, although Plaintiff ultimately prevailed, this case started out with the Court leaning in Defendant’s favor. Prior to granting Plaintiff’s motion or a preliminary injunction, the Court denied Plaintiff’s

1 application for a temporary restraining order because “[P]laintiff [had] not met its
2 burden with regard to likelihood of success.” Ex. A at 35–36. The Court also expressed
3 doubts on the record about its authority to grant the injunctive relief sought by Plaintiff
4 in this action. *Id.* at 32–33. At the hearing on the preliminary injunction, the Court
5 recognized this sui generis case is “a difficult one” because there is no case law that
6 provides a ready answer. *See* Ex. B at 18. At the conclusion of that hearing, the Court
7 indicated it had been “delving into” the issues this case “deeply” given the “magnitude”
8 of the stakes. *Id.* at 43. The Court also recognized the probability of one party needing
9 to appeal “right away.” *Id.*

10 Finally, when the Court delivered its order from the bench, the Court reiterated
11 how the “Court needed to really engage with” the issues in the case. *See* Ex. C at 3. The
12 Court concluded the hearing stating “I have spent a lot of time and put in a lot of effort
13 in trying to get this right, and then it will be in other people’s hands after this.” *Id.* at
14 30. It would be hard to conceive of a closer case on the merits than this one. The Court
15 and parties have grappled with difficult legal questions, many of which (from Article
16 III standing to application of the “zone of interests” test to the proper scope of the
17 Court’s corrective powers under the APA) have never been squarely answered by the
18 Ninth Circuit. Thus, although this Court has done everything that could be expected of
19 a District Court to resolve the merits consistent with the law, the case could still go
20 either way on appeal. If any case ever presented a “substantial case for relief,” it would
21 be this one.

22 **(2) Defendant will suffer irreparable harm absent a stay**

23 For the second factor, the movant must show that irreparable injury is likely to
24 occur during the period before the appeal is decided.” *Doe #1 v. Trump*, 957 F.3d 1050,
25 1059 (9th Cir. 2020); *see also Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020).
26 Notably, the “irreparable harm” test does not turn on whether the appeal will ultimately
27 be successful. *See Doe #1*, 957 F.3d at 1062 (citing *Washington v. Trump*, 847 F.3d
28 1151, 1168 (9th Cir. 2017)). Rather, it is a question of timing that turns on the

1 impossibility of obtaining appellate review when the effect of the injunction will be
2 irreversible even if the reviewing court vacates the order imposing the injunction. *See,*
3 *e.g., Lair*, 697 F.3d at 1214–15 (finding irreparable injury in a case addressing the
4 conduct of an election because, after the election has occurred, it cannot be undone).

5 The irreparable nature of the injury here is obvious: Defendant is currently
6 ordered to conduct the entire FY 27 entry period and announce the winners by
7 December 3, 2026. But by that point, any appeal will not even be fully briefed, let alone
8 decided. Even if Defendant prevails on appeal, the lottery will be completed and it will
9 be too late to change the past. Thus, there is no meaningful way for Defendant to obtain
10 review of the Court’s order granting the injunction before the order has been complied
11 with. This is precisely the type of un-ring-the-bell situation under which the Court
12 should find a virtual certainty of irreparable harm. *See Lair*, 697 F.3d at 1214–15. But
13 that is not the only irreparable harm the government will suffer.

14 In an ordinary year, the Department of State’s administration of the diversity visa
15 program includes sufficient time for the Department to (a) conduct pre-deployment
16 testing of the systems that run the lottery; and (b) screen lottery entrants to remove
17 duplicate and/or fraudulent entries prior to selecting any lottery winners. *See generally*
18 Dkt. 26–2. Here, the government cannot conduct any pre-deployment testing (let alone
19 *sufficient* pre-deployment testing) without diverting available agency resources from
20 other programs that implicate critical national security enhancements. *Id.* ¶¶ 12–15.
21 Thus, the Department of State must rob Peter to pay Paul in the name of compliance,
22 which is an irreparable injury that will be avoided by a stay. Insufficient applicant
23 screening has even greater consequences. In a typical year, several million entries are
24 screened out of the lottery before winners are announced because those entries are
25 duplicative or fraudulent. *Id.* ¶ 10. If the Department is unable to effectively screen
26 entrants prior to selecting lottery winners (which is a virtual guarantee under the current,
27 24-hour time limit to conduct the entire lottery), the Department will be unable to
28 conduct its ordinary screening processes, which will prevent the Department from

1 screening out individuals who may pose public safety or national security concerns if
 2 allowed to apply under for a FY 27 diversity visa. *Id.* ¶¶ 9–11. This harm is, therefore,
 3 “irreparable” for purposes of seeking a stay because it cannot be remedied once the
 4 harm is complete.

5 **(3) The balance of equities and public interest favors a stay**

6 These prongs can be said to “merge” in cases against the government. *See Nken*,
 7 556 U.S. at 435. In cases like this, this factor is typically in rough equipoise because the
 8 public’s interest is in having the law carried out correctly rather than in a particular
 9 result. *See Al Otro Lado*, 952 F.3d at 1014. Here, where the issues on appeal will be
 10 pure questions of procedure and the legal sufficiency of Red Eagle’s showing on the
 11 merits, the Ninth Circuit’s eventual order will *be* what the law is. Thus, the public’s
 12 interest in this matter is in having an answer from the Circuit, whatever that answer
 13 turns out to be. Although Red Eagle will suffer at least some harm by waiting on its
 14 fees, the minor cost of delay is a fair price for certainty in this case.

15 On its facts, this case more directly implicates the public’s interest than the order
 16 at issue in *Al Otro Lado*. “The government’s interest in efficient administration of the
 17 immigration laws at the border . . . is weighty.” *Landon v. Plascencia*, 459 U.S. 21, 34
 18 (1982). The government’s preselection review focuses on screening out fraudulent
 19 entrants and duplicates. *See* Dkt. 26–2 ¶ 8. Here, if the government is unable to screen
 20 out duplicate entries, then applicants who cheat the system will obtain an unfair
 21 advantage over those who follow the rules, and the public has no interest in allowing
 22 anyone to game the system at the expense of those who play fair. And if fraudulent
 23 entrants are permitted to apply for the lottery, then a diversity visa application might be
 24 open to an individual of “potential concern,” which would raise “significant national
 25 security concerns.” *Id.* ¶¶ 8–9. But the extraordinarily compressed schedule the Court
 26 has ordered renders the ordinary safeguards all but unavailable. This would run sharply
 27 against the public’s interest in the orderly administration of the law.

28 And in any event, these factors need not be compelling to justify a stay where the

two critical factors so strongly favor the party seeking the stay. *See Al Otro Lado*, 952 F.3d at 1007. Here, Defendant has come forward with the strongest possible showing under the “probability of prevailing” prong because this was such a close case on the merits and there is a substantial chance the Ninth Circuit interprets the law differently than this Court did. Moreover, the “irreparable harm” prong could not be more serious since, without a stay, there will be effectively no review of an otherwise reviewable order. Thus, even a moderate showing here is enough to tip the scales in favor of a stay, and this Court should conclude these factors favor Defendant, even if only moderately.

III. Conclusion

Given the fierce complexity of the issues and the myriad open questions of law presented, this case was destined for the Ninth Circuit no matter which party prevailed. The Court’s order granting Plaintiff’s motion for a preliminary injunction is effectively unreviewable given the short timelines under which Defendant must perform and the realistic timeline for obtaining review. Given that, Defendant will be irreparably harmed if the injunction is not stayed. Defendant accordingly requests the Court stay the injunction pending appeal to the Ninth Circuit.¹

DATED: October 19, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

/s/ Ian Pike
IAN PIKE
Assistant United States Attorney
Attorneys for the Defendant

¹ Defendant has filed a notice of appeal. Dkt. 25. In full candor: Defendant’s appellate counsel intends to seek an emergency stay from the Ninth Circuit on Thursday, October 22, 2026, if this Court declines to stay the injunction. Although Defendant acknowledges the Court will rule on this motion in due course consistent with the Court’s practices and procedures, Defendant respectfully requests a ruling from the Court by Wednesday, October 21, 2026.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RED EAGLE LAW, L.C.,
Plaintiff,

v.

MARCO RUBIO, *in his official capacity*
as U.S. Secretary of State,
Defendant.

Case No. 26-cv-4738-JO-VET

**DECLARATION OF IAN PIKE IN
SUPPORT OF EX PARTE MOTION
TO STAY**

I, Ian Pike, declare as follows:

1. I am an Assistant U.S. Attorney and counsel for Defendant in this action.
I am over the age of 18 and legally competent and capable of making this Declaration.
I have personal knowledge of the facts contained in this declaration, and if called upon
to testify, I would and could competently do so.

2. On October 19, 2026, I met-and-conferred telephonically with
Plaintiff's counsel, Curtis Morrison. Mr. Morisson and I discussed whether Plaintiff
would agree to a stay or other modification of the Court's injunction to allow
Defendant to pursue an appeal. Mr. Morisson informed me that Red Eagle would not

1 agree to stay of any duration or on any terms, or to any further modifications of the
2 Court's order granting the preliminary injunction.

3 3. Having been unable to resolve the issues informally, I provided Mr.
4 Morisson with notice of Defendant's intention to file an ex parte motion to stay the
5 injunction on October 19, 2026.

6 I declare under penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct.

8 Executed October 19, 2026, in San Diego, California.

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10 /s/Ian Pike
11 IAN PIKE
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RED EAGLE LAW, L.C.,

Plaintiff,

v.

MARCO RUBIO, in his official capacity as Secretary of
State,

Defendant.

Case No. 3:26-CV-04738

DECLARATION OF JOHN ARMSTRONG

I, John Armstrong, hereby declare under penalty of perjury:

1. I am employed as the Principal Deputy Assistant Secretary within the U.S. State Department's Bureau of Consular Affairs (CA). I am a member of the Senior Foreign Service and have worked as a Consular Officer for over 30 years. CA's Visa Office provides guidance to U.S. embassies and consulates around the world on a broad range of policy and procedural issues related to the adjudication of visa applications.

2. This Declaration is being submitted in support of the Defendants' Motion to Stay the Court's October 14, 2026, Order, granting the plaintiff's motion for preliminary injunction.

3. The statements made in this Declaration are based on my personal knowledge and information made available to me in the course of my official duties.

4. CA's Visa Office provides guidance to U.S. embassies and consulates worldwide on a broad range of policy and procedural issues related to visa adjudication. The Diversity Visa Program (DV Program) also relies on several other Department components, including the Visa Office's Kentucky Consular Center (KCC), which processes DV Program entries and conducts pre-selection screening; Diplomatic Technology's Office of Consular Systems and Technology (DT/EA/CST), which develops, tests, and maintains the electronic entry system; and the Office of Fraud Prevention Programs (CA/FPP), which supports fraud detection throughout the DV Program. I oversee or coordinate closely with each of these components.

5. Section 203(c) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1153(c), makes available up to 55,000 immigrant visas each fiscal year to nationals of countries with historically low rates of immigration to the United States. The Department administers the DV Program by opening an online registration period. During that period, individuals submit an entry through the Department's electronic entry system. After the registration period closes, the Department randomly selects entrants (selectees) from the qualified entries. Selectees may then apply for a DV. Pursuant to INA section 204(a)(1)(I)(i), 8 U.S.C. § 1154(a)(1)(I)(i), and Department regulations, each entrant may submit only one entry. The Department disqualifies entrants who submit more than one entry or entries that do not strictly adhere to the rules for submission.

6. In a typical year, the Department requires six to eight months to prepare the registration system to accept entries, screen the entries, conduct the random selection, and prepare results. The Department introduced two new regulations related to the entry requirements for the DV-2027 Program that require additional time to implement and test. Because selection is random and visas are limited, fraudulent, duplicate, or ineligible entries that

the Department selects are identified and removed from consideration; new selections are not added to replace the disqualified entries.

7. I understand that the Order requires the Department to open the registration period for the fiscal year 2027 DV Program at midnight EST on November 1, 2026, and to keep it open for 30 days, through November 30, 2026. The Order requires the Department to open the registration period just 18 days after the Order was entered. The Department has customarily spent about 60 days testing the entry system before it opens the registration period. The Order also requires the Department to notify DV-2027 Program selectees by midnight EST on December 3, 2026. As a result, the Department has just two business days after the registration period closes to screen entries and conduct the randomization and selection before notifying selectees. As noted above, this process ordinarily takes about six to eight months.

8. The Order effectively compels the Department to substantially abridge its ordinary randomization process required by law, as well as certain screening, vetting, and technical safeguards required by regulation. During the ordinary selection process, Department experts review entries to identify and disqualify fraudulent, duplicate, and ineligible entries before random selection through the “lottery.” Among other steps, Department personnel:

- (a) check that each entry includes all required information;
- (b) review each entrant’s photograph to confirm it meets the Department’s quality standards, which the Department needs for reliable identity verification;
- (c) run entries through facial recognition technology to find duplicate entries, including duplicates submitted under different names or biographic data; and,

(d) run selected entries through namecheck databases to identify fraudulent entries and entrants of potential concern.

9. These steps catch fraud and identify unqualified entries at the earliest and least costly stage of the DV Program – that is, prior to selectees being notified and the process moving to consular posts worldwide (infra paragraph 11). They also give the Department reliable entrant data for assessing eligibility early. The Department cannot complete these steps for millions of entries in three business days. Compliance with the Order would therefore require the Department to select and notify DV-2027 Program selectees while skipping most or all of its pre-selection fraud screening and vetting, raising significant national security concerns.

10. Fraudulent and ineligible entries historically constitute a large share of the millions of entries the Department receives in each registration period. For example, the Department received 23,823,436 entries for the DV-2024 Program, 22,097,581 entries for the DV-2025 Program, and 19,927,656 entries for the DV-2026 Program. The Department's pre-selection screening found and disqualified more than 1.7 million duplicate or non-qualifying entries in the DV-2024 Program and 2.5 million duplicate or non-qualifying entries in the DV-2025 Program.

11. Skipping or substantially abridging pre-selection vetting will harm U.S. national security and will require the Department to substantially reconfigure its limited resources with a ripple effect felt by U.S. visa applicants worldwide. While identifying fraudulent and unqualified entries at the visa application stage may be increased with altering resources, that burden is significant when shifted to posts overseas – it requires additional systems changes, training for consular officers, and adds a significant time burden in the processing of each application that is not required when the pre-selection vetting is performed at the KCC. Pre-selection vetting helps

the Department identify, at the early stages, entrants who may pose a national security or public safety threat and entrants using false identities. Releasing selections without that vetting gives a pathway toward lawful permanent residence in the United States to individuals the Department has not properly screened, as the current layered approach exists so that no single checkpoint carries the whole burden.

12. The Order requires the Department to open the registration period 18 days after the Order was entered, which leaves insufficient time for functional testing of the electronic entry system. Before each registration period, the Department would ordinarily test the entry system to simulate peak user traffic and confirm the system can handle the expected volume of entries, as well as test the entry system against simulated cyber-attacks to confirm malicious users cannot exploit the system, as well as any other necessary cybersecurity assessments.

13. Pre-deployment testing is even more critical for the DV-2027 Program. This will be the first registration period using enhanced registration requirements that were promulgated under a Final Rule published by the Department on March 11, 2026, which amended the Department's regulations governing the DV program. 91 Fed. Reg. 11891. Among other changes, the Final Rule generally requires each entrant to provide valid, unexpired passport information and upload a scan of the passport's biographic and signature page. Millions of image uploads place far greater demands on bandwidth, storage, and processing than earlier registration periods, underscoring the need for appropriate pre-deployment testing. A \$1 electronic registration fee will also be required with each entry for the first time, pursuant to a Final Rule published on September 16, 2026, further underscoring the need for adequate testing (90 Fed. Reg. 44524).

14. Opening the registration period without appropriate testing creates at least three serious risks, all of which pose irreparable harms:

(a) System failure. If the system fails during the 30-day registration period, eligible entrants may face a shortened window to enter, absent an extension, reopening, or full restart of the registration period.

(b) Exposure of sensitive personal data. An untested system is a high-value target for malicious actors, including foreign adversaries. A breach would expose sensitive identity documents of millions of people.

(c) System exploitation. Without penetration testing, the Department cannot confirm that malicious users or third-party facilitators cannot access the system, where they could alter entries, access information, or otherwise tamper with the registration process.

15. Even if the Department accelerates, rather than bypasses, the screening, vetting, and testing steps described above, doing so would necessitate a major reallocation and reconfiguration of limited personnel and systems resources. Systems personnel are now working on a range of other important upgrades to consular systems, many of which are priority upgrades to strengthen vetting and screening of applicants for U.S. visas and passports to protect U.S. national security. Reassigning consular resources to meet the Order's deadlines, will cause the Department to cease or seriously delay these national security upgrades. That is a serious irreparable harm, with potential long-term consequences, and the Department must keep vetting visa and passport applicants without the improved capabilities these projects are meant to deliver. Reconfiguration of consular resources to meet the Court's expedited timelines, absent significant revision or extension, will result in forgoing or significant delaying any of these critical national

security systems enhancements, an irreversible harm independent of, and in addition to, the operational and resource considerations described above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed October 19, 2026.



John Armstrong
Principal Deputy Assistant Secretary
Bureau of Consular Affairs
United States Department of State.

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

RED EAGLE LAW, L.C.,

Plaintiff,

v.

MARCO RUBIO,
in his official capacity
as U.S. Secretary of State,

Defendant.

)
) CASE NO.: 26-CV-04738-JO-VET
)
) DEPARTMENT 13B
)
) SAN DIEGO, CALIFORNIA
)
) THURSDAY, SEPTEMBER 3, 2026
)
) MOTION HEARING FOR TEMPORARY
) RESTRAINING ORDER
)

**CERTIFIED
TRANSCRIPT**

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JINSOOK OHTA
UNITED STATES DISTRICT COURT JUDGE

PAGES 1 THROUGH 41

Court Reporter:

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7 BY: IAN PIKE, ESQ.
ASSISTANT U.S. ATTORNEY

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1 THURSDAY - SEPTEMBER 3, 2026

9:35 A.M.

2 P R O C E E D I N G S

3 --- oOo ---

4 THE CLERK: Calling matter number 2 on calendar,
5 26-cv-4738, Red Eagle Law, L.C. v. Rubio, for a motion hearing.

6 THE COURT: Okay. Good morning, everyone.

7 We'll take appearances from petitioner/plaintiff side
8 first.

9 MR. MORRISON: Good morning, Your Honor.

10 Curtis Morrison for Plaintiffs.

11 MR. PIKE: Good morning, Your Honor.

12 Ian Pike for the defense.

13 THE COURT: Okay. Good morning, everyone.

14 So we are here on a request for a temporary restraining
15 order.

16 First off, before we get started talking about some of the
17 threshold issues of standing that have been raised by the
18 Government, I'd like to get from Plaintiff's side a sense of the
19 timing here.

