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15 * *Motions for Pro Hac pending or forthcoming*

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION
19

20 JANAN VARGHESE JACOB, et al.,
21 Plaintiffs,
22 v.
23 JOSEPH R. BIDEN, JR.¹, et al.,
24 Defendants.
25

Case No. 3:21-cv-00261-EMC

**INITIAL JOINT CASE
MANAGEMENT CONFERENCE
STATEMENT AND
[PROPOSED] ORDER**

26
27
28 ¹ Pursuant to Fed. R. Civ. R. 25(d), successors in office are automatically substituted.

1 The parties to the above-entitled action jointly submit this updated JOINT CASE MANAGEMENT
2 STATEMENT & PROPOSED ORDER pursuant to the Clerk's Notice (Dkt. No. 22).

3 **1. JURISDICTION & SERVICE**

4 Plaintiffs bring this suit under the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., the
5 Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, the Immigration and Nationality Act, 8 U.S.C. §§
6 1101 et seq., the U.S. Constitution, including but not limited to Article I, Article II, and the Fifth
7 Amendment, and this Court's inherent equitable power. This Court has additional remedial authority
8 under 28 U.S.C. §§ 2201–02. Plaintiffs' complaint was dismissed on January 13, 2021. On January 15,
9 2021, Plaintiffs served Defendants copies of the amended complaint and summons. Dkt. No. 18. On
10 January 17, 2021, Plaintiffs served Defendants with a copy summons and motion for TRO. On January
11 20, 2021, Plaintiffs served Defendants received service of all items on those dates.

12
13 **2. FACTS**

14 This action has been brought by approximately 2,200 Plaintiffs. Plaintiffs -- petitioners who are either
15 Lawful Permanent Residents ("LPR") and U.S. citizens, and the intended beneficiaries who are their
16 spouses, siblings, parents, and children -- have brought a lawsuit against Defendants, Joseph R. Biden,
17 Jr. et al, challenging Presidential Proclamations 10014 and its extensions and DOS policies to implement
18 them, including, in Defendant's view, the Secretary of State's authority to determine how to structure
19 overseas operations during a global pandemic to protect the health and safety of its own personnel and
20 visa applicants, including policies pertaining to the phased resumption of visa processing. Dkt. No. 14,
21 Amended Complaint. Plaintiffs ask the Court to: (a) issue a declaratory judgement establishing that the
22 Proclamations are in excess of the Executive Branch's lawful authority; (b) enjoin Defendants from
23 implementing, enforcing, or otherwise carrying out the provisions of the Proclamations; (c) vacate and
24 set aside the Proclamations and any actions taken to implement the Proclamations; (d) mandate the
25 immediate processing and adjudication of Plaintiffs' immigrant visa applications; (e) retain jurisdiction
26 over this action to monitor and enforce Defendants' compliance with all orders of this Court; (f) award

1 Plaintiffs reasonable attorneys' fees and costs; and (f) award Plaintiffs such other and further relief as
2 the Court may deem just and proper. *Id.* at Section VII at p. 29.

3
4 **3. LEGAL ISSUES**

5 Plaintiffs raise claims under the U.S. Constitution and the Administrative Procedure Act, and under the
6 Court's authority to review executive actions that exceed the President's authority.

7 **4. MOTIONS**

8 Plaintiffs have filed a renewed motion for a temporary restraining order and a renewed motion for class
9 certification. Dkt. Nos. 16, 17. Defendants believe the approximately 2,200 Plaintiffs have not shown
10 entitlement to a temporary restraining order and will oppose the Plaintiffs' motion. Defendants will also
11 oppose the motion for class certification by January 29, 2021. Further, in advance of the scheduled
12 January 28, 2021 conference, Plaintiffs will file a Motion for Preliminary Injunction on their
13 unreasonable delay and APA claims, and an Ex Parte Motion for Expedited Discovery for a narrow
14 scope of records that could aid the court in deciding that motion.

15 In view of the new Administration, should circumstances indicate that the issues raised in this case are
16 moot, Defendants anticipate filing an appropriate motion at that time. Additionally, Defendants oppose
17 any "ex parte" motion for expedited discovery. As discussed below, discovery is not proper in APA
18 cases. