

UNITED STATES COURT OF INTERNATIONAL TRADE

FORREST XU,

Plaintiff,

v.

U.S. CUSTOMS AND BORDER
PROTECTION, U.S. DEPARTMENT OF
HOMELAND SECURITY, and SUSAN S.
THOMAS, EXECUTIVE ASSISTANT
COMMISSIONER, OFFICE OF TRADE,

Defendants.

Before: Lisa W. Wang, Judge

Court No. 26-03403

OPINION AND ORDER

[Denying Plaintiff's motion for a preliminary injunction.]

Dated: September 16, 2026

Christopher J. Duncan, Squire Patton Boggs (US) LLP, of Los Angeles, CA, for Plaintiff Forrest Xu.

David N. Heitner, Trial Attorney, U.S. Department of Justice, Commercial Litigation Branch, of New York, NY, for Defendants U.S. Customs and Border Protection, et al. With him on the brief were Brett A. Shumate, Assistant Attorney General, Patricia M. McCarthy, Director, Justin R. Miller, Attorney-In-Charge, International Trade Field Office, and Aimee Lee, Assistant Director. Of counsel on the brief were Marc Matthews, Alexandra Khrebtukova, Lisa Ross, and Robert Mathai, Office of Chief Counsel, U.S. Customs and Border Protection.

Wang, Judge: Before the court is Plaintiff Forrest Xu's motion for a preliminary injunction. Pl.'s Emergency Mot. for Prelim. Inj., ECF No. 13; Pl.'s Mem. in Supp. of Emergency Mot. for Prelim. Inj. ("Pl.'s Mot."), ECF No. 13-1. Plaintiff seeks to enjoin Defendants U.S. Customs and Border Protection ("Customs"), U.S. Department of

Homeland Security, and Susan S. Thomas, Executive Assistant Commissioner, Office of Trade, from deactivating Plaintiff's entry filer code, which allows him to file entries with Customs electronically.¹ Id. at 1. Plaintiff argues that injunctive relief is warranted because: (1) Plaintiff is likely to succeed on the merits; (2) Plaintiff faces an immediate and continuing threat of irreparable harm; (3) the balance of hardships favors Plaintiff; and (4) the public interest is best served by the issuance of a preliminary injunction. See generally id.

For the following reasons, Plaintiff's motion for a preliminary injunction is denied.

BACKGROUND

Plaintiff Forrest Xu "is a licensed customs broker." Compl. ¶ 4, ECF No. 5. Plaintiff was assigned an entry filer code: "a unique, three character code that Customs ... assigns to a licensed customs broker." Lizarraga Customs Broker v. Bureau of Customs & Border Prot., 34 CIT 1309, 1310 (2010). An active entry filer code is required to file entries electronically with Customs.² Id. ("In order to file electronically, the broker must have an active entry filer code and be approved for participation in the [Automated Broker Interface ('ABI')] system.").

¹ Plaintiff refers to the entry filer code at issue as an "electronic entry filer code" at times. See, e.g., Pl.'s Mot. at 1.

² As the court has explained, "[f]iling 'entries' means the filing of documentation required to ensure the release of imported merchandise from Customs' custody or the act of filing that documentation." Lizarraga, 34 CIT at 1310.

On August 7, 2024, Customs conducted an on-site review at Plaintiff's office and found violations of Customs regulations and other customs broker requirements. Letter from Susan S. Thomas to Forrest Xu (June 1, 2026) ("Suspension Letter") at 8, ECF No. 4-1; Letter from Alan Aprea to Forrest Xu (Feb. 5, 2025) at Exhibit A-26–27, ECF No. 21-2; Broker Visit Interview Questions at Exhibit A-3–16, ECF No.21-2. At that time, Customs notified Plaintiff that his operation under the name of "Eton Customs Broker Inc." ("Eton") was impermissible and instructed Plaintiff "to cease conducting customs business" as Eton. Suspension Letter at 8. Two additional written communications were sent by Customs regarding Plaintiff's impermissible use of the corporate name Eton, on February 5, 2025, and on June 6, 2025. Id. at 8–9; Letter from Miyoshi M. Feliciano to Forrest Xu (June 6, 2025) at Exhibit A-36, ECF No. 21-2. Customs also sent several "informed compliance letters" to Plaintiff during the period between December 19, 2025, and March 27, 2026, regarding certain "misuse" of Plaintiff's entry filer code. Suspension Letter at 9.