20 And so if I understand it correctly, this is a program
21 that, from your view, should be starting on October 1st, and
22 that's where the urgency is coming from.

23 The TRO mechanism, it -- by its nature, freezes something
24 for 14 days. And so for that reason, and also for reasons of
25 the weighty nature of some of the standing considerations and

1 et cetera, I was thinking that this might just be better
2 addressed -- better addressed using the vehicle of a preliminary
3 injunction, and the parties would have a little bit more time to
4 brief and -- brief and gather the record to meet their burden in
5 front of me.

6 So if you want to first address -- sorry.

7 I apologize. I have something in my throat.

8 If you'd like to first address your sense of urgency of the
9 situation.

10 And is it a TRO 14-day kind of urgency?

11 Or is it before October 1st urgency?

12 MR. MORRISON: Thank you, Your Honor. May it please
13 the Court.

14 There -- Plaintiff's counsel, it's me, wrote this complaint
15 in the middle of the night, and there may have been a typo one
16 place where I said October 2026 when I meant October 2025, and I
17 apologize for that confusion if that's what's led to the Court's
18 misunderstanding here.

19 THE COURT: Okay. So that would be -- when we're
20 talking about time-sensitive vehicles like a TRO, yes, that
21 would be very crucial.

22 MR. MORRISON: Yes.

23 THE COURT: Go ahead.

24 MR. MORRISON: It was right everywhere but one place
25 and I was, like, scared. I was, like, I hope that they don't

1 attach value to this. Okay.

2 So annually, for 20 to 30 years now, every October the
3 entry period occurred for the forthcoming fiscal year.

4 So this October --

5 THE COURT: So are you challenging for the forthcoming
6 fiscal year or for the previous fiscal year?

7 Because then the question is -- then I would change my
8 question to "Do we have a little bit more time to do this as a
9 PI?" to "Do we even have time to address the suspension of this
10 visa program for the previous year?"

11 So, you know what?

12 Let me scratch that question.

13 Let's ask a much more basic question.

14 What are you challenging?

15 The one for the upcoming fiscal year?

16 Or the suspension or the -- the suspension of the program
17 for the fiscal year that is shortly about to conclude?

18 MR. MORRISON: Whew. That's -- we are challenging the
19 administration's failure to implement the Diversity Visa Program
20 for fiscal year 2027, which should have started in the first
21 month of 2026 -- in October of 2026.

22 THE COURT: Okay.

23 MR. MORRISON: What's coming --

24 THE COURT: Okay. So hold on.

25 So fiscal year 2027, and that starts when, again?

1 MR. MORRISON: October 1st, 2026.

2 THE COURT: Okay.

3 MR. MORRISON: That's where I messed up.

4 THE COURT: So I did originally understand it
5 correctly. So we're talking about a program that would start
6 October 2026.

7 MR. MORRISON: Not exactly, Your Honor.

8 That's when the visa issuances would start.

9 The program itself starts a year prior, and this year it
10 didn't start, and the State Department did an update saying
11 "We're a little bit behind," and then they emailed potential
12 entrants that, "Oh, well, it will happen in May," and then in
13 other litigation, they said, "Well, we're finalizing this other
14 thing," and they gaslit us, basically, the entire --

15 THE COURT: Counsel, before you get into what exactly
16 happened, if you could just help me understand the time frames
17 here. Because, like I said, with TROs and preliminary
18 injunctions, these are time-sensitive vehicles, so I need to
19 have a very solid understanding of what time frames we're
20 talking about.

21 So for the program for -- you're challenging the suspension
22 of the program for fiscal year 2027, and that is -- that's a
23 time period that commences on October 2026.

24 And it was my understanding, and please correct me if I'm
25 wrong, that for the fiscal year 2027 program, starting

1 October 2026, the Government would hold a lottery and then allow
2 certain people to apply for these visas, allow the lotto winners
3 to apply for these visas; is that correct?

4 MR. MORRISON: That is correct, Your Honor.

5 THE COURT: So then what's -- for fiscal year 2027 --

6 MR. MORRISON: There are no lottery winners because
7 they didn't hold the lottery.

8 THE COURT: When -- for fiscal year 2027, when would
9 the lottery have happened?

10 Because I think the breakdown may be in how I'm
11 misunderstanding you is I assumed that the lottery itself would
12 have -- for fiscal year 2027, would have started in October
13 of 2026.

14 MR. MORRISON: Thank you for that question, Your Honor.

15 No, it's October of 2025.

16 Traditionally, what it -- what would have happened if it
17 had been the status quo, the Department would have announced in
18 September of 2025 that there was a 30-day entry period in
19 October or November of 2025 for the fiscal year 2027 program.

20 And then they would have had a few months where they would
21 have vetted the entries to make sure that they were all facially
22 correct, and then they actually selected out of the 20 million
23 entrants. They select approximately 100,000 even though they
24 only had 50,000 visas. They overselect to be safe.

25 And then they announ- -- they don't -- what they do is they

1 announce that you can go check your entry on the entry --

2 THE COURT: So we don't need to get into the details.

3 Please let's just focus on the time frames for right now.

4 So the lottery would have happened in October 2025.

5 When would the winners be selected in the normal course?

6 MR. MORRISON: May of 2025. Sorry. May of 2026. I

7 just went backwards there. May of 2026.

8 THE COURT: Okay.

9 And then these lottery winners would then -- when would
10 their application window be?

11 MR. MORRISON: Beginning in October 1st, in a few
12 weeks, October 1st of 2026.

13 THE COURT: Okay. Hold on. So October. I see.

14 So the lottery would already have happened, but the
15 application period is for the lottery winners, that's what
16 starts in October of 2026?

17 MR. MORRISON: Correct, Your Honor.

18 THE COURT: Okay.

19 Before I ask my next question, I'm going to back up a
20 little bit.

21 I understand that there is a similar -- there are similar
22 claims that have been brought on behalf of a class of potential
23 lottery winners or potential applicants.

24 The -- and that was brought in the -- was it the
25 Northern District of California?

1 Or it was brought somewhere else; is that right?

2 MR. MORRISON: Thank you for this chance to explain
3 this nuance, Your Honor.

4 There was a lawsuit brought earlier this year called *Ivanov*
5 in D.C., and that was not a class action.

6 In one of the claims in that case, we represented the
7 plaintiffs.

8 One of the claims in that case was also you can't suspend
9 the DV-2027 program.

10 However, we did not brief summary judgment on that because
11 the focus of those plaintiffs --

12 THE COURT: So there's a similar claim in D.C. earlier
13 this year. It was -- was there anything else?

14 MR. MORRISON: Yes.

15 First of all, that claim's been disposed of.

16 Summary judgment's already happened in that case.

17 Skipping on to the Northern District of California, that's
18 where there is a class, but there's no cause of action related
19 to the Diversity Visa 2027 Program.

20 And I should disclose in candor, me and four of the
21 attorneys on my team at Red Eagle Law are class counsel for that
22 also.

23 THE COURT: Okay. But there's no -- there are no
24 claims related to 2027 -- the 2027 --

25 MR. MORRISON: Correct.

1 THE COURT: -- lottery or visa lottery for fiscal
2 year 2027. Okay.

3 Now circling back to this one now that I have a better
4 understanding of what the issue is with the urgency.

5 If you can -- so now I'm going to change my question
6 completely, which -- from "Don't we have a little bit more
7 time?" to "How is this not too late, then?"

8 MR. MORRISON: It's never too la- -- it's Plaintiff's
9 perspective that it's never too late for the Government to
10 follow the law.

11 THE COURT: Okay.

12 But what can -- so what would the -- so you're asking me to
13 order the reinstatement of this program ultimately; correct?

14 MR. MORRISON: Correct, Your Honor. It's effectively
15 been suspended.

16 THE COURT: Okay. And what would that look like?

17 In terms of timing, what would that look like, then, given
18 that this is something where a lottery happens a year ahead, the
19 applicants are informed five months ahead so that -- I assume so
20 that they can retain counsel, pull their paperwork together, and
21 then they have -- and then they can start applying in October,
22 what would that look like?

23 MR. MORRISON: An order compelling the Government
24 defendant to announce an entry period for the
25 Diversity Visa 2027 Program.

1 Traditionally, they wouldn't have --

2 THE COURT: In terms of timing, what would that look
3 like?

4 How would we fix the injury for fiscal year 2027?

5 We're just very focused on timing right now.

6 MR. MORRISON: Great, Your Honor.

7 If I was to craft the order, I would say that instead of
8 a 30-day period, they had a 15-day period from September 15th to
9 September 30th.

10 THE COURT: To do what?

11 MR. MORRISON: To -- that they would announce the
12 program now, and they would allow noncitizens to enter the
13 lottery for 15 days.

14 THE COURT: And so just give me -- give me a -- give me
15 a timetable.

16 They would announce the program right now.

17 When would the lottery happen?

18 MR. MORRISON: September 15th to September 30th.

19 If I may, Your Honor?

20 THE COURT: Hold on for just a second.

21 Okay. So some two-week lottery period.

22 And then what would it look like after that?

23 MR. MORRISON: Obviously, the Government would not be
24 able to determine who won the lottery by October 1st, so there'd
25 be a little bit of delay.

1 THE COURT: Just time. Just time. Give me time
2 frames.

3 What would it look like after that?

4 MR. MORRISON: Entrants announced or released by
5 January 1st.

6 THE COURT: Okay. So entrants announced by
7 January 1st.

8 And then how much time would they have to get ready to
9 apply?

10 MR. MORRISON: The normal fiscal year from January 1st
11 to September 30th of 2027.

12 THE COURT: January 1st to September 30th.

13 So basically what you're asking me for is not necessarily
14 relief within the fiscal year within the normal time frames, but
15 just kind of a makeup where you'd get the same number of visa
16 applicants, everything would be slightly on a later train, it
17 might run into the next fiscal year, but what you're saying is
18 substantively as in roughly the same number of people would have
19 that same opportunity?

20 MR. MORRISON: Correct, Your Honor.

21 THE COURT: Okay. Because there really isn't a way to
22 get all this done within or before the close of fiscal
23 year 2027.

24 MR. MORRISON: At this point, no, Your Honor, because
25 the Code of Federal Regulations says 30 days within the fiscal

1 year, and we don't have 30 days left.

2 THE COURT: Okay. Thank you.

3 So moving on from the timing.

4 And, Government, you'll get your opportunity.

5 While the plaintiff is up, I'm just going to ask all my
6 questions for him first, and then -- and then it'll be your
7 turn.

8 So in terms of zone of interest for APA claims, do you
9 agree that you need to be within that zone of interest?

10 MR. MORRISON: Yes, Your Honor.

11 THE COURT: And that there is a zone of interest
12 requirement?

13 MR. MORRISON: Yes, Your Honor. Plaintiffs agree to
14 that.

15 THE COURT: You disagree with that?

16 MR. MORRISON: I'm sorry. I said Plaintiffs agree.

17 THE COURT: Oh, okay. Thank you. Plaintiffs agree.

18 And tell me what makes your economic interest in being able
19 to do this type of work within the zone of interest of these
20 types of programs or the legislation or the programming that
21 allows for people to obtain these visas on a lottery basis?

22 How is your economic interest within that zone of interest?

23 And what case law are you relying on for your proposition?

24 MR. MORRISON: Thank you, Your Honor.

25 So a substantial part of Red Eagle Law's revenue comes from

1 representing Diversity Visa selectees every fiscal year, and
2 this has been true since our founding in 2023, and personally it
3 was true for me since 2020 with my prior law firm.

4 THE COURT: Okay. So even -- even assuming a hundred
5 percent of your law firm's business model were
6 these visa -- were these lottery visa applications, let's say
7 you did no habeas, you did no family sponsorship, you did no
8 adjustment of visa status if you end up married to a U.S.
9 citizen, you're just doing this, how is that -- how is that
10 within the zone of interest?

11 Because you have an economic interest in maintaining this
12 client base and supporting your family and keeping the law firm
13 running, but that doesn't seem to be the interest that is
14 intended to be protected by these government programs the way
15 that I'm seeing is -- or maybe -- let me rephrase.

16 What definitely seems to be within the zone of interest
17 would be the interest of the -- would be immigrants or visa
18 applicants or people who want these visa applicants,
19 they -- their interests would be within that zone, because this
20 is a program that touches on that.

21 Your interest seems to be a downstream economic interest.

22 So how is this programming or this legislation or this
23 regulatory framework, how's that meant to protect your economic
24 interest as a lawyer to do your legal work in this
25 partic- -- just in this one, narrow, specific niche market?

1 MR. MORRISON: Your Honor --

2 THE COURT: I apologize.

3 MR. MORRISON: -- first, I want to acknowledge that
4 Red Eagle Law's interests are downstream and not paramount, not
5 the most interest that are impacted by the Department's failure
6 to implement the program.

7 And the interest that is paramount is the noncitizens that
8 are impacted and unable to pursue legal immigration paths.

9 Those in the United States are in a unique position that
10 they don't want to sue the Government because they're scared of
11 the Government.

12 THE COURT: So just tell me -- you're acknowledging
13 that your interest is downstream?

14 MR. MORRISON: Uh-hmm.

15 THE COURT: And we're on the same page with regard to
16 that, but how is that downstream interest within the zone of
17 interest?

18 And what case law are you relying on for that proposition?

19 MR. MORRISON: I don't think that there's case law
20 specific to this situation with immigration attorneys
21 representing a class of visa categories because the --

22 THE COURT: I agree with you, but district courts, when
23 we're met with this situation, we still have to give the parties
24 an answer. I can't say, "Well, the circuit hasn't ruled on it,
25 so I'm just going to -- I'm going to identify that hole in the

1 law and just not give an answer."

2 I have to go from the general legal framework and the case
3 law that does exist and see, based on those principles, how best
4 to apply it in this situation.

5 So what are you leaning on to say that the zone of interest
6 extends this far to downstream economic interest?

7 MR. MORRISON: Your Honor, in *Match-E-Be-Nash-She-Wish*
8 *Band of Pottawatomí Indians v. Patchak* -- and I may not have
9 pronounced that correctly -- Supreme Court, in 2012, said that
10 the zone of interest test is not meant to be especially
11 demanding.

12 And in the case of a novel situation, it's Plaintiff's
13 position that we would fit within that "not especially
14 demanding" space.

15 THE COURT: But how does it fit at all?

16 Even if it's not -- and I've seen that same case
17 law -- that is not a rigorous or demanding standard, but it
18 still has to fit. It still is a standard.

19 So how does it fit?

20 So how about this?

21 So what about that case or any other case?

22 And this is how it would be helpful to me: In this case, a
23 court found that these interests were within the zone of
24 interest of this type of statute designed to do this type of
25 thing.

1 And so if something this far away is good enough, then
2 something this far away in our case is good enough, as opposed
3 to just telling me it's a lax standard -- I agree with you, I've
4 seen that in the case law myself -- but I still need to draw a
5 line as to it is an existing standard, however generous, and
6 where to draw that line.

7 So -- and if you can't help me with the case law, just give
8 me, then, a commonsense argument.

9 Articulate how this is within the zone of interest.

10 Because I see this as programming or a government framework
11 for these visa or the visa applicant rights or the would-be
12 immigrant rights.

13 MR. MORRISON: Thank you, Your Honor.

14 Plaintiffs concede that our arguments on zone of interest
15 in the briefing are not adequate for what you're looking for,
16 but we can do the commonsense explanation.

17 Since 2023, I've grown this law firm from just me to me and
18 five attorneys of --

19 THE COURT: No, I get that.

20 But I'm saying even if I were to credit you that this
21 was 100 percent of your work, just qualitatively -- just
22 qualitatively, how is a downstream economic interest within this
23 zone of interest of programming that's designed to either
24 protect or promote or regulate aspirational immigrant rights?

25 MR. MORRISON: Thank you, Your Honor.

1 I'm -- I'm struggling to find, if it's not in our zone of
2 interest, whose zone of interest it's in because --

3 THE COURT: It's in those people's.

4 MR. MORRISON: I just got told by a judge it's not in
5 *Ivanov*, and the Government is arguing *res judicata* on that.

6 THE COURT: Uh-hmm.

7 MR. MORRISON: So the Government is arguing it's not in
8 their interest, and they're arguing it's not in our interest,
9 which leaves an absurd result, and courts are -- don't hugely
10 adopt absurd results, but the absurd result that no one can hold
11 Secretary Rubio accountable for implementing the will of
12 Congress, and that's specifically why this is --

13 THE COURT: Is that being appealed right now?

14 Is that being appealed right now?

15 MR. MORRISON: The *Ivanov* case is not being appealed
16 right now, no.

17 It -- the summary judgment order only happened two weeks
18 ago.

19 THE COURT: Okay.

20 So I'm guessing just the decision-making hasn't happened
21 yet, I understand, of whether you're going to appeal or not.

22 MR. MORRISON: Those plaintiffs have no interest in
23 appealing.

24 Their main interest was to be able to turn on the DV-2026
25 program that was suspended, which the judge agreed and he did

1 turn it on. He did vacate the suspension of the DV-2026 program
2 for those plaintiffs, and that was their main interest.

3 They're not going to finance an appeal of the finding on
4 the DV-2027 program unless the Government appeals that order,
5 and then they might counter -- counter appeal.

6 THE COURT: Okay.

7 Well, it sounds like there might be slightly two different
8 things going on.

9 But even if it's the same exact issue, I fully understand
10 your frustration -- and I saw that in the papers myself -- is if
11 the people can't get the relief, and you can't get the relief as
12 a law firm -- but the thing is I still need to reach a correct
13 decision in my case.

14 Whether or not -- and I don't know who that judge is, and
15 with all due respect, whether or not that court got it wrong or
16 got it right, I still need to reach a correct standing decision
17 in this case.

18 So, you know, that's the -- that's the part where I'm
19 asking for your help on.

20 I appreciate your -- I appreciate your argument both on the
21 timing piece of things and what looks to be the most significant
22 threshold issue here, which is the -- which is the standing.

23 With regard to the argument that you can't have irreparable
24 injury when it's economic damages, I think the Government has
25 overlooked a line of cases saying that when it's about -- when

1 it's an APA claim where you can't get the money on the back end,
2 that this can constitute irreparable injury, of course,
3 depending on the factual circumstances, so I won't require
4 argument from you on that point.

5 I'm going to turn it over to the Government at this point
6 unless there's anything else you'd like to add right now?

7 MR. MORRISON: Just a practical nuance.

8 Normally, in the September Visa Bulletin, which was just
9 released, the Government would announce the entry period for the
10 next fiscal year, which would be DV-2028 as October, and they
11 have not done that.

12 So one of the reasons why Plaintiff thinks it's important
13 to kind of put some fire under the defendant is because it
14 appears like they're planning on skipping this allotment
15 of 50,000 visas altogether and just maybe going directly to
16 DV-2028, if at all. That's all.

17 THE COURT: Okay. Thank you. I appreciate it.

18 Government, if, first, you'd like to give me your take on
19 the overlapping issues in these other cases.

20 This is something you spent some time on in your briefing.

21 And to what degree these are the same issues or not the
22 same issues -- basically, this is your chance to add your color
23 to some of what we talked about with Plaintiff's counsel as to
24 did the *Ivanov* action -- did the class action up in the
25 Northern District of California address the same issue?

1 And, secondly, after that, I'd like to get your position on
2 the -- get your position on the zone of interest -- zone of
3 interest argument that we spent a lot of time with Plaintiff's
4 counsel on.

5 But, first off, if you'd like to address for me those other
6 cases.

7 MR. PIKE: Absolutely, Your Honor.

8 So there are two mass/class action cases that are somewhat
9 overlapping with this case.

10 There's *Medani*, which is up in the Northern District, and
11 there's *Ivanov* in the District of D.C.

12 The *Medani* case does not, as Plaintiff's counsel asserted,
13 correctly ask the Secretary to force open the lottery to enter
14 the 2027 fiscal year DV program. That's all this case is about.
15 Open the lottery for 2027.

16 We cite *Medani* for the purpose of illustrating how
17 Red Eagle Law's positions vis-à-vis the Secretary's actions on
18 the DV program have been pretty hardened for a long time here
19 enough to file multiple cases which cuts against the
20 reasonableness of waiting until the eleventh hour.

21 As to *Ivanov*, in that case, he did rep- -- Red Eagle was
22 Plaintiff's counsel -- this Plaintiff here -- and they
23 represented a class of applicants who prayed for relief from the
24 district court to issue an order requiring the judge or
25 requiring the Secretary to open the lottery to enter the fiscal

1 year 2027 Diversity Visa Program.

2 That court denied that request on the basis those
3 plaintiffs' interest in doing so was too attenuated to confer
4 Article III standing as distinct from APA standing.

5 It wasn't sufficiently imminent, concrete, particularized,
6 all that Luhan language the Court's familiar with.

7 It's our position that the law firm representing a group of
8 clients who might want to apply for the 2027 visa program is
9 essentially in privity with those clients, and their interests
10 are coterminous and, if anything, of one step removed here.

11 Because Red Eagle Law's interest isn't in applying for the
12 program. It's for collecting bills from the clients who wish to
13 apply for the program.

14 But if the client's interest in the program in -- if the
15 clients weren't able to show a sufficient imminent desire to
16 enter the program, then the law firm can't show an imminent
17 injury to bill those clients for entering the program.

18 It's sort of a logical consequence of the other one.

19 And that's why back in March when the *Ivanov* lawsuit was
20 filed in D.C., Red Eagle Law was under a firm enough impression
21 that Secretary Rubio and the State Department would not be
22 opening the program -- the lottery for the 2027 program, but
23 they filed a lawsuit on behalf of hundreds of individual
24 plaintiffs.

25 And at that point, having, you know, had the Rule 11 basis

1 to file that compliant --

2 THE COURT: Okay. So if you're building up to they sat
3 on this for too long, I've read those arguments, I've noted
4 them.

5 I don't need any more argument on it.

6 In -- let's circle back to the claims in *Ivanov*.

7 The -- so that's a claim where Red Eagle represented
8 would-be visa applicants in a class action?

9 MR. PIKE: Sort of a mass action.

10 I don't think there was a class, but they did represent,
11 like, 700 individual plaintiffs.

12 THE COURT: Okay. I see.

13 So it wasn't pled as a class.

14 So it was pled as these 700 -- these 700 plaintiffs.

15 And the ruling in that case was not that they're not within
16 the zone of interest, I think in this parti- -- in that
17 particular case, it clearly would be.

18 But the ruling was that there wasn't sufficient showing
19 that these 700 people had standing or had injury, because who
20 knows if they would have won the lottery; is that right?

21 MR. PIKE: Right. They -- those individual,
22 hypothetical, future 2027 DV applicants didn't have sufficient
23 Article III injury to seek an injunction to order the Secretary
24 to open the 2027 lottery. It was too attenuated in that court's
25 interpretation of facts.

1 THE COURT: Okay. Thank you.

2 So I appreciate that clarification.

3 Now, going on to the standing in this particular case, I
4 know that you're arguing that it doesn't seem to fit within the
5 zone of interest.

6 Before we get there, when it comes to organizational
7 standing, is that something that you would concede?

8 MR. PIKE: No. This isn't an organizational standing
9 case at all, Your Honor.

10 THE COURT: Excuse me?

11 MR. PIKE: This is not an organizational standing case
12 at all, Your Honor.

13 THE COURT: And how is that?

14 Is it because they're not a, let's say, a community
15 advocacy organization?

16 Can you be a private sector entity or a for-profit type
17 endeavor and still have organizational standing?

18 MR. PIKE: I don't see why not.

19 But an organizational standing case is where you have an
20 organization claiming to represent the interest of its members.

21 Classically, you know, the Sierra Club suing to enforce
22 environmental protections because it represents people who care
23 about the environment.

24 But this application isn't based on Red Eagle's desire to
25 represent the interests of its clients, which I honest- -- I

1 would have to research whether a law firm's clients can be
2 within organizational standing, but the Court doesn't need to
3 answer that question because the interests at issue here are
4 Red Eagle's financial interest in billing for legal services, it
5 is the plaintiff in this case representing its own interests as
6 a business entity.

7 That's just outside the realm of any of the organizational
8 standing cases where courts have to grapple with whether the
9 interest of the organization are sufficiently aligned with the
10 membership to confer organizational standing.

11 But, like, we don't have to go there here because Red Eagle
12 has told the Court it has a financial stake in seeing this
13 regulation implemented on certain terms.

14 It's standing as for any other individual plaintiff in a
15 federal court.

16 THE COURT: Okay. The -- so in terms of zone of
17 interest -- in terms of zone of interest, Plaintiff is saying
18 that the reason that there is an overlapping interest is because
19 a significant portion of -- a significant portion of their work
20 is comprised of these types of visa applicants.

21 And when I ask them the question, I said, "Even if that
22 was 100 percent of your work, how is your interest qualitatively
23 within the zone?"

24 I'm going to ask you the same question.

25 The analysis that I'm doing here today, does it hinge on

1 the percentage?

2 If they could show -- if they could make a showing
3 that -- and I know that's not their claim, but I'm doing this to
4 kind of isolate the issue.

5 If they could show that that was 100 percent of their work,
6 would it bring their downstream economic interest, because it
7 aligns so closely to the immigrants' interest, such that it
8 would bring that -- their downstream economic interest within
9 the zone of interest? Which everybody -- and we repeatedly see
10 this language -- everyone is saying this is a lax standard or a
11 generous standard.

12 MR. PIKE: It would not, Your Honor.

13 Even if this were a hundred percent of Red Eagle Law's
14 business, its interests for statutory standing, APA standing as
15 distinct from Article III standing, would fall outside the zone
16 of interests that are protected by the statute.

17 In terms of case law, I actually think the *Lexmark* case is
18 ultra helpful here.

19 And in that case, it was arising under the Lanham Act, the
20 federal unfair competition statute, and you had a set of
21 consumers alleging violation of the Unfair Competition Law in
22 the form of false advertising had caused them to spend money on
23 deceptively marketed products.

24 The Supreme Court found those people had Article III
25 standing because they'd lost money, and that's injury and fact

1 for Article III purposes, but it held they had no statutory
2 standing because the purpose of the Lanham Act is not to protect
3 consumers from losing their money. It's to protect the
4 integrity of the market as a market force. And the people who
5 have statutory standing -- not people -- the parties, the
6 stakeholders who have statutory standing under the Lanham Act
7 are businesses that are market participants who would be harmed
8 by unfair competition.

9 Thus, even though the consumers might have lost money
10 because of unfair competition, because the Lanham Act wasn't
11 invented, created to protect their interests. They weren't the
12 people Congress intended to enforce it.

13 This case can't really be distinguished from that.

14 And under the Supreme Court's *juris prudencia* in this,
15 however broad the Court construes the zone of interest test, you
16 have to look at which stakeholders did Congress intend to be the
17 ones to file lawsuits here?

18 And when you consider the structure of the Diversity Visa
19 Program that's part of the Immigration and Nationality Act,
20 there's no room in which law firms that represent diversity visa
21 applicants play any part. They weren't written into the
22 statute. There's just no indication Congress intended
23 Red Eagle Law to be the person to sue over this.

24 And, in fact, it's not an op- -- it's not just exactly a
25 settled question whether even potential applicants would be the

1 people with statutory standing here. Because the purpose of the
2 Immigration and Nationality Act which, on a very short
3 briefing -- I haven't been able to do a deep dive into the
4 legislative history -- but if you read President Bush's signing
5 statement, when that was created, the stated goal of Congress
6 there was to try to divers- --

7 THE COURT: I don't think we need to go this
8 far -- this far into the weeds. And --

9 MR. PIKE: I think -- yeah.

10 THE COURT: It may be that you would be losing me.
11 Because there are cases saying that people do have a
12 property interest in these types of -- in these types of
13 concerns, but I don't think we need to wrangle about that.

14 In terms -- so circling back to zone of -- circling back to
15 zone of interest.

16 So the *Lexmark* case, which is in the Lanham Act context, is
17 that the same exact analysis, that kind of statutory standing
18 analysis, is that the exact analysis that I need to be doing for
19 zone of interest for an APA claim?

20 MR. PIKE: I think so, Your Honor.

21 Because if you read the *Lexmark* case, it was a Lanham Act
22 case, but the Supreme Court says this whole statutory standing
23 doctrine arose initially in the context of APA cases, and we
24 apply the same framework here.

25 THE COURT: Okay. So it's overtly putting itself into

1 that analytical framework?

2 MR. PIKE: Yes.

3 THE COURT: Okay.

4 MR. PIKE: The Court relied on the APA standing cases
5 to reach its decision under the Lanham Act.

6 And same result also under the case I cited in opening
7 brief, which is the *Block v. Community Nutrition Institute*.

8 That's the milk case where they had a whole body of milk
9 distribution regulations that had been enacted by the Secretary
10 of Agriculture, and consumers tried to sue under that, and the
11 Supreme Court ultimately held that consumers weren't the
12 stakeholders that Congress intended to enforce this legislation,
13 because it created a framework where, like, milk distributors
14 and dairy producers work with the Secretary.

15 So even though the statute actually made reference to
16 protecting consumer interests, the consumer's interests were
17 outside of what the -- what the statutes and regulations were
18 trying to protect.

19 So that case, which was a -- an APA case if I recall
20 correctly, leads to the exact same result as the *Lexmark* case,
21 and when --

22 THE COURT: And they're both the general principle that
23 this downstream economic interest, while it could be valid or
24 very real and compelling, is still outside of that zone?

25 MR. PIKE: Yes.

1 It's -- once you get beyond what interest Congress intended
2 to protect, even if they're serious downstream economic
3 interests, it falls outside the zone.

4 And I would call the Court's attention to the slight
5 distinctions in the Article III context here because this is
6 really important, I think, to bucket these correctly.

7 Because the Article III test isn't about the zone of
8 interest Congress intended in a statute, it's about whether
9 there is a -- an actual federal substantive right to be
10 protected and sued on at all.

11 And that's where -- look at the Ninth Circuit cases in
12 these government injunction cases, and you have to look at
13 whether Congress created rights that can be enforced.

14 And that's why, separate and apart from whether an effect
15 on Plaintiff's billings is -- or Plaintiff's billings are within
16 the zone of interest in the statute, it's also the case for
17 Article III purposes, which is a whole separate analysis that
18 Red Eagle Law, like any other law firm, has no federally
19 protected right to bill clients for its services that's created
20 by the Immigration and Nationality Act or any other -- or any
21 other statute that I'm aware of in this context.

22 And that's why you have the -- we get the same result --

23 THE COURT: That the INA is not a job-creation statute
24 is what you're saying?

25 MR. PIKE: I'm saying that, Your Honor.

1 THE COURT: Okay. Thank you.

2 The -- and some statutes very much are -- like during the
3 Great Depression era or et cetera, the -- now let's circle
4 backwards to the first question I asked Plaintiff's counsel,
5 which is -- which is the timing in this case.

6 Again -- and your arguments about they sat too long are
7 noted and duly considered. I don't need argument on that.

8 But in terms of my concern -- or a question, rather, in
9 this timing -- regardless of whose fault it is, in this timing,
10 I seem to be in a situation where no matter how fast I act, it
11 would still be a little bit too late, what is the urgency in
12 that type of scenario?

13 Which is -- because of when the case came to me, obviously,
14 I couldn't have done anything about the suspension of the
15 lottery almost a year ago, I couldn't have done anything about
16 the opening of the -- the notification of lottery winners that
17 happened last May.

18 And after some back and forth with Plaintiff's counsel, it
19 seems more a question of me doing a late makeup test, where I
20 can -- if they are successful, I can grant the
21 substantive relief -- it still wouldn't happen within fiscal
22 year 2027 -- but at least we can get that numerical allotment
23 satisfied even if it's bleeding over into the next fiscal year.

24 In a situation like that, how do you see the -- how do you
25 see the urgency?

1 MR. PIKE: Well, if anything, Your Honor, the urgency
2 is too much here, because having presented this case to
3 the Court to the point where the Court is required to do the
4 makeup test, this becomes not just a case of compelling agency
5 action unlawfully withheld and requiring compliance with the
6 regulation, but inventing new timetables out of whole cloth for
7 the agency to take action on which aren't based on a regulation
8 or a statute, and which seem to possibly exceed the scope of the
9 Court's jurisdiction to act under the Administrative Procedure
10 Act, because the statute waives sovereign immunity to do all
11 kind of things, but to write new regulations on an *ad hoc* basis
12 doesn't seem to be within the relief that the Court is able to
13 grant.

14 And that ends up ultimately being consistent with the
15 Article III problem in this case, because it is this very
16 attenuated hypothetical dispute, and it's -- the framers didn't
17 create a system where courts adjudicate *ad hoc* abstract legal
18 disputes.

19 Courts are supposed to reach reasonable decisions based on
20 evidence with the appropriate civil procedure that is attendant
21 to the orderly administration of justice, and not having that
22 here puts the Court in a bit of a bind by asking the Court to do
23 something that I'm not sure the Court can do.

24 I'm not aware of any authority.

25 THE COURT: I'm not sure either, honestly.

1 Thank you.

2 But I think that's something that we can cross that bridge
3 later.

4 So after hearing argument from both sides, here's the
5 Court's ruling.

6 MR. PIKE: Your Honor.

7 THE COURT: Oh, yes.

8 Go ahead.

9 MR. PIKE: Oh, may I address the irreparable --

10 THE COURT: Oh, yes. You can --

11 MR. PIKE: -- harm prong?

12 THE COURT: -- go ahead.

13 MR. PIKE: There was something the Court said
14 that -- about the irreparable injury case, about how we
15 potentially overlooked some cases.

16 I'm -- to the extent those are the Little Sisters of the
17 Poor, I think, *California v. Azar* cases, in which the --

18 THE COURT: I don't remember the names.

19 They're the cases that say when monetary recovery is not
20 possible --

21 MR. PIKE: Uh-hmm.

22 So I haven't read all --

23 THE COURT: -- when it's not possible that -- unlike in
24 most cases --

25 MR. PIKE: Yeah.

1 THE COURT: -- where if -- if you can get the money on
2 the back end, then it's not irreparable injury. That's kind of
3 standard operating procedure in most cases.

4 But there are cases that say, "But when you're suing under
5 a framework or a situation where monetary recovery is not
6 possible on the back end, then it can constitute irreparable
7 injury."

8 I'll give you another chance to address that because -- how
9 about this?

10 Let me give you my ruling which will, in and of itself,
11 allow you another chance to go back in and tell me if we're two
12 ships crossing in the night with respect to our understanding of
13 the law on that one.

14 MR. PIKE: That works, Your Honor.

15 THE COURT: So here's what the Court's going to do:

16 The Court is going to deny the motion for a temporary
17 restraining order without prejudice to -- and, in fact, with
18 court orders to do a preliminary injunction round of briefing.

19 The two reasons for that are as follows:

20 First of all, in terms of the time frame of irreparable
21 injury, the Court is faced with a situation where many of the
22 acts that the Court could have enjoined if it were able to do so
23 under the law and the facts, many of those have passed.

24 And the request on the table seems to be what we've talked
25 about with both sides as some kind of later makeup set of

1 actions from the Government.

2 This is a long way of saying much of the ship has sailed
3 already.

4 And so if we're talking about making something up after the
5 fact, then I don't think that situation presents as much urgency
6 as stopping or ordering something in the time frames during
7 which they're supposed to happen to begin with.

8 I certainly don't see the -- I do see a general sense of
9 urgency.

10 Because if Plaintiffs are correct in that they are entitled
11 to this after-the-fact makeup type of relief, then the sooner
12 the better, because this is the -- these are actions that the
13 Government should have taken within a certain time frame.

14 However, I don't see the urgency in terms of the next 14
15 days, which is the TRO vehicle.

16 It more seems to be if Plaintiff is entitled to relief,
17 then we should act as soon as possible, but there's nothing
18 about the next 14 days -- the next 14 days are neither here nor
19 there.

20 We're already late by virtue of when the Plaintiff brought
21 this to us to do anything about something that should have
22 happened a year ago and half a year ago.

23 So the Court is denying TRO on that timing ground, as well
24 as -- as far as the papers stand right now, the plaintiff has
25 not met its burden with regard to likelihood of success because

1 of what I see as potential significant standing or zone of
2 int- -- scratch the standing -- the zone of interest requirement
3 as far as APA claims go right now, I'm not seeing Plaintiff
4 having met that burden in terms of legal authority persuasion,
5 state of the record, that their interests are within that zone
6 of interest.

7 But, again, this is without prejudice to and with court
8 orders to.

9 We're going to address this and more at length during a
10 preliminary injunction set of briefing, and I'll set the timing
11 for that.

12 It's during that round, Government, where you can let me
13 know about if there is an even simpler threshold issue of this
14 can't be irreparable injury because of the economic interests,
15 and you'll go and look at those cases that I'm seeing, then you
16 can certainly raise that in your preliminary injunction
17 briefing.

18 Or if it turns out that your strongest argument is in the
19 zone of interest, then you can choose to focus your arguments
20 there in the preliminary injunction briefing.

21 So basically we're going to do this all again but on a
22 slightly more extended timeline with better opportunity on both
23 sides to prepare that legal research and analysis and briefing
24 and add to the record to the extent necessary.

25 On Plaintiff's side, these are preliminary thoughts that

1 drive the denial of the TRO.

2 If you believe you can show me more that the degree of your
3 economic interest makes a difference, then, of course, you're
4 going to want to make the record on that.

5 And if the answer is going to hinge on that, then you're
6 going to want to show me more than just significance.

7 You're going to want to give me more concrete facts, like
8 what percent are we talking about, what percent of revenue
9 historically, how much, things like that.

10 I have my doubts at this point that the analysis will turn
11 on that, but if you're able to convince me under the law that it
12 should turn on that in your preliminary injunction briefing,
13 then you're going to also want to make the record on that point
14 so that even if you're able to convince me on the law, you also
15 need to convince me on whether you've met the burden that you
16 carry for this preliminary relief in terms of record facts.

