

The Honorable James L. Robart
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS
PROJECT and THE ADVOCATES FOR
HUMAN RIGHTS;

Marvella ARCOS-PEREZ, Carmen OSORIO-
BALLESTEROS, and W.H., Individually and
on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY; Leon RODRIGUEZ, Director,
U.S. Citizenship and Immigration Services;
Jeh JOHNSON, Secretary, U.S. Department of
Homeland Security,

Defendants.

Case No. 2:15-cv-00813-JLR

DEFENDANTS' MOTION TO STAY
SUMMARY JUDGMENT PROCEEDINGS
OR IN THE ALTERNATIVE TO RESET
DEFENDANTS' TIME TO RESPOND TO
PLAINTIFFS' MOTION

NOTE ON CALENDAR: August 14, 2015

Defendants United States Citizenship and Immigration Services, United States
Department of Homeland Security, Leon Rodriguez, and Jeh Johnson, in their official capacities,
hereby move for a stay of proceedings on Plaintiffs' Motion for Summary Judgment (ECF No.
24). Plaintiffs' summary judgment motion is premature as Defendants have not had time to file a
responsive pleading to the Complaint (ECF No. 1) or the Motion for Class Certification (ECF
No. 5), and other pretrial proceedings have not been had.

1 On May 22, 2015, Plaintiffs filed their Complaint and a Motion for Class Certification,
2 setting the noting date at June 19, 2015. On May 27, 2015, Plaintiffs served those documents on
3 the United States' Attorney's Office for the Western District of Washington. Pursuant to Federal
4 Rule of Civil Procedure 12, Defendants' responsive pleading to the Complaint is due on July 27,
5 2015.¹

6 Beginning on May 29, 2015 and continuing through June 16, 2015, counsel for
7 Defendants conferred at length with counsel for Plaintiffs by telephone and email on scheduling
8 matters—including briefing schedules and noting dates for both the dispositive motion
9 Defendants likely would file in response to the Complaint and the class certification motion—
10 and Plaintiffs' proposed motion for a protective order. The parties agreed and stipulated to a
11 briefing schedule (ECF No. 20) for the pending class certification motion and the probable
12 motion to dismiss, which Defendants likely would file on July 27, 2015, the answer deadline. In
13 addition, Defendants did not oppose Plaintiffs' Motion for a Protective Order (ECF No. 22).

14 Surprisingly, despite the detailed communications between counsel on scheduling
15 matters, Plaintiffs' counsel made no mention to Defendants' counsel of any summary judgment
16 motion until filing it on July 2, 2015, the eve of a Federal holiday weekend, at 4:43 p.m. Pacific
17 time (7:43 p.m. Eastern time). Counsel for Defendants have attempted to come to an agreement
18 with Plaintiffs on re-scheduling summary judgment briefing so that the Court can get the
19 necessary information in the most logical way and in the sequence the Federal Rules of Civil
20 Procedure recognize. *See* Fed. R. Civ. P. 56 at Advisory Committee Notes 2010 Amendments
21 Subdivision (b). The parties, however, were unable to come to an agreement.

22 Defendants submit that the Court should decide their motion to dismiss (which will be
23 filed on the answer deadline) and Plaintiffs' motion for class certification prior to any litigation
24 of Plaintiffs' motion for summary judgment. Once the motion to dismiss and class certification
25

26 ¹ Due to the nature of the case, the complexity of the issues raised, and the need for multi-
27 level supervisory review, Defendants will require additional time to file their Motion to Dismiss
28 and Class Certification Motion. The parties have agreed and filed a stipulation (ECF No. 26) for
Defendants to have a fourteen-day extension (to August 10, 2015) to file their planned Motion to
Dismiss in response to the Complaint and opposition to the Class Certification Motion.

1 motion are resolved, to the extent Plaintiffs' claims survive, the parties can submit a stipulated
2 proposed discovery plan outlining deadlines for any discovery that needs to be conducted, as
3 well as a deadline for briefing motions for summary judgment. This sequence will enable the
4 Court to get to the merits in due time after first addressing jurisdictional and other threshold
5 issues. To the extent Plaintiffs' summary judgment motion raises legal issues, those issues may
6 be addressed by the Court's adjudication of Defendants' planned motion to dismiss.

7 In the alternative, Defendants request that the Court set a scheduling order that would
8 give them sufficient time to appropriately respond to Plaintiffs' summary judgment motion. Due
9 to the nature of the case, the complexity of the issues raised, and the need for multi-level
10 supervisory review at the Department of Justice and the United States Citizenship and
11 Immigration Services, which has an interest in the outcome of the case and would have to
12 implement the Court's decision, Defendants request, in the alternative, that the Court set their
13 time to respond to the summary judgment motion thirty days (30) days after the Court's ruling on
14 the present motion.

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1 DATED: July 24, 2015

Respectfully submitted,

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3 BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

4 WILLIAM C. PEACHEY
5 Director

6 JEFFREY S. ROBINS
7 Assistant Director

8 *s/ Sarah Maloney*
9 SARAH MALONEY
CRAIG DEFOE
10 Trial Attorneys
U.S. Department of Justice
11 Civil Division
Office of Immigration Litigation
12 District Court Section
P.O. Box 868, Ben Franklin Station
13 Washington, D.C. 20044
14 Phone: (202) 305-4193
15 Fax: (202) 305-7000
16 Email: Sarah.Maloney2@usdoj.gov

17 Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 2015, I electronically filed the foregoing DEFENDANTS' MOTION TO STAY SUMMARY JUDGMENT PROCEEDINGS with the Clerk of the Court using CM/ECF. I also certify that the foregoing document should automatically be served this day on all counsel of record *via* transmission of Notices of Electronic Filing generated by CM/ECF.

s/ Sarah Maloney _____
SARAH MALONEY
Trial Attorney
U.S. Department of Justice

The Honorable James L. Robart
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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NORTHWEST IMMIGRANT RIGHTS
PROJECT, *et al.*,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, *et al.*,

Defendants.

Case No. 2:15-cv-00813-JLR

[PROPOSED] ORDER

[Proposed] ORDER

Upon consideration of Defendants’ Motion to Stay, the motion is GRANTED.

Summary judgment proceedings are stayed until the Court has decided Defendants’ motion to dismiss and Plaintiffs’ motion for class certification. Once the motion to dismiss and class certification motion are resolved, to the extent Plaintiffs’ claims survive, the parties shall submit within thirty (30) days therefrom a stipulated proposed discovery plan outlining deadlines for any discovery that needs to be conducted, as well as a deadline for briefing motions for summary judgment.

Upon Consideration of Defendants’ Motion in the Alternative to Reset Defendants’ Time to Respond to Plaintiffs’ Motion, the motion is GRANTED.

Defendants shall respond to the summary judgment motion within thirty (30) days from the date of this Order.

1 The Clerk is directed to send copies of this Order to all counsel of record.

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3 Dated this _____ day of _____, 2015.

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The Honorable James L. Robart
United States District Judge

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1 Presented by:
2 BENJAMIN C. MIZER
3 Principal Deputy Assistant Attorney General
4 WILLIAM C. PEACHEY
5 Director
6 JEFFREY S. ROBINS
7 Assistant Director
8 s/ Sarah Maloney
9 SARAH MALONEY
10 CRAIG DEFOE
11 Trial Attorneys
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