On April 24, 2026, Customs sent Plaintiff a letter informing him that the agency was "conducting a compliance review of the accuracy of the CBP Form 5106 data that [he] certified and transmitted to the Automated Commercial Environment" ("ACE") for over thirty specific Importer of Record ("IOR") numbers.³ Letter from Judy Staudt to

³ Per Customs, "CBP Form 5106, also known as the Importer Identity Form, is used to collect and maintain essential identification information for individuals and businesses involved in importing goods into the United States. This form serves several critical purposes: it establishes or updates an importer's identity within [Custom's] systems, assigns a unique importer number (often linked to an IRS Employer Identification

Forrest Xu (Apr. 24, 2026) (“Apr. 24, 2026 Letter”) at Exhibit A-81–82, ECF No. 21-2.

The letter requested that Plaintiff respond and provide the agency with specific documentation and answers to a set of questions. Id. at A-82–83. The letter further specified that “[f]ailure to respond ... and/or provide a sufficient explanation and supporting written or electronic records or documents may result in [Customs] taking action to disable [Plaintiff’s] ability to transmit CBP Form 5106s electronically in ACE.” Id. at A-83.

Plaintiff sent a response to Customs on April 29, 2026. Letter From Forrest Xu to Customs (Apr. 29, 2026), Exhibit C, ECF No. 21-4. In his response, Plaintiff stated that the importers at issue were “legitimate operating business entities”, but acknowledged that there was “still room for improvement in our importer verification procedures.” Id. Plaintiff listed several corrective measures that he proposed to take regarding these procedures. Id.

In a letter dated May 4, 2026, Customs informed Plaintiff “that [Customs] ... disabled [his] ability to transmit CBP Form 5106s electronically to the Automated Commercial Environment (ACE)” Letter from Judy Staudt to Forrest Xu (May 4, 2026) (“May 4, 2026 Letter”) at Exhibit A-77, ECF No. 21-2. In a subsequent letter, Customs informed Plaintiff that the agency was “no longer allowing [him] to use [his]

Number, Social Security Number, or a CBP-assigned ID), and is a prerequisite for becoming an Importer of Record.” CBP Form 5106 – Create/Update Importer Identity Form, U.S. Customs and Border Protection, <https://www.cbp.gov/document/forms/cbp-form-5106-createupdate-importer-identity-form> (last visited Sept. 10, 2026).

assigned entry filer code” and that the “action extends to both electronic filing in ... ACE ... through ... ABI and paper filing utilizing [his] assigned entry filer code”

Suspension Letter at 8. The letter also informed Plaintiff of an alternate method he could use to file entries and the steps that Plaintiff would have to take “[f]or [Customs] to consider reinstating the use of [his] entry filer code after a minimum of 180 calendar days from the date of [the] letter” Id. at 9–10.

On July 30, 2026, Plaintiff filed a complaint challenging the deactivation of his entry filer code. See generally Compl. Before filing his complaint, Plaintiff filed a motion for a temporary restraining order “enjoining [Defendants] ... from deactivating [P]laintiff’s customs broker electronic entry filer code” Pl.’s Mot. for Temp. Restraining Order at 1, ECF No. 4. Defendants filed their response on August 3, 2026. Defs.’ Opp. to Pl.’s Mot. for a Temp. Restraining Order, ECF No. 8 (superseded by ECF No. 21).

The court denied Plaintiff’s motion for a temporary restraining order on August 4, 2026. Order Denying Pl.’s Mot. for Temp. Restraining Order, ECF No. 9. On August 6, 2026, Plaintiff filed a motion for reconsideration. Pl.’s Emergency Mot. for Reconsideration, ECF No. 10. The court denied the motion the same day. Order Denying Pl.’s Emergency Mot. for Reconsideration, ECF No. 12.

On August 7, 2026, Plaintiff filed the motion for a preliminary injunction at issue here. Pl.’s Mot. Defendants filed their response on August 12, 2026. Defs.’ Opp. to Pl.’s Emergency Mot. for Prelim. Inj. (“Defs.’ Resp.”), ECF No. 15. Plaintiff sought leave to file a reply, which was granted. Order Granting Pl.’s Mot. for Leave to File a Reply, ECF

No. 23. Plaintiff's reply was deemed filed on August 21, 2026. Id.; see Pl.'s Reply to Gov.'s Opp. to Pl.'s Emergency Mot. for Prelim. Inj. ("Pl.'s Reply"), ECF No. 17.

JURISDICTION & STANDARD OF REVIEW

The court has jurisdiction over this matter. 28 U.S.C. § 1581(i)(1).⁴

The court may issue injunctive relief in the form of a preliminary injunction pursuant to CIT Rule 65. Injunctive relief is "an extraordinary remedy never awarded as of right." Winter v. Nat'l Res. Def. Council, Inc., 555 U.S. 7, 24 (2008); see also Ninestar Corp. v. United States, 666 F. Supp. 3d 1351, 1359 (CIT 2023) ("The movant, by a clear showing, carries the burden of persuasion on a motion for preliminary injunction.") (citing Mazurek v. Armstrong, 520 U.S. 968, 972 (1997)).

To obtain injunctive relief, the moving party must demonstrate: (1) "it is likely to succeed on the merits"; (2) "it is likely to suffer irreparable harm without a preliminary injunction"; (3) "the balance of ... [hardships] favors the [moving party]"; and (4) the injunction is in the public interest." Harmoni Int'l Spice, Inc. v. United States, 211 F. Supp. 3d 1298, 1306 (CIT 2017) (citing Winter, 555 U.S. at 20; Zenith Radio Corp. v. United States, 710 F. 2d 806, 809 (Fed. Cir. 1983)); Silfab Solar, Inc. v. United States,

⁴ Defendants note that Plaintiff's failure to file "the summons and complaint concurrently is grounds for dismissal for lack of subject matter jurisdiction." Defs.' Resp. at 11, n.5. However, such a failure does not necessitate a dismissal. See Chae v. Sec'y of the Treasury, 518 F. Supp. 3d 1383 (CIT 2021); Arlanxeo USA LLC v. United States, 337 F. Supp. 3d 1350 (CIT 2018). Here, Plaintiff filed his complaint one day after his summons. Summons, ECF No. 1; Compl. Defendants have not alleged prejudice by this one-day delay. See generally Defs.' Resp. The court declines to dismiss this case for lack of subject matter jurisdiction.

892 F.3d 1340, 1345 (Fed. Cir. 2018); Invenergy Renewables LLC v. United States, 422

F. Supp. 3d 1255, 1280 (CIT 2019). As the court has noted:

In reviewing these factors, “no one factor, taken individually,” is dispositive. Ugine & ALZ Belg. v. United States, 452 F.3d 1289, 1292 (Fed. Cir. 2006) ... ; FMC Corp. v. United States, 3 F.3d 424, 427 (Fed. Cir. 1993). However, each factor need not be given equal weight. See Ugine & ALZ Belg., 452 F.3d at 1293; Nken v. Holder, 556 U.S. 418, 434 (2009). Likelihood of success on the merits and irreparable harm are generally considered the most significant factors in evaluating a motion for injunctive relief. See Nken, 556 U.S. at 434; Amazon.com, Inc. v. Barnesandnoble.com, Inc., 239 F.3d 1343, 1350 (Fed. Cir. 2001).

Harmoni, 211 F. Supp. 3d at 1306.

DISCUSSION

I. Plaintiff is Not Likely to Succeed on the Merits

Plaintiff asserts that “he will succeed on the merits because Customs did not provide even basic due process” Pl.’s Mot. at 9. Plaintiff supports this claim by alleging that “Defendants’ action is arbitrary and capricious because [Defendants] have summarily deactivated Mr. Xu’s entry filer code without disclosing the specific reasons therefore and providing Mr. Xu with the opportunity to counter these reasons through evidence and argument.” Id. at 6.

Defendants maintain that “the due process afforded to an individual before the suspension of an entry filer code is governed by Section 558(c) of the APA, which involves notice by the agency in writing of the facts or conduct which may warrant the action, and an opportunity to demonstrate or achieve compliance with all lawful requirements. [Customs] afforded Mr. Xu with this due process.” Defs.’ Resp. at 12.