17 There is -- unlike this one -- because unlike this one,
18 there isn't going to be a do-over with regard to the preliminary
19 injunction.

20 Of course, the case will continue, but I do think that the
21 nature of it, the time-sensitive nature of it is not something
22 that makes the answer during the preliminary injunction round
23 have a fair bit of significance instead of having to wait for
24 the conclusion of a litigation in this particular case.

25 So in terms of briefing -- again, because some of the

1 nature of the situation, which is where there is a time urgency,
2 but some of the ship has already sailed, the Court's thinking
3 the standard 28-day briefing schedule.

4 But if Plaintiff would like me to order something more
5 expedited, I would be open to that as well.

6 Also keeping in mind -- also keeping in mind your needs as
7 to the length of time you would need to give this your -- give
8 this your best effort.

9 So, at this point, what I would be inclined to do is order
10 your motion for preliminary injunction in seven days, give the
11 other side seven days to respond, reply in seven days, and the
12 hearing in another seven days. That is 28 days out from now.
13 That's a fairly aggressive schedule, and one that respects,
14 again, the general urgency of the situation, even though
15 some -- a lot of these dates -- a lot of these dates have passed
16 in terms of Government withholding action.

17 But, Plaintiff, since you're the one driving the -- driving
18 the request for an expedited relief, if you feel that you need
19 more time on the briefing, I'd be happy to grant it.

20 So what schedule would you propose for me, Plaintiff?

21 MR. MORRISON: Your Honor, as a practical matter on the
22 workload, I think that that's a fair schedule.

23 There's one issue that I want to raise for the Court, and
24 that is one of the basis for this lawsuit, is Code of Federal
25 Regulations 42.33 --

1 THE COURT: So, Counsel, if this is substantive
2 argument, I'm going to ask that you -- unless -- is your comment
3 about to be about the timing or a substantive argument about
4 what we've been talking about today?

5 Because if it's the latter, we're pushing that all into
6 preliminary injunction at this point.

7 MR. MORRISON: It's about the timing of the briefing
8 schedule.

9 THE COURT: Okay.

10 MR. MORRISON: It could potentially be moot if -- the
11 wording in the CFR says that the duty is to do the registration
12 period of at least 30 days each fiscal year. So the Government
13 may argue after September 30th that it's moot.

14 THE COURT: September --

15 MR. MORRISON: But the briefing schedule that you've
16 set, Your Honor, is within September. It's just leaving a small
17 window at the end of September. That's the only thing that
18 Plaintiffs want to note.

19 THE COURT: So do you want to ask me for a more
20 expedited -- more expedited briefing?

21 MR. MORRISON: That would be Plaintiff's preference.

22 THE COURT: Okay. So give me your proposed set of
23 dates.

24 MR. MORRISON: Instead of seven, seven, and seven, like
25 five, five, and five maybe.

1 THE COURT: Okay.

2 So, Mr. Deputy, what would five, five, five look like?

3 So that would be September 8th?

4 THE CLERK: Yes, Your Honor. The Plaintiff's initial
5 filing will be September 8, followed by -- let's see.

6 And then the Government's response would be Monday,
7 September 14.

8 And then reply on the 18th.

9 THE COURT: Okay.

10 THE CLERK: And then the hearing, we have Thursday,
11 September 24th, at 9:30 a.m. available.

12 THE COURT: Okay. So I'm going to order that set of
13 dates for a preliminary injunction motion.

14 And this is a set of dates that, given the filing
15 of -- given the date of filing by Plaintiffs, given the Court's
16 denial of the TRO, this is the time frame that the plaintiff has
17 asked for in recognition of the time-sensitive nature of this
18 situation so that any relief that the Court may or may not grant
19 on preliminary injunction would not be moot.

20 Is there anything else I can do for the parties today?

21 MR. MORRISON: Not from Plaintiffs, Your Honor.

22 MR. PIKE: Nothing from my side, Your Honor.

23 THE COURT: Okay. Thank you.

24 We'll see everyone back -- so the hearing date, Mr. Deputy,
25 was the 24th?

1 THE CLERK: Yes, Your Honor. That's Thursday,
2 September 24, at 9:30 a.m.

3 THE COURT: Okay. So we'll see everyone back on that
4 date at 9:30.

5 Thank you for argument, Counsel.

6 MR. PIKE: Thank you, Your Honor.

7 THE CLERK: And, Your Honor, that concludes the Court's
8 calendar.

9 (Proceedings concluded at 10:36 a.m.)

10 -oOo-

11
12 C E R T I F I C A T E

13 I, Cristine R. Gerongco, certify that I am a duly
14 qualified and acting Official Court Reporter for the United
15 States District Court; that the foregoing is a true and accurate
16 transcript of the proceedings as taken by me in the
above-entitled matter; and that the format used complies with
the rules and requirements of the United States Judicial
Conference.

17 Dated: September 7, 2026

18 s/ Cristine R. Gerongco

19
20 Cristine R. Gerongco, CSR 13517
21 U.S. Official Court Reporter
22
23
24
25

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

RED EAGLE LAW, L.C.,) CASE NO.: 26-CV-04738-JO-VET
)
Plaintiff,) DEPARTMENT 13B
)
) SAN DIEGO, CALIFORNIA
v.)
) THURSDAY, SEPTEMBER 24, 2026
MARCO RUBIO,)
in his official capacity)
as U.S. Secretary of State,) **CERTIFIED**
) **TRANSCRIPT**
)
Defendant.) MOTION FOR PRELIMINARY
INJUNCTION HEARING

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JINSOOK OHTA
UNITED STATES DISTRICT COURT JUDGE

PAGES 1 THROUGH 45

Court Reporter:

CRISTINE R. GERONGCO, RPR, CSR 13517
U.S. OFFICIAL COURT REPORTER
U.S. District Court Clerk's Office
333 West Broadway, Suite 420
San Diego, California 92101

Reported stenographically; transcribed with CAT software.

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ASSISTANT U.S. ATTORNEY

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1 THURSDAY - SEPTEMBER 24, 2026

9:57 A.M.

2 P R O C E E D I N G S

3 --- oOo ---

4 THE CLERK: Calling matter number 4 on calendar,
5 26-cv-4738, Red Eagle Law, L.C. v. Rubio, for a hearing on a
6 motion for a preliminary injunction.

7 THE COURT: Good morning, everyone. We'll take
8 appearances from Plaintiff's side first.

9 MR. MORRISON: Good morning, Your Honor.
10 Curtis Morrison for Plaintiff.

11 MR. PIKE: And good morning, Your Honor.
12 Ian Pike for the Government.

13 THE COURT: Okay. Good morning. So I'd like to talk
14 to the Government first.

15 If you'd like to take the podium or stay at your desk, but
16 whatever's more comfortable for you because I know the
17 microphone is very low, so you don't have to bend over.

18 MR. PIKE: Thank you, Your Honor. I'm happy up here.

19 THE COURT: Thank you.

20 So the -- for the Government, in terms of -- in terms of
21 organizational standing, is your argument that when it comes to
22 a prospective income stream and, obviously, specifically here,
23 their argument that they're losing this -- they're going to lose
24 this business, or they have already lost -- lost business that
25 they would have had had this program started and started in the

1 correct time that -- is your argument that that type of injury
2 for Article III standing purposes is always too speculative to
3 constitute that type of -- to qualify for that type of standing?
4 Or is it that they haven't shown or is that they haven't shown
5 that they would -- haven't made enough of a record to show me
6 that they would have had this business otherwise?

7 MR. PIKE: I would say it's elements of both,
8 Your Honor.

9 On the -- if I may go in reverse order.

10 On the -- on the sort of merits argument, the case-specific
11 fact of whether they've made a sufficient showing of a lost
12 business opportunity -- I think this ends up bleeding into the
13 merits and the obligation to show the likelihood of harm, but
14 also the standing issue, because they have to show an
15 Article III injury is actual, imminent, concrete,
16 particularized, not speculative. And here, the law firm has
17 said "yes" in the past.

18 We have represented some of these clients doing these
19 Diversity Visa applications, and it's been X -- 20-something
20 percent of our revenue in the last year.

21 However, they have -- the firm has not come forward and
22 showed we have signed up X number of clients who now cannot go
23 forward.

24 We can credibly project for 2027 it would have been this,
25 it's all "Because in the past, ergo in the future," and that's

1 not always a good analogy.

2 If this were a damages case, these would be so far outside
3 the realm of certainty that they couldn't be proven in this
4 case. Because in these future lost profits cases, damages
5 plaintiffs need to prove that they can't, without reasonable
6 efforts to mitigate, substitute those damages.

7 And part of the problem with this case is when you say "We
8 won't be able to get these potential, hypothetical, future
9 clients, ergo we're going to lose business," the firm still has
10 attorneys who will therefore have the capacity to retain and
11 represent other clients mitigating their damages and replacing
12 the lost fees.

13 And when all is said and done, if this Court could project
14 itself into the future, there's a very real scenario where
15 Red Eagle Law doesn't just roll over and not make 27, 28 percent
16 of its revenues. It goes out and it does any of the other nine
17 areas of law in which it practices extensively, and it loses no
18 money.

19 So part of the problem of a lost business injury case is
20 that it is both insufficiently imminent and concrete for
21 Article III purposes because they would have to convince this
22 Court that the only way they could possibly make that money
23 would be to retain those clients and to process those
24 applications, and on the facts of this case, they haven't shown
25 that that's the level of -- with any kind of certainty to where

1 they're actually going to lose that money.

2 And because -- then that's evidentiary in a -- in a lot of
3 ways, the base -- the Court's record right now --

4 THE COURT: So, Counsel -- so you're saying that it is
5 a failure to meet a evidentiary record. You're saying they just
6 haven't put enough in the record to show that they will lose
7 that money?

8 MR. PIKE: Yes.

9 THE COURT: Okay. Thank you.

10 I tend to disagree with you there.

11 I think there's a little different -- a logical step that
12 you are inviting me to make that I'm not sure I agree with. You
13 make it sound like what they're saying is there's some sum total
14 of money that they're entitled to, and they haven't shown that
15 they could -- let's say it's 500 grand; I'm just making up that
16 number -- and they haven't shown that they can't get there by
17 doing more -- other areas of immigration work. But I think what
18 they're saying is they are losing this Diversity Visa business,
19 and they've shown me a record that they have historically had
20 this business and that it has been significant. And if there's
21 no lotto, they can't get this business.

22 And your argument that they don't have signed-up clients
23 might be persuasive in other contexts, but in this one where the
24 very nature of it is that you need the -- no one signs up on
25 the -- for some services on the off chance that they win a

1 lottery. So I think that is a standard of some kind of level of
2 certainty that's neither possible in a case like this nor
3 requisite to show the -- to show that the loss is actual and
4 imminent.

5 It'd be one thing if, let's say, a law clerk of mine who
6 has still a year left to go with me, says to me "You know,
7 generally, I'm interested in immigration law, so I think I'll
8 hang up my shingle, and I think part of my business will be
9 Diversity Visas. And because this program has been suspended, I
10 won't be able to make that money." But there is some
11 significant record now, at this point, that they have been doing
12 this for a while.

13 And it seems concrete enough that because they have that
14 historical information on getting this work and making money
15 from this work, that it is as actual and concrete as anything in
16 the future can be.

17 MR. PIKE: Even if the Court reaches that conclusion,
18 that conclusion begs the fundamental standing question in this
19 entire case, which is "Does Red Eagle Law have a federally
20 protected right to bill those clients?"

21 THE COURT: Yes so -- so then you -- you want to move
22 on to zone of interest, then, at this point?

23 MR. PIKE: So, not speci- -- yes and no because this
24 Article III and standing test isn't the zone-of-interests tests.
25 It's -- they overlap and probably are coherent --

1 THE COURT: Let's just talk about it in terms of zone
2 of interest. I've seen the nuance that you're trying to make
3 with regard to Article III. And whether correct or not, it
4 overlaps so much with zone of interest that there doesn't -- it
5 doesn't seem to be particularly fruitful to do that when there's
6 going to be so much overlap with the zone of interest here.

7 So in terms of zone of interest, here is -- here's my
8 question for you.

9 So this is a quote from the California *Trump* case. It
10 looks like you can have APA statutory standing or -- scratch
11 that. Let's just call it "zone of interest." It looks like you
12 can have this -- meet this zone-of-interest requirement in two
13 ways.

14 First, is, quote, "If it is among those Congress expressly
15 or directly indicated where the intended beneficiaries of a
16 statute." That's the first way. And then, the second way is,
17 quote, "If it is a suitable challenger to enforce the statute,"
18 that is, "if its interests are sufficiently congruent with those
19 of the intended beneficiaries that the litigants are not more
20 likely to frustrate than further statutory objectives."

21 So do you agree with me that those are the two ways you can
22 have APA zone of interest?

23 MR. PIKE: That sounds like an adequate recitation of
24 how we would show a zone-of-interest test. And it's -- to be
25 clear, it's not zone of interest under the APA. It's under the

1 statute that is being alleged in violation of the APA.

2 THE COURT: I understand that.

3 MR. PIKE: Okay.

4 THE COURT: The -- so these are the two ways to meet
5 the zone-of-interest requirement for APA cases.

6 MR. PIKE: So my take on the zone of interest is more
7 that -- as is the Supreme Court and the Ninth Circuit have
8 phrased it, it's did Congress create a --

9 THE COURT: So, Counsel, so --

10 MR. PIKE: -- intend for this particular Plaintiff to
11 sue --

12 THE COURT: -- we have a --

13 MR. PIKE: -- but if we --

14 THE COURT: Sorry. Sorry. We have a -- we have a
15 Ninth Circuit case, and then I know nuclear -- nuclear -- what's
16 the case name that starts with "nuclear" something -- comes
17 afterwards.

18 But this two -- this two-prong way of getting to APA zone
19 of interest, is this -- is this still good law?

20 MR. PIKE: I suppose so, Your Honor. I --

21 THE COURT: So you -- I know you already know this
22 'cause I know you get good training at the U.S. Attorney's
23 Office in the civil division. There's the advocacy and
24 zealousness portion of what you do, but there's also the portion
25 of what you do that has to do with duty of candor.

1 So when it's a straight up question that should be a
2 straight-up answer, then you give that answer, and then you
3 could proceed to tell me how that impacts your advocacy
4 position. But right now, I'm asking you a straight up question
5 of law, and you owe the Court a duty of candor on that.

6 Is this two-prong test still good law?

7 MR. PIKE: Yes.

8 THE COURT: Okay.

9 So taking the -- so in this -- in the Ninth Circuit, of
10 course, I meant -- taking these two prongs. So the first one,
11 if it is among those who Congress expressly or directly
12 indicated were the intended beneficiaries of a statute.

13 So that one is clearly out, and I don't think even
14 Plaintiffs would fight me on that. He can let me know if I'm
15 incorrect later.

16 So I'm more looking at the second prong of this, which is
17 if this immigration law firm that has done its work -- if their
18 interests are sufficiently congruent. And so I understand the
19 *Lexmark* case stands for a proposition that says something like,
20 look, you have a financial injury, but it's this collateral and
21 downstream financial injury, the Lanham Act is just about even
22 playing field among competitors. So if you're a competitor or a
23 player in the field like *Lexmark* and the knockoff cartridge
24 maker with the cheap device, then that's okay. But just because
25 you have some real financial injury which would probably be fine

1 for Article III is not fine for zone of interest.

2 And they make that clarification in the *Lexmark* case.

3 So that one seems to stand for the proposition that some
4 kind of downstream financial injury alone is not going to be
5 sufficient to get you into the zone of interest.

6 Similarly, there's the case with the recyclers and the
7 Dormant Commerce Clause, where, yes, you have a concern about
8 the biolipids and, like, how far you have to drive to get rid of
9 those. But the Dormant Commerce Clause is really just a matter
10 of federalism and what's affecting interstate commerce and this
11 or that, and you're not in that zone of interest.

12 But then we get to cases like *East Bay* and -- yes, so let's
13 start with *East Bay*. Then we get to cases like *East Bay*, where
14 these nonprofit organizations who are going to help asylum
15 seekers with their asylum claims, they're found to have this
16 type of zone-of-interest standing. And I know those facts are
17 stronger there because they -- in that particular instance,
18 they're specifically mentioned somewhere in the legislative
19 history or somewhere in the act, which is it's envisioned that
20 asylum seekers by their nature are not -- usually not people who
21 are, you know, have all these resources and that they're going
22 to be working with these nonprofit organizations.

23 And then we have the case with the blood donors -- or the
24 plasma donors, rather -- where it's not so much explicit, but
25 it's implicit in that if there are provisions for allowing

1 people to come over for a business transaction -- not ongoing
2 work, but for a business transaction -- that the people who
3 would have an interest in that -- it would be two-sided: the
4 people who are coming over for the transaction, and then the
5 people who are meeting them in that transaction. Because the
6 very definition of "transaction" means that it is a multi-sided
7 or multi-party interaction.

8 And so that -- those people are within that zone of
9 interest because, clearly, what was envisioned was that there
10 would be that business transaction.

11 And so, between the combination of these two cases, my
12 question for you is why isn't it -- so we have a portion of the
13 INA and then the corresponding regs that are designed to promote
14 immigration from different types of countries. And to provide a
15 pathway for that -- and why couldn't it be the case that it
16 would be envisioned and expected that these people would be
17 working with immigration attorneys to navigate what is a very
18 complicated process, and so that the people who do that have
19 sufficiently these congruent -- congruent interests?

20 That combined with -- and I just want to acknowledge,
21 Government, I would not even be entertaining this discussion if
22 the standard did not explicitly tell me that it's a very lenient
23 one. If it was a normal standard or a stringent standard,
24 like -- like the one needed for a TRO and preliminary
25 injunction, this would be the type of argument where I would

1 say, "I don't know if that's particularly a strong argument";
2 however, when I'm told that it's a very lenient standard and
3 that all you need is something more than marginally and not
4 inconsistent, is -- and then I'm getting -- and then I'm looking
5 at the cases like *CSL Plasma* and *East Bay*, why isn't it that
6 this framework that's designed to help -- or promote --
7 immigration from certain -- from certain diverse countries, why
8 the immigration firms who are likely going to be helping those
9 applicants because of the complexity of this area of law -- why
10 isn't it that -- that that would naturally be envisioned, and
11 that it would -- that it's a part of this policy goal of
12 promoting this type of diverse immigration, and that's an effort
13 that, obviously, the immigration attorneys on their end are
14 assisting with by providing these services?

15 MR. PIKE: Okay. A lot to unpack there, and I'll start
16 with the *CSL Plasma* case. The logic and holding of *CSL Plasma*
17 is not so broad as whenever a federal statute sets up a
18 regulatory regime under which multiple parties engage in
19 transactions with each other, all parties to that transaction
20 automatically become stakeholders sufficient that they have
21 statutory standing to sue. The *CSL Plasma* case looked very
22 directly at the point of the B-1 visa, which was created to
23 benefit the American businesses exactly like *CSL Plasma*. It was
24 enacted for their benefit purposefully by Congress.

