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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES;
JANE DOE #2; JANE DOE #3; IRIS
ANGELINA CASTRO; BLAKE DOE;
BRENDA VILLARRUEL; GABINO
SORIANO CASTELLANOS; and LATINO
NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as
President of the United States; U.S.
DEPARTMENT OF HOMELAND
SECURITY; KEVIN MCALEENAN, in his
official capacity as Acting Secretary of the
Department of Homeland Security; U.S.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; ALEX M. AZAR II, in
his official capacity as Secretary of the
Department of Health and Human Services;
U.S. DEPARTMENT OF STATE;
MICHAEL POMPEO, in his official capacity
as Secretary of State; and UNITED STATES
OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SI

**UNOPPOSED MOTION TO DISMISS
PROCEEDINGS WITHOUT PREJUDICE**

LR 7-1 CERTIFICATION

Pursuant to Local Rule 7-1, counsel for the parties conferred on November 5, 2021. Defendants' counsel stated that they do not oppose this motion to dismiss Plaintiffs' claims without prejudice.

MOTION TO DISMISS PLAINTIFFS' CLAIMS WITHOUT PREJUDICE

Plaintiffs hereby respectfully move the Court, pursuant to Fed.R.Civ.Proc. 23(e), for an Order dismissing this action without prejudice.

I. Background

On October 4, 2019, the President of the United States issued Proclamation No. 9945, titled "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System" (the "Proclamation"). The Proclamation purported to require certain immigrants to show proof of health insurance or sufficient financial resources to pay for the costs of anticipated health care before those immigrants could qualify for immigrant visas.

On October 30, 2019, Plaintiffs filed a putative class action complaint alleging that: (1) Defendants violated the Administrative Procedure Act ("APA"); (2) Defendants violated the Fifth Amendment Due Process clause's requirement of equal protection based on race, ethnicity, and national origin; (3) Defendants' actions are ultra vires, including that the President's issuance of the Proclamation violates the separation of powers doctrine and is outside the authority delegated to him in 8 U.S.C. § 1182(f); and (4) Defendants violated the Fifth Amendment Due Process clause's procedural due process guarantee. (Dkt. 1). On November 2, 2019, the Court entered a Temporary Restraining Order, temporarily enjoining Defendants from taking any action to implement or enforce the Proclamation through November 30, 2019. (Dkt.

33). On November 26, 2019, the Court entered a preliminary injunction order, enjoining Defendants from taking any action to implement or enforce the Proclamation until the Court resolves this case on the merits. (Dkt. 95).

On November 8, 2019 Plaintiffs requested certification of two subclasses: (1) a subclass of United States citizens who are petitioners sponsoring a visa for family members; and (2) a subclass of foreign nationals who are visa applicants. (Dkt. 44). On April 7, 2020 this Court granted that motion, certifying both subclasses (with a modest modification of the requested definition of the subclass of United States citizen petitioners). (Dkt. 132). The Court did not direct that notice be issued to members of the certified classes.

Defendants appealed the Preliminary Injunction and, on December 31, 2020, the Ninth Circuit reversed this Court's preliminary injunction. On January 19, 2021, Plaintiffs filed a petition for rehearing *en banc*: however, on May 14, 2021, the President issued Presidential Proclamation 10209 revoking the Proclamation challenged by this lawsuit and mooted this case. Plaintiffs filed a Motion to Vacate the December 31, 2020 Panel Opinion. The Ninth Circuit granted Plaintiffs' request in part on July 16, 2021 in an order that simultaneously denied Plaintiffs' request for rehearing as moot, and remanded this matter to this Court with instructions to vacate as moot the November 26, 2019 order granting the preliminary injunction. (*See* Dkt. 160, 161). On October 25, 2021 this Court entered an order vacating its November 26, 2019 order. (Dkt. 162)

II. Legal Standard

“The claims . . . of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval.” Fed. R. Civ. P. 23(e). “[W]hen reviewing a proposal to voluntarily dismiss a class action after it has been certified, the Court should ensure

that the interests of the absent class members have been adequately protected and that there is no collusion between the parties that are present to the detriment of the parties that are absent.”

Joseph v. Am. Modification Agency, Inc., 08 CIV. 11186 JPO, 2012 WL 3542189, at *3 (S.D.N.Y. Aug. 16, 2012). Dismissal should be granted if there is no possible prejudice, such as “from (1) class members' possible reliance on the filing of the action if they are likely to know of it either because of publicity or other circumstances, (2) lack of adequate time for class members to file other actions, because of a rapidly approaching statute of limitations, (3) any settlement or concession of class interests made by the class representative or counsel in order to further their own interests.” *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989).

III. Argument

The Court should allow Plaintiffs to voluntarily dismiss their claims here. Dismissal would not raise any of the prejudice concerns outlined in *Diaz*. The relief sought on behalf of the class (an injunction enjoining implementation of the Proclamation, and a declaration that the Proclamation is unlawful and invalid¹) is no longer necessary given the revocation of the Proclamation challenged by the pending lawsuit, so there are no concerns regarding class members' ability to file their own actions seeking similar relief. Notice of the pendency of the action has not been sent to the Class, and class counsel has not been contacted by any class member regarding this case (aside from named plaintiffs, who have been informed of and approve the dismissal of the claims), so there would be no significant concerns regarding class member “reliance” on this action in any event. There has been no settlement or negotiation between the parties that would give rise to concerns regarding collusion. Class counsel are not

¹ The only other relief sought by the Complaint is an order awarding Plaintiffs costs of suit and reasonable attorneys' fees and expenses, and Plaintiffs are foregoing that request for purposes of winding down this matter.

requesting fees or costs, and would thus not receive any payment or other benefit from dismissal of this action.

Moreover, this Court need not direct notice to the class regarding dismissal of this action. Rule 23(e) requires notice to class members only “where the class will be bound by the proposal,” and if “the proposal is to dismiss the claims without prejudice and the class is not bound by any determination, notice may not be required.” *Joseph*, 2012 WL 3542189, at *4; *see also Stern v. Docircle, Inc.*, 2014 WL 12558847 (C.D. Cal. May 19, 2014). “The notice provision is aimed at protecting the interests of nonparty class members from unfair or collusive settlements and to discourage the assertion of a class action to secure an unjust private settlement for the named plaintiffs who then dismiss the putative class claims.” *Robb v. Stericycle, Inc.*, CIV.A.05-1370, 2005 WL 2304475, at *8 (W.D. La. Aug. 19, 2005).

The dismissal without prejudice requested here would not constitute a resolution on the merits that would bind Class Members, there has been no “private settlement,” and no notice has yet been disseminated to the Class. In such circumstances, notice to the Class “would afford no benefit or protection to the class members.” *Robb*, 2005 WL 2304475, at *9; *see also Stern*, 2014 WL 12558847, at *3 (allowing voluntary dismissal and finding class notice not required because class members were not bound by dismissal without prejudice); *Joseph*, 2012 WL 3542189, at *4-*5 (concluding that notice was not necessary when notice was never disseminated to the class, and when there was “no determination in this matter that could serve to preclude or foreclose any of class members’ claims”).

Based on the foregoing, Plaintiffs request that this Court grant Plaintiffs’ motion in its entirety, dismiss the action without prejudice (each party to bear their own costs and fees), and find that notice of the dismissal need not be disseminated to the class.

DATED this 5th day of November, 2021.

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