The Court of Appeals for the Federal Circuit (“Federal Circuit”) has explained “that the party seeking the injunction must be able to demonstrate that it has at least a fair chance of success on the merits for a preliminary injunction to be appropriate.” Silfab Solar, 892 F.3d at 1345 (internal quotations and citations omitted).

In the present case, Plaintiff has failed to establish a “fair chance” of success on the merits.⁵ Specifically, Plaintiff’s claim that Defendants failed to identify the reasons for deactivation, or afford Plaintiff an opportunity to respond to these reasons, ignores the reality of Plaintiff’s interactions with Customs. Pl.’s Mot. at 6.

Before conducting its April 2026 compliance review, Customs put Plaintiff on notice of misuse of his entry filer code on several occasions over a one-year period. Defs.’ Resp. at 18–19 (detailing “[t]he full scope and timeframe of [Custom’s] notice to

⁵ Plaintiff relies in part on Lizarraga in support of his position. Compl. ¶ 7 (“Under guidance set forth by this court in Lizarraga[,] ... Customs has no right to deactivate a customs broker’s entry filer code without, at a minimum, adherence to proper procedure, such as notice, an opportunity for the broker to respond, and a hearing before an administrative law judge.”); Pl.’s Mot. at 6 (“As this court found in Lizarraga, Mr. Xu is also likely to succeed on the merits.”).

Plaintiff misconstrues the applicability of Lizarraga. Notably, in Lizarraga, which also involved the suspension of an entry filer code, the court specifically noted that “the court is not determining whether the provisions of [5 U.S.C.] § 558 will provide adequate legal due process under circumstances yet unknown.” Lizarraga, 34 CIT at 1318.

Relatedly, in Plaintiff’s reply brief, Plaintiff raises the claim that “[t]he government ... is estopped from challenging, [P]laintiff’s showing of likelihood of success [on] the merits, irreparable harm, balance of [hardships], and public interest[,]” given Lizarraga. Pl.’s Reply at 11. Although Plaintiff claims that he “suffered the same injury as the broker in Lizarraga[,]” mere assertions do not constitute evidence. Id. at 7–8. Also insufficient are counsel’s memories of his government service during the Lizarraga litigation. See, e.g., id. at 5. As such, Plaintiff’s estoppel argument fails.

Plaintiff, associated warnings, and time to achieve compliance ...”, with citations to supporting documentation). In these notices, Customs informed Plaintiff of the potential repercussions of such misuse and how Plaintiff could dispute allegations of misuse. Id.; see, e.g., Letter from Automotive and Aerospace Center to Forrest Xu (Dec. 19, 2025) at Exhibit A-49–50, ECF No. 21-2.

Further, and prior to deactivating Plaintiff’s entry filer code, Customs informed Plaintiff that it was conducting a compliance review. Apr. 24, 2026 Letter. In that letter, Customs put Plaintiff on notice of the issues it was reviewing, specified what information Plaintiff needed to provide to address the agency’s concerns, and informed him of potential repercussions. Id. at A-81–83. Specifically, Customs notified Plaintiff that “[f]ailure to respond to this request and/or provide a sufficient explanation and supporting written or electronic records or documents may result in [Customs] taking action to disable [his] ability to transmit CBP Form 5106s electronically in ACE.” Id. at A-83.⁶

Plaintiff failed to respond with the information requested by Customs. For example, as Customs noted in its May 4, 2026 letter:

[Customs] requested that you provide all communication between yourself and the above IORs regarding their initial inquiry into filing a CBP Form 5106 or engaging in other customs business. First, you did not provide evidence showing that you had direct communication with 13 of the above

⁶ The letter also informed Plaintiff of specific legal requirements he had to follow as a licensed customs broker and informed Plaintiff that “[f]ailure to comply with these or other applicable legal requirements may result in monetary penalties, revocation or suspension of [his] customs brokers license, or other appropriate actions.” Apr. 24, 2026 Letter at Exhibit A-83.