25 Because it --

1 THE COURT: But when you say that "it was enacted to
2 benefit purposefully by Congress," [sic] that's what the court
3 concluded, but there were no words to that effect. The court
4 just looked at language saying they're allowed to come over for
5 a transaction. So clearly, the other side of the transaction
6 has -- are benefited -- can be benefited. Plasma is saying that
7 they're absolutely crucial to their operations. And so it was
8 the conclusion that they -- it was the conclusion that they,
9 true -- but I don't know that that -- what you said about the
10 "benefit of American companies" [sic] or "American
11 stakeholders," [sic] et cetera, that wasn't in the statute
12 itself. It was what the court concluded was meant by a statute
13 that simply allowed for these types of visas for the conducting
14 of transactions, and this is why I'm asking the question.

15 So that kind of implicit -- without some legislative
16 history language, it was enough in *Plasma*. Why isn't it enough
17 here?

18 MR. PIKE: Because if you ex- -- cast the holding of
19 *Plasma* so broadly as to allow that kind of transactional test to
20 create organizational standing, then any law firm that practices
21 any kind of law where its business is affected by the regulatory
22 efforts of the federal government would have standing to sue the
23 federal government to challenge its regulatory decisions if
24 those decisions have an impact on the law firm's ability to
25 practice law. And that is how -- however broad this test is

1 under the broad language standard, that's too broad.

2 Because that's why you would have -- I gave the example in
3 the briefing of tax preparers would have standing to sue if the
4 IRS granted clemency for filing certain returns every year
5 because those people -- it's -- well, we do 80 percent of our
6 business filing gift tax returns, and if we can't do that, we're
7 effectively shuttered.

8 And I have never seen a articulation of the
9 zone-of-interest tests, however broad it may be, that is quite
10 that broad. And I think here in the Ninth Circuit, where we're
11 bound by the *East Bay* decision and *CSL*'s purely persuasive,
12 there you had a very good road map from Congress.

13 THE COURT: There was a -- I -- and I appreciate that.

14 MR. PIKE: Uh-hmm.

15 THE COURT: That in the *East Bay*, there was specific
16 stat- -- there was a specific statutory language hook.

17 MR. PIKE: Uh-hmm.

18 THE COURT: The -- I think maybe a better way of
19 getting to the heart of what I'm struggling with here is, A -- I
20 will just make this really clearer if it wasn't already, which
21 is when I -- when I first met this issue at the TRO stage, I
22 thought it was a lot simpler than I think it is today.

23 I was really of the mind -- we had this discussion -- I was
24 of the mind the INA was not for the benefit of immigration
25 attorneys and whether they enrich themselves or don't enrich

1 themselves, and I thought it was going to be a very clear
2 decision on that type of reasoning. But the more I started
3 reading about -- and I've pointed you to those so you could try
4 to help me with it, that second prong of APA zone of interest,
5 which is the congruent interest -- the more I started reading
6 and really focusing on *East Bay* and *Plasma* and understood -- I
7 know *East Bay* is Ninth Circuit, and they had a specific
8 statutory or legislative history or legislative language hook
9 that we are missing here. And that *Plasma* is just persuasive
10 authority because it's out of circuit.

11 But I think this might help you understand exactly what I'm
12 struggling with today in a way -- which is something I was not
13 struggling with at the TRO stage, which was a lot more of an
14 initial impression of -- of the cases and the arguments. They
15 were newer to me by their very nature.

16 We've all had a couple of weeks now to think about this
17 further, which is -- last time when we were all talking about
18 this, I was thinking about it as "Okay, so the would-be
19 immigrants are affected by this."

20 But it would really seem to be outside of the zone of
21 interest to say, because they're affected, the -- the
22 immigration attorneys are affected 'cause they have less
23 business. The grocery stores in those neighborhoods have a
24 financial injury because -- because they would be affected. And
25 I saw that type of downstream financial -- what I saw as

1 marginal or a collateral financial injury as outside of the zone
2 of interest in the same way.

3 The immigration attorneys who lose the business, the
4 grocery stores who lose the business, and I'm sure, you know, we
5 can come up with many other butterfly-effect type of -- type of
6 results.

7 But the difference today is I'm not sure -- so, sure that
8 we should be treating the type of grocery store -- we have a
9 downstream financial injury because -- 'cause we have less
10 customers. The same way as the immigration law firm because if
11 we have an immigration -- because of what I just started with,
12 which is if we have a framework for promoting this immigration
13 from diverse countries, and we have a law firm that is -- their
14 role in that is -- again, it's not explicit like it is in
15 *East Bay*, but I think it is just as envisioned or implicit that
16 these people would be seeking the help of immigration attorneys
17 to make this happen, that they have a role in making this
18 diversity immigration program happen on -- in accomplishing that
19 goal of having the diverse immigration from all these different
20 countries. So, in a way that the grocery store owners -- that
21 really is just downstream and financial and collateral. And the
22 grocery store owners don't have a role in helping or not helping
23 diverse immigration happen. It is just a downstream financial
24 impact. Whereas the immigration attorneys, after having this
25 extra time with the cases, it seems that they're a lot closer to

1 that.

2 So if there's a way you can help me with this, 'cause I'll
3 be very honest with you, a lot of the times when I get on the
4 bench, I have a tentative; I'm fairly confident. I get the
5 argument to make sure I didn't miss things or kick the tires or
6 see if different aspects occur to me. But on this one, I am
7 still struggling with it to be fully honest with both of you. I
8 don't have a tentative on this. I've thought a lot about this,
9 and I've deeply looked at the cases and gone over it, but
10 it's -- right there is where the rubber meets the road. Grocery
11 store owners, downstream.

12 Marginal.

13 Not envisioned in the statute. Has nothing to do with
14 accomplishing those objectives.

15 The immigration attorneys, are they closer to -- in that
16 zone of making this diverse immigration happen envisioned that
17 they would be having a role in this such that they would have a
18 congruent interest in making this happen?

19 MR. PIKE: I agree with the Court. This is a really
20 hard one because, as far as I can tell, nobody has ever argued
21 this before. And that makes it really tough.

22 THE COURT: It's always easy when you could say, "Ninth
23 Circuit case." Nobody has to think about it. I know. This is
24 a difficult one. Like I said, I'm still struggling. Uh-hmm.

25 MR. PIKE: And if the -- I see where the Court is

1 coming from. On the one hand, we have the grocery store that
2 is -- and literally, everybody else in all the country that is
3 marginally or tangentially affected by any government regulatory
4 action, they're outside the interest. And then you have
5 congressionally established stakeholders that Congress intended
6 to sue. They're definitely within the zone of interest.

7 And then there's gotta be a line somewhere, and the Court
8 needs to draw a line to decide whether Red Eagle is on one side
9 or the other side.

10 And if the guideline is the interests are sufficiently
11 congruent with the interests of the -- of the people whom the
12 statute was intended to benefit, then here it may help to look
13 at this as a question of whether they are necessary to the
14 process or incidental to the process. And they are not
15 necessary to the process. It is helpful to have a lawyer, but
16 as the Court knows, something like 30 percent of the docket here
17 is pro per. You can go to court without a lawyer, and you
18 don't -- if you want to file a diversity visa, you don't need to
19 hire Red Eagle Law to do it. You don't need to hire anyone to
20 do it.

21 It is a option that people have, and maybe they want to
22 take it.

23 THE COURT: Yeah. And I appreciate that distinction,
24 Counsel, because I think that's where the struggle is -- is with
25 lawyers. I agree with you: they're not necessary. But I

1 dis- -- but I also don't think they're incidental. They're
2 somewhere in between. The grocery stores: incidental; the bus
3 that gets them to the courthouse: incidental, as in you can do
4 it without a lawyer. But I don't think it's random or
5 incidental or any number of, you know -- yes, you also need the
6 roads and the doors to the courthouse kind of incidental. And
7 an immigration attorney is, at least numerically, going to be
8 present as part of the process. And again, which is different
9 from "Are they absolutely necessary?" Of course not. You can
10 do it pro per. You're probably going to have a lower chance of
11 success if you do it pro per, but you can do it pro per. So,
12 that's -- that really is the space that I'm struggling with.

13 MR. PIKE: Uh-hmm. And I revert back to this idea that
14 the -- should the Court craft a rule that would bring Red Eagle
15 into the zone of interests here?

16 It seems much more concrete and particularized and
17 appropriate in this case because this is the case that's before
18 the Court.

19 But the logic would truly extend to the accountants' firms,
20 to the -- Congress enacted the False Claims Act trying to wipe
21 out Medicare and defense fraud, and the relators bar is a huge
22 part of that. I work on some of the aferdim (phonetic) civil
23 cases. They -- those come to the U.S. attorneys in most cases
24 because the relator brings them. The Court sees these *qui tam*
25 cases on the docket. But should the relators' bar be within the

1 zone of interests of a change in regulatory policy vis-à-vis the
2 False Claims Act if, say, U.S. Attorney Adam Gordon makes the
3 decision to change enforcement priorities? Or if the -- if the
4 appropriate governing body enacts a regulation that somewhat
5 changes how those cases should go forward, it's just -- it
6 becomes this -- and as much as I don't want to rely on a parade
7 of horrors, in a case where there's no case telling you what
8 to do, I think the Court should look at the practical effect of
9 adopting a rule so broad, which would be that all those people
10 would now have standing to sue the Government to change its
11 practices because they are a sufficiently big part of the
12 process.

13 And it's not entirely on point because it was a -- like a
14 charitable organizational standing case, but the alliance for
15 *Hippocratic Medicine* case, the Supreme Court came in and just
16 slammed the door on a lot of these organizational standing-type
17 cases because the overarching principle from the Supreme Court
18 in a lot of these cases has been "You can't just spend your way
19 into standing to sue." We don't -- we want the -- the parties
20 who appear before the Court to have the appropriate stake in the
21 outcome of the litigation that they should be able to invoke the
22 federal judicial power itself. And when -- when the
23 Supreme Court is closing the door on standing in -- and I
24 realize it's an Article III case, but the interests are
25 coterminous here -- in the *Hippocratic Medicine* case, it just

1 does not seem consistent with that policy for this Court to open
2 the door to law firms, accountants -- you know, hospitals,
3 doctors, all these professionals that have the kind -- that
4 provide the kind of advanced services that, like, theoretically,
5 you could do your own dentistry just like you can be pro per,
6 but you shouldn't. That's too fuzzy of a guiding line for the
7 Court to adopt in the wake of a series of Supreme Court cases
8 closing the door on plaintiffs and trying to keep it to parties
9 that have a real stake.

10 And, again, I think this isn't a organizational standing
11 case, but when you look at the organizational standing cases,
12 they do provide a helpful analog. Because there you have, say,
13 the Sierra Club and the East Bay Sanctuary, and they're suing
14 not to enforce their -- not because their own rights have been
15 violated. They're suing because the rights of the people whose
16 interests they can sufficiently and articulately claim to
17 represent have been violated.

18 And the courts use that convenient legal fiction of, you
19 know, injury and fact in standing cases to say, like, to say,
20 "Yes, we know that this isn't a class action case brought on
21 behalf of a group of people who want visas, but," like,
22 "this single issue advocacy group cares so deeply about this
23 that they don't exist but for that."

24 "And if they -- and they care so deeply about this that
25 they should -- that it is their reason for being, and they

1 should therefore go to sue."

2 And maybe the Court doesn't need to decide whether, in any
3 case, a law firm has standing to sue on these facts because even
4 if this is a large fraction of Red Eagle's private practice
5 business that has developed in the past couple years, it's just
6 too much to say that Red Eagle Law is as the Sierra Club as to
7 the environment, as the East Bay Sanctuary is to asylum seekers,
8 as the Defenders of Wildlife were to whatever Lujan wanted to do
9 to Yosemite.

10 Like -- because this is a area of law that a firm chooses
11 to engage in because it makes it money.

12 THE COURT: Okay. Thank you. And I appreciate that.
13 And I know that the fact that it's a private law firm is one of
14 the facts that make it a little more dicey.

15 The -- let's move -- let's fast forward to your argument
16 about injunctive -- injunctive relief and how that's barred by
17 the timing here, which is -- so already the ship has sailed on
18 the lottery.

19 And when I say "the ship has sailed," I mean we've already
20 missed the usual time window for the lottery.

21 The -- and then we're about to start the fiscal year. And
22 in a normal year, the lottery would have already happened, and
23 it would be this fiscal year that there would be time frames for
24 people -- the selectees to get their ducks in a row, submit
25 their applications, and et cetera.

1 So if you want to give me your argument on why you think an
2 injunction is outside either not under the law or outside of
3 this Court's authority just 'cause of the timing has passed.

4 MR. PIKE: Can I grab some water?

5 THE COURT: Yes. Yes, of course. I know we've been
6 talking for a while.

7 MR. PIKE: Okay. So on the Court's power to issue an
8 injunction in the scope of the law, I think those -- those
9 inquiries are ultimately coterminous because my read on the APA,
10 as briefed to the Court, is that the Court's power is vast in
11 terms of ordering compliance with the law and virtually
12 nonexistent in terms of ordering compliance outside what the law
13 provides in terms of agency action unreasonably withheld and --

14 THE COURT: So the timelines. Are those a matter of
15 practice? Or are they enshrined in statute? Or are they
16 enshrined in the regs?

17 MR. PIKE: That's the heart of the matter because if
18 this were a matter of practice, and the defense was saying, "But
19 it's really hard for us to do this. We don't have the time." I
20 don't think that's enough. The courts order people to do things
21 on short time frames all the time, and it gets done. And you
22 have to move heaven and earth to comply with the court order.

23 But here, our position is that compliance with the law is a
24 literal impossibility at this point because they're -- the
25 statute, and I -- the statute says the registration period is

1 for the fiscal year beginning, quote, unquote "after the end of
2 the period."

3 Thus, if a period ends in fiscal year 2027 -- that's the
4 registration period -- if it ends in 2027, those visas go to
5 fiscal year 2028. So for this case, to get a 2027 visa, you
6 have to run a complete registration period to comply with the
7 statute that ends before fiscal year 2027.

8 Hence, the historical practice of starting it early so that
9 we have plenty of time to administer it.

10 THE COURT: Okay. And so -- so we just have an end
11 date in the statute.

12 MR. PIKE: Uh-hmm.

13 THE COURT: Why -- all the other dates are a matter of
14 practice, and it's a nice, leisurely schedule. It's kind of
15 like the difference between what's in the code versus when a
16 court comes along and short sets, "No, I need this in three
17 days, and you'll have two days, and regardless if you normally
18 have a 28-day time fr- -- period for this." Why is it
19 impossible to get this done before 2027?

20 MR. PIKE: So say the Court ordered a lottery to open
21 right now and to close before midnight at the end of the month.
22 The statute says the Secretary of State shall promulgate
23 regulations that establish what the period is. The Secretary of
24 State has promulgated a regulation that says that period shall
25 be at least 30 days long.

1 So we have a statute directing the Secretary to make a
2 regulation, and the regulation implementing the statute says it
3 has to be at least 30 days. An order by the Court to do a super
4 short registration period would be requiring the Secretary to
5 violate the regulation which there's no indication that that
6 regulation is invalid under the statute. This isn't an
7 action --

8 THE COURT: So tell me all the pieces where I would be
9 requiring something contrary to statute if I were to try to
10 grant this kind of relief?

11 So I can't -- whatever I -- whatever I do -- so I can't
12 shorten the 30-day period. What else would I need -- what else
13 are the -- what else are the -- the time frames set in stone in
14 the regs and in the statute? So --

15 MR. PIKE: It has to --

16 THE COURT: -- so that it's 30 days, and it has to end
17 before -- so that they all have to be issued and in the hands of
18 the recipients before end of fiscal year 20 -- so end of
19 October -- let's just talk concrete dates. End of fiscal
20 year 2027 is October 30th, 2027? Or September -- October 30th,
21 2027; correct?

22 MR. PIKE: No. September 31st [sic], 2027.

23 THE COURT: September. Okay. So September 31st [sic].
24 So these visas -- so you're saying these visas have to be in
25 the -- the selectees apply, some get granted, some get

1 denied -- that they that have to -- for the ones who get it,
2 they have to already be in their hands by September 2027?

3 MR. PIKE: That seems right -- I believe that's right
4 for the visas, but this case is not necessarily about issuing
5 the visas. The Court is really concerned with the opening of
6 the registration period and --

7 THE COURT: I don't see it that narrowly. I think it's
8 about whether this -- we're going to just miss out on a whole
9 fiscal year of a program because the Department of State is
10 saying, "Oh, we're gonna think about it and issue some new
11 rules," and it's just not happening.

12 So, okay. So -- and what else are the hard time frames
13 that you're saying where it'd be impossible for me to grant
14 relief without going contrary to reg and statute?

15 MR. PIKE: Yeah, the Court would order something not
16 provided for by law. It must -- a registration period must
17 be 30 days long. It must conclude before the end of fiscal
18 year 2026. It cannot run into fiscal year 2027.

19 THE COURT: So what's the "it"? So the registration
20 period is 30 days. What's the "it" that has to conclude before
21 September 31st [sic], 2027?

22 MR. PIKE: The -- sorry. The registration period must
23 conclude before September 31st [sic], 2026; otherwise, if it
24 runs into 2027, you -- that registration period can't be used
25 for 2027 visas.

1 THE COURT: Okay. So the regs specifically say that
2 the registration period has to be specifically that date? Or is
3 it that the registration period has to conclude -- it has to
4 be 30 days long, and it has to conclude before the
5 fiscal -- before the relevant fiscal year starts?

6 MR. PIKE: The regulation says it has to be 30 days
7 long. The statute says it has to conclude before the relevant
8 fiscal year starts.

9 THE COURT: Okay. So reg is 30 days, and then the
10 statute says -- okay. So I -- I agree with your general
11 proposition that my injunctive authority would allow me, if
12 appropriate in all the ways it needs to be appropriate, to order
13 the Government to do what it's supposed to be doing anyway,
14 which is you said you were going to do this 2027 visa program.
15 It doesn't look like there's authority for the -- for the leader
16 to just suspend that. Or at least, that's what the heart of
17 this -- heart of this case is about, or the merits of this case.
18 And unlike many cases, this is already so difficult before we
19 even touch the merits.

20 There's a lot of threshold issues here, but -- so you're
21 telling me that -- that those limits on my injunctive authority
22 are down at this nitty-gritty level of -- down at this
23 nitty-gritty level of "Well, you can tell us to do a 30-day
24 registration period because that's what we're supposed to do,
25 and you can tell us to do a -- do it within the fiscal year

1 because that's what -- that's what -- that was what our original
2 plans are," but how about I just look at it more broadly, which
3 is this program is a bestowal of 55,000 -- 55,000 chances per
4 year of diverse -- I'm just going to call it "diverse
5 immigrants." I know that's an inartful and an inaccurate term
6 in a lot of ways, but I'm just going to use that shorthand. So
7 basically, if I say what this -- is in the big picture is a
8 bestowal of 55,000 chances for immigration per fiscal year and
9 "Make that happen even if you're a little late, even if you're
10 outside the time frames, it's not more than you said you were
11 gonna do to begin with; just make these 55,000 opportunities
12 happen," why is it that I need to look at it so narrowly as
13 opposed to just the broader -- what is the agency, what is the
14 bestowal of the -- the rights? Or what is the -- what are the
15 entitlements created by the statutes and regs? And can I enjoin
16 so that that -- those entitlements are carried out?

17 MR. PIKE: No, because Congress didn't say "Hand out
18 55,000 diversity visas every year." Congress allows for up to
19 between zero and 55,000, but the -- that's a merits question.
20 And Congress very clearly told a whole bunch of cabinet-level
21 departments how to do it.

22 Congress gave us the rules for how to establish what
23 the -- countries with historical low immigration --

24 THE COURT: Yes, but that's the "how." But the "what"
25 are these 55,000 chances.

1 So why am I bound by the "how" as opposed to the "what"?

2 Why does the "how" matter more than the "what"?

3 Because I wouldn't want to go outside my authority and
4 enjoin or order the Government to do a "what" that is greater
5 than --

6 MR. PIKE: Right.

7 THE COURT: -- you yourselves undertook to do, and when
8 I say "you," of course I don't mean you gentlemen. These
9 are -- these are congressional actions and regulatory actions,
10 but just broadly speaking to the Government, my authority here
11 is "You said you were gonna do it, you put it in the statutes
12 and regs, and if it turns out that there isn't an authority to
13 deviate from that and et cetera, et cetera -- if it would count
14 as arbitrary capricious government action or withholding of
15 agency action, then do that thing you were supposed to do, or do
16 that thing that you told everybody you were going to do in
17 statute."

18 Basically, is the -- am I bound by I can only order it
19 exactly the way that you said you were going to do it and the
20 "how" as opposed to why can't I just order the "what" even if
21 it's little different from the "how"?

22 MR. PIKE: Yeah, and to the extent the Court is looking
23 at the cases where they go into the "how," which there are
24 plenty, there's lots of case law out there saying the Court
25 doesn't order the details of how the agency effectuates its

1 thing.

2 It's -- it goes about its business.

3 Like it -- I couldn't tell the Secretary of State what the
4 website has to look like for the -- for the -- for the
5 lottery -- the registration period. It can just say "Do it."

6 But the "how" here isn't just the agency's preference
7 between taking its -- exercising its own discretion about how to
8 do something.

9 The "how" here is deadlines that Congress said governed
10 whether these visas would issue or not.

11 And an order by the Court to say "Get it done" --

12 THE COURT: So I get that factually. Where's
13 your -- what's the legal support for the proposition
14 that -- basically, why can't I say, "Just get it done even if
15 you're behind on your own time frames"? But get the "what"
16 done?

17 MR. PIKE: It's that -- the "what" isn't just issue
18 visas -- isn't just eventually issue 55,000 visas. It is a
19 hugely convoluted process that is spelled out in detail in
20 statutes. And the agency's power to do this stuff is the power
21 Congress gave it. It doesn't -- this is -- so I'm not --

22 THE COURT: But the -- sorry.

23 MR. PIKE: But this is -- yeah. Go ahead.

24 THE COURT: The announcement from the Department of
25 State saying, "I know we're supposed to get started on this, but

1 hold on, everybody. We're going to think about some stuff and
2 sit on it for a while." And maybe they'll do it, maybe they
3 won't. It clearly looks like they won't at this point. But why
4 is it that -- I read that announcement by the Government as
5 saying -- at least that announcement on its face because that
6 announcement doesn't say "We're just canceling fiscal year
7 2027." It just says "We're going to take a little bit more time
8 on this, and hold on, everybody. We'll keep you posted."

9 So, they seem to be saying, at least for right now "We will
10 do the "what," or we may do the "what," but we're going to do it
11 slightly differently."

12 Is it -- how is it that the Government can do that, but the
13 Court can't order a remedial action, which pretty much is
14 ordering the Government to do what on its face it says it's
15 doing, which is "Get it done"? "You got a late start, but get
16 it done." The Government, right now, is saying, "We got a late
17 start, but we may be getting it done."

18 MR. PIKE: I don't love coming to court and telling the
19 Court "Sorry, but you can't fix this." But the APA cases say
20 that it has to be -- the standard is that a discrete agency
21 action, you have to have -- the agency action here is to -- at
22 issue, in this case, is to run a lottery, and that lottery is
23 set out by a very specific --

24 THE COURT: So the legal standard I'd be violating
25 is -- tell me what the rules are. I totally understand how

1 you're factually analyzing, how you're telling me it's
2 impossible to do the "how" in the way that it's set out in the
3 regs and the statute. But what's the le- -- what's your legal
4 proposition for why I can't just get the big picture "what" done
5 even if the details are different?

6 MR. PIKE: So, if the -- the legal rule here -- and I'm
7 going to try to put this as straightforward -- is that the Court
8 can order the agency to take duties it has no discretion to
9 avoid taking, like, essentially, administerial duties, the
10 agency doesn't have a duty to give out 55,000 visas.

11 Congress allows the agency to maybe issue 55,000 visas.

12 The agency does have a duty to run a lottery and a
13 registration period under a very strict set of deadlines.

14 The first thing is not a duty the Court can compel the
15 agency to do because it is not something the agency must do.

16 The second thing is arguably a duty the Court could have,
17 at some point in the past, ordered the agency to do. If this
18 had been six months ago, we would not be having this discussion
19 because the Court could have solved this imponderably hard case,
20 decided whether to issue an injunction and said, "You better
21 open that lottery before September 1st so it can comply with all
22 the laws," but, like, that just can't happen now. And there is
23 no -- the plaintiff cannot identify a duty for the agency to
24 conduct a make-up test.

25 And if the Court can only --

1 THE COURT: But what's the legal principle for why I
2 can't change the "how"?

3 MR. PIKE: Because --

4 THE COURT: Because I get what you're saying, that this
5 is not a guarantee of 55,000 visas, but it is a guarantee of
6 certain steps leading to the possibility of these 55,000 visas.
7 And not every single last one of which is given out, but some
8 are given out to the -- if the select lottery winners get their
9 acts together and their applications are approved and et cetera.
10 So the -- what's -- what is the legal standard that
11 governs -- or constrains my ability to say, "Yeah, do all that,
12 but do it a little later"?

13 MR. PIKE: It's the -- the distinction between those
14 discretionary duties versus nondiscretionary ones.

15 There -- the dis- -- and -- it runs up against the problem
16 that to order the Court -- to order the agency to do it "a
17 little later" would be to take action that Congress never
18 authorized the agency to take. If you say, "Do it a little
19 later" and this lottery runs into fiscal year 2027, the Court
20 would be saying, "Allow people to apply for fiscal year 2027
21 diversity visas in contravention of what Congress said they
22 could apply for." And there's nothing -- there's no
23 authority -- the -- Red Eagle would ultimately have to show that
24 the Secretary of State has authority to do that and must, in
25 fact, do that if it misses the deadline.

1 If that were -- if that were the case, then the Court could
2 order a make-up test. But at the end of the day, there's just
3 no form of relief the plaintiff can ask the Court to award that
4 would be an action the Department of State is obligated and has
5 no discretion to not do -- or, like -- because there's no
6 statute -- if there was a statute that said "You can do a
7 make-up test under x, y, z circumstances," sure, they could
8 order compliance with that. But there's just -- there's nothing
9 here that allows the agency to do what the plaintiff wants it to
10 do, let alone nothing here that says the agency must do what the
11 plaintiff wants it to do, and a statute that the APA allows the
12 Court only to compel those must-do actions.

13 And what's at issue here just isn't one of them.

14 And it could have been but for timing, and I realize that
15 looks a bit "heads I win, tails you lose." At same time, it's
16 not the defendant's fault this action wasn't filed until it was
17 too late. And also, this is a profoundly rare and unusual
18 situation where a -- the very specific deadlines that are in
19 place because of -- that govern this program, this is not a
20 problem that the Court is likely ever to run into again. So
21 the -- the fact that it feels, perhaps, frustrating for the
22 plaintiff, and I understand the Court, is not a situation that's
23 likely to be repeated anytime soon. And maybe that nullifies
24 the Court's frustration on this.

25 THE COURT: Okay. Thank you, Counsel. I appreciate

1 it.

2 Plaintiff?

3 MR. MORRISON: Hello, Your Honor. I have lots of
4 thoughts, but I prefer to be responsive to the Court's questions
5 if they have one for Plaintiffs.

6 THE COURT: So I don't have -- if you'd like to respond
7 to all the same questions -- I mean, I'm not saying every single
8 last one, but you know, where the gist of this conversation has
9 been going, and where it is -- at which points the Court is
10 struggling. And so if you would like to -- this is your
11 opportunity to add your piece to -- I'm not going to repeat my
12 questions or repeat the gist of my concerns 'cause you heard
13 them all with the Government attorney. And he has done both the
14 valiant and excellent job at helping the Court with what it's
15 struggling with and exactly where it's struggling.

16 And so if you -- this is your chance to add to that
17 conversation in those same places.

18 MR. MORRISON: Thank you, Your Honor. I'll just add
19 briefly where I think I might have something that could help.

20 First, I want to point out that the defendant here -- not
21 necessarily their Counsel, but the defendant -- is acting in bad
22 faith in many of these arguments because the very first sentence
23 in their opposition of the motion is: "The Diversity Visa
24 Program allows individuals from countries with historically low
25 U.S. immigration rates to enter a lottery for one of roughly

1 55,000 visas available in each fiscal year to qualifying
2 immigrants."

3 So they led with this sentence of, like, that's the status
4 quo. That's the norm. That's supposed to be what's happening.
5 And then somehow they reversed that and say, "Granted we're not
6 doing that, but nobody can stop us."

7 And I don't believe the Government should be able to
8 weaponize their own regulations that they're ignoring against
9 the Court's ability to prescribe remedies.

10 THE COURT: In terms of timing here, as I spent a lot
11 of time with the Government attorney discussing -- so we've
12 already missed the window for the 30-day registration period
13 that has to happen before the fiscal year starts. The fiscal
14 year's about to start tomorrow or -- that's an exaggeration, but
15 very quickly. The fiscal year is very imminently about to
16 start.

17 We have missed the 30-year -- 30-day registration period.

18 The -- and even had I ruled on the day that we heard the
19 TRO, we still would have missed the 30-day registration period.
20 Perhaps we could have made a 20-something-day registration
21 period, but we still would have not been able to do it exactly
22 the way that it's set out in the regs and the statute.

23 So, my question for you, Counsel, which is, you know that
24 at the preliminary -- I know that there is urgency in the
25 situation, the type of urgency where we're already behind the --

1 behind the normal time frame.

2 And so you want to -- you want to get that heard as soon as
3 possible, and I just didn't feel like you met that burden at
4 TRO. We did more extensive briefing here. It did bring forward
5 a lot more nuance, especially with regard to the zone of
6 interest.

7 But we're still at the preliminary injunction stage.

8 And at the preliminary injunction stage, you're still up
9 against a higher burden than if I were just deciding this
10 on -- if -- basically, I don't see this as a case with a lot of
11 factual disputes. So if I was just deciding this on summary
12 judgment, for example, then I could just decide on the summary
13 judgment standard as opposed to this higher burden of -- as the
14 plaintiff asking for a preliminary injunctive relief. You have
15 to meet this certain threshold about a likelihood -- that this
16 early showing of a likelihood of success.

17 The -- a very simple way of saying all of this is, given
18 that we're already behind the curve, and any relief that I
19 granted, if at all, would already be in the nature of a make-up,
20 which the Government is saying I can't do, but it wouldn't be
21 any less of a make up me ordering it today versus me ordering it
22 two months from now. Qualitatively, of course. Quantitatively,
23 it'd be more of a make-up but qualitatively would not be any
24 more or less of a makeup. Is there any -- given that, should we
25 just do this on summary judgment?

1 MR. MORRISON: Thank you for that question, Your Honor.
2 And Plaintiffs would say, no, we should not do that on summary
3 judgment, that it is better decided on preliminary injunction,
4 the per- -- the entry period for DV2028 historically would have
5 been announced already, and it's not been. So it was kind of
6 remarkable to me to hear the Government attorney say, "This is a
7 very unique situation. It's not going to happen again." It's
8 literally already happening again. They have abolished the
9 Diversity Visa Program, and they think they're going to get away
10 with it because they're doing it in silence. The website
11 says they already have --

12 THE COURT: I don't think they were as -- I don't think
13 the statement was as bold as the administration is not going to
14 do things like this again. I think they were saying that courts
15 would rarely meet the instance where the challenge to it was
16 broad in this particular time frame. Am I correct, Government?

17 MR. PIKE: I would agree with that. I'm not quite so
18 harsh.

19 MR. MORRISON: Yeah. And with respect to the time
20 frame, I am just puzzled on when we can identify the Government
21 is lying to us and bring an action. I -- I -- I think it was
22 suggested here that I should have done this in June or July, but
23 in June or July had the Government attorney representing the
24 State Department acting like things are moving along.

25 So the website still says things are moving along. Their

1 opposition brief's first sentence says things are still moving
2 along, that the Government's going to, you know, do the
3 Diversity Visa Lottery Program. That's their public position,
4 that they're doing something that in practice they're not doing.

5 I think that there's a distinction when we're talking about
6 that timing problem, and the judge's remedy between what
7 Congress said and the CFR.

8 Congress said "You have to do this program, and we allot
9 55,000 visas per year." Not "allow," as the Government says.
10 They allotted 55,000, and the Government does have a duty to
11 implement the program. There's lots of case law on that.

12 What -- the 30-day period happening in the prior fiscal
13 year, well, that was promulgated by the defendant in a
14 regulation that the defendant is ignoring.

15 So -- so from Plaintiff's perspective, we're coming to
16 court because we're saying, "You're ignoring your regulation,"
17 and say, "Yes, but I ignored it long enough that I get away with
18 it." And so we think the Court probably has higher
19 equitable -- higher powers to -- to order a remedy when it
20 involves a regulation that's not being abided by versus a
21 congressional statute. And here, the Government at one time
22 said that if the Court ordered this period to happen in the
23 next -- like, in the next 60 days or something -- it's not what
24 they said -- but if in the next fiscal year, then Plaintiffs
25 would be applying in the wrong fiscal year. "No, no, no. We're

1 talking about entries. This is the entry period." And what
2 Congress opined on -- not opined. What Congress prescribed was
3 that the Diversity Visas had to be consumed. They could only be
4 consumed within the fiscal year. So it is true that if the
5 entry period happens late, we're doing make-up work. The State
6 Department will have less than 12 months and potential selectees
7 will have less than 12 months to make application and be
8 considered for the program for visas. But at the same time,
9 that's better than not any chance at all. So --

10 THE COURT: Okay. Thank you. I appreciate it.

11 MR. MORRISON: Plaintiff appreciates that the Court
12 obviously read the *CSL Plasma* case, and it's Plaintiff's
13 position that we are situated like *CSL Plasma*, only with a
14 little bit stronger position because we're actually part of the
15 immigration process, where *CSL Plasma*, the -- those companies
16 were downstream more than us.

17 Defendants have an analogy that's interesting about if the
18 IRS decided to give clemency to certain taxpayers, then this
19 awful thing could happen where tax preparers could bring -- have
20 standing to bring federal litigation because they're in the zone
21 of interest. Plaintiffs want to make a distinction from that
22 scenario, from that example here, because we're not having a
23 situation where the State Department is fiddling with our -- are
24 saying -- that we're doing this part of the program different.
25 They're abolishing the program. So if his analogy was true to

1 our situation, it would be the IRS abolishing federal income
2 tax. And in that case, it's Plaintiff's view -- I would be
3 happy -- Plaintiff's counsel would be happy to represent a tax
4 preparer in the event that the IRS decided to abolish federal
5 income tax. So I think scale matters with respect to that
6 analogy.

7 Honestly, Plaintiff kind of sees where the Court's already
8 considered most of the positions we were going to submit, so
9 we submit.

10 THE COURT: Yes. I hope regardless of how I
11 turned -- how this turns out, I hope that you could at least see
12 just how carefully I looked at it and didn't just automatically
13 reject your zone-of-interest theories out of hand. And I do
14 understand that it's a lenient standard.

15 MR. MORRISON: Plaintiff does appreciate that. And so
16 we submit.

17 THE COURT: Okay. Thank you.

18 So here's -- here's what I'll do at this point:

19 Mr. Deputy, is there a Wednesday or a Tuesday two and a
20 half weeks out from now?

21 THE CLERK: Yes, Your Honor. We have either Tuesday,
22 October 13, or Wednesday, October 14 available.

23 THE COURT: Okay. I'm going to set a hearing on one of
24 those two dates to give you my bench ruling on this issue.
25 Because it is a complex and meaty one, I will likely follow it

1 up with a written order. However, I know that with the time
2 frames, either way, that both sides need an answer, and that you
3 might want to -- want to be appealing that right away. So I
4 will give you a full order from the bench even if it's followed
5 up by one that is more -- one that is more polished or artfully
6 laid out in a written order.

7 But I'll give you something that has the effect of
8 something you can appeal right away during that hearing.

9 I'm setting it two and a half weeks out from now because of
10 the very -- complexity of the issues and how much I think I'm
11 going to need to really get into before I reach a decision on
12 this.

13 I understand the urgency. I am not disregarding that in
14 setting these time frames, and I hope it was apparent from the
15 argument today that this is not from lack of the Court's feeling
16 that urgency and delving into it deeply. But to issue a ruling
17 of this type of magnitude, whichever way it comes out of this
18 type of magnitude, I don't want to do that in haste because this
19 is the type of ruling where, technically, it's just the
20 preliminary relief, but I think it's this order that's pretty
21 much going to be bearing the weight of this whole entire case
22 because of the time frames and because of what's -- because of
23 what's at stake.

24 So we will go ahead and we'll set that as a back stop. If
25 I can get a written order out before that, then that'll be

1 posted to the docket. I'll give you courtesy notices.

2 But I'm setting this date for a bench ruling so that you
3 know the order you get from me on this will not be any later
4 than that date.

5 If I can crank out a paper order before that, then I'll do
6 so.

7 Anything else I can do for the parties today?

8 MR. PIKE: May I clarify one extremely important thing?

9 THE COURT: Yes, please.

10 MR. PIKE: I mentioned September 31st from the lectern.
11 I believe there are only 30 days in September.

12 THE COURT: Okay. Thank you. I appreciate it. I was
13 in October. So it was -- is still closer than where the Court
14 started in terms of doing a off-the-cuff what is the -- what is
15 the end of the fiscal year.