IORs, nor did you provide any response for seven. Second, you provided only partial correspondence for 15 of the above IORs. Third, despite your claim that you reviewed the powers of attorney (POA) for each of the above IORs for completeness, 15 of the POAs that you provided were not fully filled out and are therefore incomplete.

Your response claims that you confirm that each IOR is a legitimate operating business entity and that they are not a fictitious company or associated with misrepresented parties. However, [Customs] has confirmed that at least two of the government-issued identifications that you provided in your response are invalid.

May 4, 2026 Letter at Exhibit A-78.

Given the record evidence, Plaintiff's due process assertions that Defendants "summarily" deactivated its entry filer code are unpersuasive.

II. Plaintiff Has Not Established Irreparable Harm

The court next turns to whether Plaintiff has shown "that he is likely to suffer irreparable harm in the absence of preliminary relief" Winter, 555 U.S. at 24.

Plaintiff argues that he has suffered a "clearly irreparable" injury because "he cannot continue to operate his brokerage business in a competitive manner" while his entry filer code is suspended. Pl.'s Mot. at 5. Plaintiff further claims that he "cannot so easily recover the injury to [his] business from [D]efendants' action because there is no way to know whether Customs will ever reinstate his entry filer code, and no guidelines or hearing process in this regard, [and] no effective remedy will compensate Mr. Xu for [his] present and continuing injury." Id.

Defendants rebut Plaintiff's contention, stating that "Plaintiff's assertions of the negative effects on his business fall short of demonstrating the severe or imminent

threat of financial extinction required, and he has accordingly failed to establish irreparable harm.” Defs.’ Resp. at 24.

The court “has long recognized that a movant’s burden to prove irreparable harm is ‘extremely heavy.’” Retractable Techs., Inc. v. United States, 739 F. Supp. 3d 1330, 1340 (CIT 2024); see also Shandong Huarong Gen. Corp. v. United States, 122 F. Supp. 2d 1367, 1369 (CIT 2000); Int’l Fresh Trade Corp. v. United States, 26 F. Supp. 3d 1363, 1367 (CIT 2014). As the court has explained,

A finding of irreparable harm requires that a Plaintiff demonstrate “a viable threat of serious harm which cannot be undone,” justifying the injunctive relief sought. Zenith, 710 F.2d at 809 Generally, an allegation of financial loss alone, however substantial, which is compensable with monetary damages, is not irreparable harm if such corrective relief will be available at a later date. See Sampson v. Murray, 415 U.S. 61, 90, 94 (1974). As such, “[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.” Sampson, 415 U.S. at 90. Nevertheless, irreparable harm may take the form of “[p]rice erosion, loss of goodwill, damage to reputation, and loss of business opportunities.” Celsis In Vitro, Inc. v. CellzDirect, Inc., 664 F.3d 922, 930 (Fed. Cir. 2012).

Harmoni, 211 F. Supp. 3d at 1306–07. The court has also noted that “[w]ithout more, affidavits from interested parties may be considered weak evidence, unlikely to justify a preliminary injunction.” Int’l Fresh Trade, 26 F. Supp. 3d at 1368 (internal quotations and citations omitted).

Plaintiff has provided weak evidence for his claim of irreparable injury. Plaintiff relies on self-attestations regarding: (1) his financial situation; (2) his loss of clients because of the suspension of his entry filer code; and (3) the challenges of manual

filing. Supplemental Declaration of Forrest Xu (“Supplemental Decl.”) ¶¶ 6–11, 13–14, ECF No. 13-2.

Plaintiff has provided no outside support, such as financial documentation, for his claim that he will “run out of money” and be forced to close his brokerage in the absence of a preliminary injunction. *Id.* ¶ 13; Compare Harmoni, 211 F. Supp. 3d at 1307–08, with ICON EV LLC v. United States, Slip Op. 2026-42 at *14–16 (CIT Apr. 24, 2026). Additionally, Plaintiff alleges that he “tried to ask [his] clients to stay but they have no interest in paying [him] to file manually when they can go to another broker and get electronic service” and that “[m]anual filing is not practical in [this] day and age.” Supplemental Decl. ¶ 14. However, Plaintiff has not provided evidence of communications with clients or attempts to file manually to support his claims.