16 Is there anything else I can do, gentlemen?

17 MR. MORRISON: Nothing from Plaintiff, Your Honor.

18 MR. PIKE: Nothing further. Thank you, Your Honor.

19 THE COURT: Okay. Thank you. And, Plaintiff, I just
20 want to say, I know that -- I know why you are doing this.

21 MR. MORRISON: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. PIKE: I also know why. And it's all right.

24 THE COURT: Oh, yes. Sorry. I gave those two options.
25 Is there any preference between the two? If not, I'll set it on

1 the Wednesday.

2 MR. PIKE: I peeked at my calendar, and both days are
3 open, and I'll be here when the Court says be here.

4 MR. MORRISON: Same here.

5 THE COURT: Okay. Thank you. We'll set it on the
6 Wednesday. All right. Thank you.

7 THE CLERK: And, Your Honor, that concludes the Court's
8 calendar today.

9 (Proceedings concluded at 11:13 a.m.)

10 -oOo-

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13 C E R T I F I C A T E

14 I, Cristine R. Gerongco, certify that I am a duly
15 qualified and acting Official Court Reporter for the United
16 States District Court; that the foregoing is a true and accurate
17 transcript of the proceedings as taken by me in the
above-entitled matter; and that the format used complies with
the rules and requirements of the United States Judicial
Conference.

18 Dated: October 16, 2026

19 s/ Cristine R. Gerongco

20 Cristine R. Gerongco, CSR 13517
21 U.S. Official Court Reporter
22
23
24
25

Exhibit C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

RED EAGLE LAW, L.C.,) CASE NO.: 26-CV-04738-JO-VET
Plaintiff,) DEPARTMENT 13B
v.) SAN DIEGO, CALIFORNIA
MARCO RUBIO,) WEDNESDAY, OCTOBER 14, 2026
in his official capacity)
as U.S. Secretary of State,) **CERTIFIED**
Defendant.) **TRANSCRIPT**
MOTION HEARING ON RULING FOR
PRELIMINARY INJUNCTION

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JINSOOK OHTA
UNITED STATES DISTRICT COURT JUDGE

PAGES 1 THROUGH 31

Court Reporter:

CRISTINE R. GERONGCO, RPR, CSR 13517
U.S. OFFICIAL COURT REPORTER
U.S. District Court Clerk's Office
333 West Broadway, Suite 420
San Diego, California 92101

Reported stenographically; transcribed with CAT software.

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ASSISTANT U.S. ATTORNEY

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1 WEDNESDAY - OCTOBER 14, 2026

9:34 A.M.

2 P R O C E E D I N G S

3 --- oOo ---

4 THE CLERK: Calling matter number 1 on calendar,
5 26-cv-4738, Red Eagle Law, L.C. versus Rubio, for a ruling on a
6 motion for a preliminary injunction.

7 THE COURT: Good morning, everyone. We'll take
8 appearances from Plaintiff's side first.

9 MR. MORRISON: Good morning, Your Honor.
10 Curtis Morrison for Plaintiff.

11 MR. PIKE: Good morning, Your Honor.
12 Ian Pike for the United States on behalf of Defense.

13 THE COURT: Good morning. You can be seated.
14 I'll just be issuing my ruling today.

15 First of all, I want to thank both of you for your patience
16 with me. I know this was filed as a PR- -- TRO and a
17 preliminary injunction motion. I know that there is an inherent
18 time rush to the situation, but it was time that this Court
19 needed to really engage with these materials and hopefully reach
20 the correct answer in this situation.

21 So I do have a ruling for you today that I will follow up
22 with a written order, but I'm going to give you the reasoning,
23 and issue the ruling and issue the injunction today so that both
24 sides can take necessary and appropriate action following that
25 and not have to wait for the written order because of the very

1 rushed or sensitive or urgent timing involved.

2 So what I'm going to be doing is I'm going to be granting
3 the motion for a preliminary injunction today, and these are the
4 reasons why: First of all, with regard to Article III standing,
5 to have standing, a party must establish that it suffered an
6 injury in fact, that there is a causal connection between the
7 injury and alleged wrongful conduct, and that the injury would
8 likely be redressed by a favorable decision.

9 And this is from the *Lujan* Supreme Court case.

10 The injury in fact must constitute an invasion of a legally
11 protected interest, which is concrete and particularized, and
12 actual or imminent, not conjectural or hypothetical.

13 From the same case.

14 The standing inquiry is the same for both individuals and
15 organizations, as organizations must also satisfy the usual
16 standards for injury in fact, causation, and redressability that
17 apply to individuals.

18 So, with regard to injury, we have declarations in the
19 record that substantial parts of Plaintiff's business consists
20 of representing the clients in obtaining diversity visas.

21 They've given us declarations that, since its founding
22 in 2023, Plaintiff has represented an increasing number of
23 Diversity Visa clients each year. In 2026, services for
24 Diversity Visa selectee clients comprised nearly one-third of
25 the firm's gross revenue.

1 So what the plaintiffs have done is demonstrate in the
2 record that substantial part of its business, historically,
3 including the past year, has consisted of representing clients
4 in obtaining Diversity Visa cases, and that the suspension and
5 effective cancellation of the Diversity Visa Program for fiscal
6 year 2027 will result or will mean a loss of that work for them.

7 This economic injury -- economic injury of this type is
8 sufficient to establish a concrete and particularized injury in
9 fact for the purposes of Article III standing.

10 The Court is relying on Supreme Court case *Diamond*
11 *Alternative Energy, LLC versus EPA*, another Supreme Court case.

12 In *Diamond Alternative Energy*, the Supreme Court held that
13 business corporations producing fuel had standing to challenge
14 the Environmental Protection Agency's approval of California
15 regulations under the Clean Air Act, which required automakers
16 to manufacture more electric vehicles and fewer gasoline-powered
17 vehicles.

18 Although the California regulations did not directly
19 regulate the fuel producers, they asserted that they had
20 suffered a concrete monetary injury because these regulations
21 reduced the manufacture and sale of gasoline-powered cars, which
22 in turn caused fewer gasoline sales and, thereby, adversely
23 affecting their revenue that came from gasoline sales.

24 Likewise, in the Ninth Circuit, the Court has recognized
25 economic harm as constituting a concrete and particularized

1 injury in the *Isaacson versus Mayes* case. The Court found that
2 plaintiffs had established standing and particularized injury in
3 fact, where they established that they lost money because the
4 challenge law significantly curtailed their medical practices by
5 preventing them from providing abortions to patients who
6 previously made up a significant part of their business.

7 The Court observed here that an Article III injury in fact
8 can arise when plaintiffs are simply prevented from conducting
9 normal business activities, and a loss of even a small amount of
10 money is ordinarily an injury.

11 In this case, the plaintiff has established to the Court's
12 satisfaction that representing Diversity Visa clients in
13 obtaining these diversity visas was a regular part of
14 their -- was a normal part of their business activities,
15 particularly for the past three years, and that the suspension
16 and effective cancellation of this program would result in a
17 loss of their revenue from representing those clients for that
18 fiscal year.

19 The causation element of Article III standing is fairly
20 straightforwardly met here. The cancellation, the suspension,
21 and effective cancellation of the 2027 fiscal year diversity
22 visas caused a loss of that business because -- would cause the
23 loss of that business because the program would be shuttered
24 down; therefore, there would be no such clients to represent.
25 And that, in turn, would produce the harm of the -- this

1 immigration law firm losing that business.

2 That is a harm that would be redressable by an injunctive
3 order, reinstituting the DV Program, meaning that there would be
4 opportunities this business and this market would be opened back
5 up for Plaintiffs to obtain clients and earn money by assisting
6 their clients with these Diversity Visa programs.

7 The -- I know the Government has raised concerns about the
8 speculative nature of these injuries, but the cases that I've
9 relied on from the Supreme Court and the Ninth Circuit case has
10 rested on similar types of general reasoning that the Court is
11 employing today, and neither of those cases required, for
12 example, something as stringent as making a plaintiff show up
13 with pregnant ladies who had wanted an abortion, already signed
14 up, who didn't receive one because of the laws.

15 And so similarly, by extension, the Court declines to
16 require the plaintiff here to show that -- identify or show
17 specific plaintiffs that they would have signed up as clients
18 were it not for this legislation.

19 Same goes for the clean energy action. It was sufficient
20 in those cases, and the Court finds that it's sufficient in this
21 case, that a plaintiff has shown that they do enjoy that market,
22 regularly conduct business in that market, and that they would
23 be losing that business because of the specific action at -- the
24 specific action in question here.

25 The Government further invites the Court to read in a

1 requirement that is akin to a zone-of-interest requirement, and
2 the Court finds no support for that in the cases that the Court
3 is relying on here, the abortion case and the Supreme Court case
4 about clean energy requirements.

5 Neither of those statutes were intended to protect the
6 financial bottom line of abortion clinics, and certainly the
7 environmental statutes were not intended to either harm or
8 benefit the financial bottom line of gasoline companies.

9 Those -- that type of requirement that there'd be something
10 akin to a zone of interest analysis built into an Article III
11 standing, the Court doesn't find support that that is part of a
12 Article III standing inquiry or analysis.

13 Moving on to the zone-of-interest test. The Supreme Court
14 has held that plaintiffs suing under the APA must demonstrate
15 that their interest is arguably within the zone of interest to
16 be regulated or protected by the statute that is allegedly
17 violated.

18 Courts conducting this inquiry use traditional tools of
19 statutory interpretation in order to determine whether a
20 legislatively conferred cause of action encompasses a particular
21 plaintiff's claim. This is from *Lexmark*.

22 In the APA context, a plaintiff can satisfy the test in
23 either one of two ways:

24 1, if it is among those who Congress expressly or directly
25 indicated were the intended beneficiaries of a statute; or, 2, if

1 it is a suitable challenger to enforce the statute, that is, if
2 its interests are sufficiently congruent with those of the
3 intended beneficiaries that the litigants are not more likely to
4 frustrate than to further statutory objectives.

5 And that's from the Ninth Circuit, *California Trump*
6 case, 963 F.3d 926, citing to *Scheduled Airlines*, D.C. Circuit
7 case, 87 F.3d 1356.

8 We also have a different -- substantially same, but
9 different formulation of that test in *City versus [sic] County*
10 of San Francisco, Ninth Circuit case, 981 F.3d 742, a -- quote,
11 "a plaintiff's interest need only be sufficiently congruent with
12 those of the intended beneficiaries that the litigants are not
13 more likely to frustrate than to further the statutory
14 objectives."

15 The zone-of-interest test denies a right of review if the
16 plaintiff's interests are so marginally related to or
17 inconsistent with the purposes implicit in the statute that it
18 cannot reasonably assumed [sic] that Congress intended to permit
19 the suit.

20 And that's from *Clarke*, Supreme Court case, 479 U.S. at
21 399.

22 The law further goes on to emphasize that this is meant to
23 be a lenient test, and part of that lenient test is that the
24 plaintiff does not have to be the intended beneficiary of the
25 statute.

1 Clearly here, immigration law firms are not the intended
2 beneficiary of the INA statutes. Those would be immigrants and
3 would-be immigrants interested in obtaining the benefits
4 provided by the INA.

5 What is required is that the interest be sufficiently
6 congruent with the intended beneficiaries. And here, we have a
7 situation where the intended beneficiaries are the would-be
8 immigrants, and they want to have the chance to and they want to
9 obtain the -- these diversity visas, and we have a plaintiff law
10 firm here that wants to help them in obtaining these diversity
11 visas and to get paid for it as a part of their business model.

12 Both have a congruent interest in reopening the Diversity
13 Visa Program because both need this program to be reopened for
14 the would-be immigrants so that they have this chance at a
15 pathway to a green card and for the immigration law firm so that
16 they can absist [phonetic] -- so that they can assist these
17 individuals in their attempts to obtain these visas as a part of
18 their business model.

19 The fact that the interest is economic does not bar zone
20 of -- does not bar passing the zone-of-interest test, as long as
21 the interest is sufficiently connected to or consistent with the
22 statutory objectives.

23 And we see that in the line of EPA cases where courts are
24 making not a legal distinction, saying "You just have an
25 economic interest; therefore, you do not satisfy zone of

1 interest." They look at specifically whether the interest
2 asserted by the plaintiff is sufficiently connected to or
3 consistent with the environmental protection goals at issue.

4 And they find that for some is just an economic interest
5 and for others that it's an economic interest that is consistent
6 with and runs alongside the environmental -- environmentally
7 protective intent of the statute in question.

8 In the immigration context, the Ninth Circuit in *East Bay*
9 held that pro bono counsel/advocacy groups had a interest in
10 helping people obtain asylum that came within the zone of
11 interest. This interest was sufficiently congruent with asylum
12 seekers who had their separate interests in obtaining the asylum
13 benefits provided for in the statute.

14 In this particular case, in *East Bay*, the Court noted that
15 there was an explicit mention of the role that advocacy groups,
16 pro bono lawyers, the right to counsel in general played in
17 terms of helping individuals exercise the benefits provided for
18 in the INA and asylum space.

19 While this helped strengthen the Court's analysis and
20 conclusion, there was no requirement or no statement by the
21 Ninth Circuit that such an explicit statutory mention is a
22 required element to come within the zone of interest.

23 In this case, the Court finds that while there is no
24 specific mention of for-pay immigration lawyers when it comes to
25 diversity visas or the Diversity Visa Program, that the same

1 logic applies. It is envisioned that attorneys paid or unpaid
2 will have a role in assisting the beneficiaries obtain these
3 Diversity Visa benefits, and that this role, this helping role
4 is sufficiently connected, and that it is more than a incidental
5 or marginal one.

6 It is well understood that many people need and obtain the
7 services of immigration lawyers to help them navigate this
8 process and to obtain these benefits that were intended by
9 Congress to be dispersed to this specific group of people, which
10 are would-be immigrants from select diverse countries that are
11 typically underrepresented in immigration statistics or
12 immigration numbers coming into this country.

13 The Court also finds support for this proposition in
14 persuasive authority, the D.C. Circuit case concerning
15 *CSL Plasma*, where private businesses that benefited from people
16 coming across the border to transact businesses and donate
17 plasma, that that interest was sufficiently connected with the
18 statutory interest in providing for those business transactions,
19 cross-border business transactions, and same with regard to a
20 district court case that talked about the congruent interest of
21 a company that helped with other visa efforts for people who
22 would generate business opportunities in the United States.

23 Finding that the threshold requirements of Article III
24 standing and the zone-of-interest test has been made, the Court
25 moves on to the preliminary injunction analysis.

1 And the Court looks at the four *Winters* factors. The
2 Court's not going to read the exact verbiage in the record, but
3 it is familiar with the four factors. And summarized briefly,
4 they consist of likelihood of success, irreparable injury, and a
5 look at the balance of equities and public interest involved.

6 With regard to the likelihood of success, the Court will
7 state on the record its reasoning for Plaintiff's claim that
8 this suspension and effective cancellation, if left on its
9 current track, of the fiscal year 2027 Diversity Visa Program is
10 arbitrary and capricious government action. It will decline to
11 address the ultra vires claims because the Court finds that the
12 plaintiff has established likelihood of success on its
13 arbitrary-and-capricious claim, it need not address the other
14 grounds for the claim. And it may be that if the Court were to
15 do so, the Court has its doubts at this point whether -- about
16 the feasibility of a ultra vires claim when we have a
17 statutory -- when we have the feasibility of an APA claim and a
18 statutory framework to point to for that APA claim.

19 The Court is similarly going to decline to address the
20 withholding claims at this juncture for the same reason. It
21 doesn't need to get there. And also while on this one, in the
22 Court's analysis, the Court thinks that there would be a high
23 likelihood of success on a withholding claim, but currently the
24 plaintiff's complaint -- this argument was raised in the
25 briefing and is not a part of the plaintiff's complaint, so the

1 Court is hesitant to rest its preliminary injunction findings on
2 that portion of the plaintiff's claims.

3 The plaintiff, of course, is free, if it wants to, and
4 chooses to, of course, to amend at a later point, but the Court
5 will not be addressing that today as a basis for its preliminary
6 injunction action.

7 The arbitrary-and-capricious claim has been pled, has been
8 briefed, and the Court finds that it has a likelihood of -- has
9 established a likelihood of success on that claim.

10 First of all, Plaintiff has sufficiently established final
11 agency action.

12 The 27 -- the 2027 diversity program has been effectively
13 suspended for the past 11 -- actually, I think, at this point,
14 for the past 12 months, with no indication from the
15 State Department as to when it will establish the registration
16 period, which is the first step required for the program to be
17 able to work or start in the 2027 fiscal year.

18 So, now that we have entered the fiscal year with no
19 registration process having been opened, it is very clear that
20 the suspension is neither tentative nor interlocutory, but
21 instead reflects a present and operative agency position, which
22 is to not hold the registration period, which is required for
23 opening up the 2027 Diversity Visa Program, because you can't
24 issue those maximum of 55,000 visas if you haven't let people
25 register to be selected to be able to apply for those maximum

1 of 55,000 visas.

2 This suspension and effective cancellation has a direct and
3 immediate effect on -- as relevant here, Plaintiff's business
4 operations because it cannot obtain the business of individuals
5 from registering for the lottery and seeking out their legal
6 services, and it forecloses Plaintiff's ability to provide these
7 Diversity Visa-related legal services.

8 So for this reason, the Court finds that the suspension,
9 which is an effective cancellation of the 2020 -- which operates
10 as an effective cancellation of the 2027 Diversity Visa Program
11 is a final agency action with concrete and immediate
12 consequences.

13 The fact that the website notice cloaks it as, "We'll think
14 about it and get back to you," and then just dead silence after
15 that, the cloaking it in the form of indefinite and prolonged
16 duration is not sufficient to convert what is something that has
17 concrete and immediate consequences into some kind of deliberate
18 or intermediate or interlocutory step by cloaking it as dragging
19 its heels.

20 What has happened is that the administration has decided
21 not to open up this registration period, and right now the
22 effect of that is, unless an injunction orders otherwise or
23 unless there is some about-face, the 2027 Diversity Visa
24 Program, which is ordered by statute, is not going to happen.

25 The Court finds that Plaintiff is likely to succeed on the

1 merits of its arbitrary-and-capricious claim because the State
2 Department has failed to provide a reasoned explanation for
3 suspending and effectively canceling the 2027 Diversity Visa
4 Program.

5 So the requirement is whether there's a reasoned
6 explanation, and a lot of times in APA cases, the fight comes
7 down to how reasoned is it? Does it just pretend to be
8 reasoned, when in fact there aren't -- there isn't a reasonable
9 support for the action? Have the correct things been
10 considered? Have reliance interests been considered? All of
11 those things.

12 In this particular case, the State Department has
13 identified no reason for that decision, and the Court cannot and
14 should not supply one on its own behalf. Certainly by providing
15 no reason, it fails to provide a reasoned explanation. It also
16 fails to prove that it has considered any of the reliance
17 interest at stake when it suspended and effectively canceled
18 the 2027 Diversity Visa Program.

19 And when an agency changes course, it is required, under
20 the law, to consider whether there were reliance interests,
21 determine whether they were significant, and weigh any such
22 interests against competing policy concerns.

23 And that's a quote from *DHS versus Regents of the*
24 *University of California*, Supreme Court case from 2020, 591 U.S.
25 1 at 33.

1 With regard to the irreparable injury requirement, the
2 Court also finds that that's been met to the preliminary
3 injunction standard. The loss of business revenue from this
4 specific type of work -- ordinarily economic loss would not be
5 considered irreparable injury. In the APA context, however,
6 economic harm may be irreparable because plaintiffs are
7 otherwise unable to recover monetary damages.

8 And that's from the *California versus Azar* case, 911 F.3d
9 558, Ninth Circuit, 2018.

10 When the threat of economic loss is one that is
11 unrecoverable because you can't simply wait for the case to be
12 over and get damages on the back end, Courts has -- with
13 that -- that does qualify as irreparable harm.

14 (Court reporter clarification.)

15 THE COURT: Yes. Courts have found that -- that
16 unrecoverable economic harm or economic loss does qualify as
17 irreparable harm.

18 Here, Plaintiff has shown a sufficient likely threat of
19 this irreparable harm. It submitted declarations that it has
20 historically maintained some significant chunk of its business
21 doing these diversity visas, and that without the registration
22 period, no applicants can enter the program with no
23 corresponding pool of perspective [sic] -- prospective clients,
24 meaning that this challenged suspension/cancellation threatens
25 Plaintiff with the loss of these prospective clients and

1 associated revenue in an area where they do have this
2 historical -- established historical pattern and trend of having
3 done work in this area.

4 And finally, the Court looks at -- in its preliminary
5 injunction analysis, looks at the balance of equities and the
6 public interest. Because Plaintiff has established a likelihood
7 that the suspension of the 2027 Diversity Visa Program violated
8 the APA, both the public interest and the balance of equities
9 tip sharply in favor of the plaintiff and of injunctive relief.

10 Quote, "It is clear that it would not be equitable or in
11 the public's interest to allow the state to violate the
12 requirements of federal law, especially when there are no
13 adequate remedies available." And that's from Ninth Circuit
14 case, Valle de [sic] Sol Inc. versus Whiting, 732 F.3d 1006 at
15 1029, Ninth Circuit case from 2013.

16 And other cases generally all uniformly stating the
17 proposition that there is no public interest in the perpetuation
18 of unlawful agency action or a government violating its own
19 legal statutory requirements to the public of the United States.

20 There are also the equitable interests of the individuals
21 interested in the 2027 Diversity Visa Program. What the opening
22 of that registration period does is it provides a
23 opportunity -- a chance to be selected to be able to apply, and
24 without a registration period, otherwise eligible individuals
25 could not enter the lottery and would lose any opportunity to be

1 one of the lucky selected applicants that could then proceed to
2 apply for a Diversity Visa during the 2027 fiscal year.

3 This is an opportunity that cannot be restored at a later
4 time once the fiscal year has passed, because the statute,
5 clearly on its face, says that this maximum of 55,000 visas have
6 to be issued during the specific fiscal years. You can't carry
7 over the balance into future years.

8 On the other hand, the State Department, the Court does not
9 see any articulated harm from being forced to meet its own
10 statutory obligations. Certainly, doing what it's supposed to
11 do by statute comes with it an administrative burden, but that
12 was congressional purpose and intent, and it -- there's nothing
13 in the record that shows the -- the quantum of that burden or
14 the quantum of that burden in doing that compliance in this
15 specific time frame in response to a preliminary injunction
16 order.

17 So the Court finds that on this current record, both the
18 balance of equities and the public interest weigh in favor of
19 granting a preliminary injunction to the plaintiff.

20 Off the record.

21 (Off the record.)

22 (Pause in the proceedings.)

23 THE COURT: The Court will now turn to addressing the
24 argument that the belated nature of the -- or the belated timing
25 of the registration period precludes injunctive relief in this

1 case. And what that belated timing -- and what that belated
2 timing consists of is that there is a regulation stating that
3 for the fiscal year 2027 Diversity Visa Program, there has
4 to be a 30-day -- at least a 30-day registration
5 program -- registration period that is opened up prior to the
6 fiscal year.

7 And it's during that registration period that individuals
8 will submit their names to be a part of the lottery for a chance
9 at being selected to be able to apply for a diversity visa in
10 the 2027 fiscal year.

11 Given the timing of when this TRO was brought to the Court,
12 even if the Court had ruled immediately, it already was in a
13 time frame where a 30-day registration period could not have
14 happened before the start of fiscal year 2027, which started on
15 October 1st of 2026.

16 And the Government argument here is that for the Court to
17 issue a belated set of injunctions or to issue a makeup or a
18 catch-up would violate statutory and congressional intent and
19 therefore the Court would be exceeding its powers and authority
20 in issuing an order like that.

21 So when the Court is analyzing whether the belated timing
22 in this particular case precludes injunctive relief, the Court's
23 essential analysis is driven by what would affect congressional
24 intent and statutory purpose? That's what the case law says,
25 and the Court is directed to find the course that best

1 effectuates the congressional intent and statutory purpose here.

2 So, in order to do that, the Court looks at the statute, it
3 looks at the regulations, and it looks at the purpose of what
4 this program is and tries to reach a conclusion in that regard.

5 And here, we have a statute that says the State Department
6 is to issue a maximum of 55,000 diversity visas for each fiscal
7 year.

8 And in the statute, it tells the Secretary of State to
9 promulgate or issue regulations regarding the timing of how to
10 make this happen.

11 So, in other words, the what is issue 55 -- up to 55,000
12 visas from traditionally diverse countries, and issue -- and
13 that is a yearly allotment, those 55 -- up to 55,000 visas have
14 to be issued from within that fiscal year, and they cannot be
15 carried over. And then, like I said, it tells the Secretary of
16 State to come up with regulations and figure out a way to get
17 this done.

18 So these are timing and how requirements.

19 The regulations, then, pursuant to this directive in the
20 statute, sets a 30-day registration period before the start of
21 the fiscal year, before the start of the relevant fiscal year,
22 and that it has to -- that registration period has to extend for
23 at least 30 days.

24 So here's how the -- Counsel, I'm not sure if you are
25 wanting to raise something with me, but the -- what I'm doing

1 right now is just issuing the ruling, so --

2 MR. PIKE: No, I'm just paying very good attention --

3 THE COURT: Oh, okay. Thank you. I didn't know if you
4 were gesturing that you wanted to say something.

5 MR. PIKE: Want to write down the how.

6 THE COURT: Okay. Thank you.

7 The -- so when the Court is looking at cases to provide
8 guidance in this space of when can a court order injunctions in
9 this belated or make-up type of time frame after some specified
10 time frame has already expired, it's seeing two types of cases.
11 And there are the types of cases where courts hold that courts
12 can issue such injunctions belatedly after specified time frames
13 if that is what is consistent with and would best effectuate
14 statutory intent.

15 However, the Court -- and that is in one of the
16 environmental protection statutes where certain things are
17 required to be done within a specific time frame, and the
18 analysis there was, no, it's very clear that the intent here is
19 to protect the environment and making you do it better late than
20 never is better -- is going to be the better read of statutory
21 intent and congressional purpose.

22 And there's a second line of cases where it's also clear
23 that the courts cannot issue this type of belated relief, if
24 the -- if there is a specific statutory intent for relief to be
25 limited to or cabined into a specific time frame.

1 So you can issue these citizenship rights to Filipino
2 veterans if they apply by a certain date.

3 And specifically with regard to the diversity program
4 itself, you can only issue up to 55,000 of them per year, but
5 only within that year. You can't carry the balances forward.
6 You can't have it drag on and on. And that kind of time frame
7 is a part of and is -- is specifically a part of the statutory
8 intent for what the benefit is or what the point of the statute
9 is.

10 And so the question before the Court is, in this particular
11 case, which one is this more similar to? Which one is the
12 framework that this situation best fits?

13 And so here, we have a -- I have a situation where the
14 statute is we want to encourage immigration from diverse
15 countries.

16 There are countries where we get a lot of immigration. And
17 there are countries where we don't get so much immigration. And
18 from those countries, we want to encourage immigration, so we're
19 going to start a specific program that allows for up to 55,000
20 visas per fiscal year.

21 And that 55 allotment has to be used up within each year,
22 so that's the statute. That's the purpose of the statute.

23 And in trying to effectuate the statute and also in trying
24 to stay clear of issuing an order that exceeds this Court's
25 authority overriding congressional intent, the Court is faced

1 with a choice here, which is I can honor the timing requirement
2 of the registration period. So in order to issue these 55,000
3 visas within fiscal year 2027, I can honor the regulation that
4 says the registration, the timing requirement, the how-to to
5 make this happen, that has to happen a month before the fiscal
6 year even starts.

7 Do I honor that piece at the expense of honoring or
8 effecting the also clear -- the clear congressional intent of
9 having these 55,000 -- up to 55,000 visas be issued by the
10 Government, or having this program that allows for that
11 opportunity for applicants to apply for one of these potential
12 55,000 spots?

13 So -- or to put it less confusingly, I can look at it in a
14 way where I hundred percent effect a what's down in the regs for
15 the registration period, a registration period that is part of
16 one of the steps to make this diversity program work; and in
17 doing that, I would not be honoring the congressional intent of
18 having the Diversity Visa Program for fiscal year 2027. Or if I
19 want to honor the congressional intent of having these visas
20 issue for year 2027, then I would have to order a belated or
21 makeup set of timings for the registration program.

22 And, again, given that the Court's mandate here is to look
23 at what is the congressional intent? What is the statutory
24 purpose? If I ask myself, is the statutory purpose to have a
25 perfectly, timely registration program as set forth in the regs?

1 Or is the congressional purpose to issue these diversity visas
2 to encourage immigration from diverse countries to give people a
3 chance at an allotment of up to 55,000 visas per year? And
4 that's an allotment that you can never get back. It's per year.
5 That's very clear in the statute.

6 And so the Court's read of the situation is that the
7 greater import, or the thrust of the congressional purpose here,
8 is to have this Diversity Visa Program, to implement the
9 opportunity for these 55,000 visas and pathways to a green card
10 as specifically set forth -- as specifically set forth in the
11 statute, because, again, going back and looking at the statute,
12 the statute just says, this is why we want to encourage this
13 diverse immigration, this is how we're going to do it, 55 per
14 fiscal year. And then it tells the Secretary of State, "Issue
15 some regs that get this done." So the statutory intent here,
16 the congressional intent here is to get this done.

17 And that is the part -- that is the Court's conclusion as
18 to what the statutory intent here, which is to get the diversity
19 program done, and that the registration period is a timing
20 requirement. It's a how requirement. It's the details for how
21 best to administer this congressional purpose, this
22 congressional purpose of having this Diversity Visa Program that
23 gives these opportunities for immigration from diverse
24 countries.

25 So, for those reasons, the Court finds that it does have

1 the authority to issue the type of injunctive relief requested
2 by the plaintiff, and that the issuance of that relief to effect
3 the congressional purpose of reopening this 2027 Diversity Visa
4 Program is congressional intent. Congress passed the statute.
5 Clearly it made this program and specified that it has to happen
6 every year, and that's the intent that the Court will be
7 honoring with its ruling today.

8 The cases that go the other way, I already talked briefly
9 about it, which is, in those cases, the timeline built into
10 those statutes was part of the what itself, citizenship for
11 Filipino veterans who apply by a certain date, visas -- up to
12 55,000 by a certain date.

13 Neither of those required some type of honoring a timing or
14 how or detail provision at the expense of the greater statutory
15 intent. Those cases involved overriding specifically specified
16 deadlines into the -- specified or defined in the statute
17 itself. And so the Court sees a distinction there.

18 So, in short, the Court is declining to adopt the
19 Government's interpretation, 'cause it would transform the
20 timing provisions, which are meant to implement Congress's
21 annual Diversity Visa Program into a restriction that frustrates
22 the program's larger substantive objectives.

23 We have a argument that the *Trump versus CASA* case forbids
24 nationwide injunctions. That's not happening here. In
25 the -- there is, at least currently, a clearer carveout for the

1 APA space, which affords courts broad remedial authority upon a
2 finding of unlawful agency action, and allows the federal courts
3 authority to hold unlawful and set aside agency action on a
4 nationwide basis when the challenged action is held unlawful.

5 And in this particular case, even if we were in a
6 *Trump versus CASA* space, the specific nature of the injury
7 itself would require reopening the whole program for Plaintiff
8 to get complete relief. He needs this market to be opened back
9 up so he can get clients from this market. That cannot happen
10 unless the whole diversity program is opened back up.

11 So -- and that is what the Court will be ordering here
12 today.

13 So thank you for bearing with me. That is the Court's oral
14 ruling on its grant of the motion for a preliminary injunction.

15 Now, I'm going to turn to the injunctive relief itself.

16 The Court is going to -- this is going to -- the injunction
17 portion is going to come out in written form so that the
18 Government has that in a convenient memorialized form instead of
19 just on the record, which takes some time for transcription and
20 et cetera, and also for the benefit of the plaintiff so that
21 they can also play their role in making sure that this gets done
22 in the Court's time frames.

23 But just so the Government knows what to expect, what it's
24 going to order is that no later than -- no later than -- I'm
25 assuming this is all happening in D.C., so I'll set the time

1 frames in terms of the Eastern Time Zone, unless, Government,
2 you know differently. This is just a matter of providing enough
3 specificity for the injunction.

4 Will it be helpful for me to put all of this in Eastern
5 times? I just don't want any confusion.

6 MR. PIKE: That sounds reasonable, Your Honor.

7 THE COURT: Okay. Thank you.

8 So these are all Eastern Time Zone time frames for this
9 order.

10 I will require no later than midnight tomorrow that the
11 defendant publicly announce the registration period for the
12 fiscal year 2027 Visa Program, and that the defendant
13 simultaneously open the registration period for fiscal year 2027
14 and that that period be at least 30 days, as set forth in the
15 governing framework.

16 I'm going to require that the opening of the registration
17 period be published in all the places where it is regularly
18 published by previous agency practices, so I'm not requiring
19 anything new and different. I'm requiring you to do all the
20 things that you normally do to publicize the opening of this
21 registration period and let people know that they can start
22 registering immediately.

23 Upon the -- and then 30 days after the opening of the
24 registration period, which is going to start by midnight
25 tomorrow, the Court is going to order that Defendants will

1 timely process and -- timely process and accept the applications
2 per its usual procedures and standards. So, again, not ordering
3 anything different from what you usually do, I'm just ordering
4 that you do it.

5 Until the 55,000 allotment is exhausted or the close of
6 fiscal year 2027, whichever one happens earlier, and the Court
7 will retain jurisdiction to enforce or modify as necessary.

8 So you'll get this in written form, and you'll get this
9 very shortly and definitely before the close of business.

10 But, Government, I'm going to require you to immediately
11 communicate with whoever you need to communicate with, 'cause
12 we're talking about very short time frames to open the
13 registration period, and do all the things it takes to open
14 that, which is whatever Internet portals or application sites
15 that need to be opened and to get these announcements out there
16 in a very -- in a very expedited time frame.

17 I wish I could afford you the courtesy of something that is
18 a little bit more generous, but everybody knows the time frames
19 that we are working with. And we are already, at least
20 a -- we're already at least a month behind the -- behind the
21 curve in terms of fully affording this opportunity for people to
22 apply for this benefit as envisioned by Congress.

23 So you'll get this in written form, and that concludes the
24 hearing.

25 So this is my order.

1 If you have any specific questions, I'm happy to take them
2 at this time. But we've had extensive argument. This isn't
3 about rearguing anything wrong or right. And I have spent a lot
4 of time and put in a lot of effort in trying to get this right,
5 and then it will be in other people's hands after this.

6 So it's not an invitation to rehash anything, but if
7 there's any specific questions that I can address for the
8 parties right now?

9 MR. MORRISON: Not for Plaintiffs, Your Honor.

10 MR. PIKE: If I may, Your Honor?

11 I spoke with Plaintiff's counsel about potential timing
12 issues prior to the hearing, and I acknowledge the Court led
13 with the Court wishes it could grant more time, but if Plaintiff
14 were not to object to a slightly longer window to take action on
15 this, would the Court modify its order? And we could even
16 discuss that right now in court?

17 THE COURT: I'm not going to give a blanket promise
18 right now, but I will say that that is an endeavor that I would
19 welcome, and I'll take a look.

20 Obviously, if the stipulation comes back at we're going to
21 open the registration period seven months from now, I'll
22 probably say no, but if it's a matter of just
23 realistic -- slightly more realistic time frames and courtesy,
24 then that's something that I would very much welcome seeing that
25 process and seeing what you two come up with.

1 It's a long way of saying, I can't promise I'll sign off on
2 it right now, but please do show me -- do show me what you come
3 up with, and I would be open to doing that, because I'm
4 not -- none of this is about making life difficult for -- for
5 people who have to scramble to get this done. I'm just trying
6 to acknowledge the underlying urgency of the situation.

7 MR. PIKE: Okay. I'll meet and confer.

8 THE COURT: Okay. Thank you.

9 Thank you, everyone. That concludes the hearing.

10 MR. MORRISON: Thank you, Your Honor.

11 MR. PIKE: Thank you, Your Honor.

12 (Proceedings concluded at 10:34 a.m.)

13
14 -oOo-

15
16 C E R T I F I C A T E

17 I, Cristine R. Gerongco, certify that I am a duly
18 qualified and acting Official Court Reporter for the United
19 States District Court; that the foregoing is a true and accurate
20 transcript of the proceedings as taken by me in the
21 above-entitled matter; and that the format used complies with
22 the rules and requirements of the United States Judicial
23 Conference.

24 Dated: October 16, 2026

25 s/ Cristine R. Gerongco

Cristine R. Gerongco, CSR 13517
U.S. Official Court Reporter

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10 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

11 RED EAGLE LAW, L.C.,
12 Plaintiff,

13 v.

14 MARCO RUBIO, *in his official capacity*
15 *as U.S. Secretary of State*,
16 Defendant.

Case No.: 26-cv-4738-JO-VET

PROOF OF SERVICE

1 I, Ian Pike, hereby certify I am a citizen of the United States and least eighteen
2 years of age. My business address is 880 Front Street, Room 6293, San Diego,
3 California 92101-8893. I am not a party to the above-entitled action. I have caused
4 service of:

5 EX PARTE MOTION TO STAY

6 Plaintiff has been served by emailing the moving papers to:

7 **Curtis Lee Morrison**
8 Red Eagle Law, L.C.
9 5256 S. Mission Road
10 Suite 135
11 Bonsall, CA 92003
12 714-661-3446
13 Email: curtis@redeaglelaw.com

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21 I declare under penalty of perjury the foregoing is true and correct.

22 DATED: October 19, 2026

23 Respectfully submitted,

24 ADAM GORDON
25 United States Attorney

26 /s/ Ian Pike
27 IAN PIKE
28 Assistant United States Attorney
Attorneys for Defendant