Finally, Plaintiff’s contention that “there is no way to know whether Customs will ever reinstate his entry filer code, and no guidelines or hearing process in this regard” is contradicted by record evidence. Pl.’s Mot. at 5. In Customs’ June 1, 2026 suspension letter to Plaintiff, the agency laid out the specific information and documentation Plaintiff would need to provide in order “[f]or [Customs] to consider reinstating the use of [Plaintiff’s] entry filer code after a minimum of 180 calendar days from the date of this letter” Suspension Letter at 9–10. The letter concluded that:

If [Customs] is able to confirm the validity and sufficiency of the information contained within your response, your entry filer code will be reactivated on day 181. If [Customs] requires additional information after receiving your initial response, this will be communicated to you before the end of the 180-day period. Should you fail to provide sufficient information, [Customs] will continue to disallow the use of your entry filer code beyond the initial 180-day duration.

Id. at 10. In sum, Plaintiff has not demonstrated irreparable harm.

III. Plaintiff Has Not Shown that the Balance of Hardships Weighs in His Favor, Nor That a Preliminary Injunction Would Serve the Public Interest

Plaintiff argues that the balance of hardships weighs in his favor, contending “[t]he issuance of a preliminary injunction to prevent [D]efendants’ continuing action will have incidental or no adverse impact upon Customs[’] administration of broker licenses or upon other licensed customs brokers in the region, or anywhere else in the country, whereas denial of the preliminary injunction will have tremendous impact upon Mr. Xu – ending his brokerage In contrast, Customs is free to continue its other broker regulation activities during the pendency of the case.” Pl.’s Mot. at 8. Relatedly, Plaintiff argues that “the public interest is best served by the issuance of a preliminary injunction” Id. at 7. Plaintiff notes that “[s]hould [D]efendants not be prevented from implementing their plan, the economic viability of the existing brokers will undoubtedly be threatened.” Id. at 8.

Defendants counter that the balance of hardships weighs in their favor, stating that “[a]s a result of Plaintiff’s actions, dozens of importer of record numbers were issued for which [Customs] does not have accurate and complete information, exposing the public’s health and safety, and the nation’s security, to the unacceptable risk of unlawful importation of dangerous goods and lost customs revenue.” Defs.’ Resp. at 25. Defendants also maintain that the public interest would be disserved by the issuance of a preliminary injunction, maintaining that “[Customs’] actions ensure that the small minority of brokers who misuse their entry filer codes do not continue to put at risk the

revenue of the United States and the health and safety of all its people, while not diminishing the availability of compliant customs brokers to the importer community.” Id. at 26.

When evaluating a preliminary injunction, the court’s considerations of the balance of hardships and public interest “merge when the [g]overnment is the opposing party.” Nken, 556 U.S. at 435; ICON EV, Slip Op. 2026-42 at *16; Ninestar Corp. v. United States, 687 F. Supp. 3d 1308, 1343 (CIT 2024).

Plaintiff has failed to establish that these merged factors weigh in his favor. Relevantly, the Federal Circuit has stated that “[t]he public interest is served by ensuring that governmental bodies comply with the law” Am. Signature, Inc v. United States, 598 F.3d 816, 830 (Fed. Cir. 2010). Plaintiff has not shown that Defendants are acting in contravention of the law. Rather, through its oversight of and communications with Plaintiff, Customs was ensuring “[a]ccurate and effective enforcement of [the] trade laws” Union Steel v. United States, 617 F. Supp. 2d 1373, 1381 (CIT 2009). Such actions are in the public interest. See id. Therefore, this factor weighs against granting Plaintiff’s motion.

Further, Defendants’ interests in protecting national security and government revenue have already been held to be significant public interests by the court. See Severstal Exp. GMBH v. United States, Slip Op. 2018-37 at *24 (CIT Apr. 5, 2018) (“Both the rule of law and our nation’s security are foundational to the public good.”); Harmoni, 211 F. Supp. 3d at 1318 (“Congress made clear that protecting the revenue of the United States is a significant public interest.”).

CONCLUSION

For the foregoing reasons, Plaintiff's motion for a preliminary injunction is
DENIED.

/s/ Lisa W. Wang
Lisa W. Wang, Judge

Dated: September 16, 2026
New York, New York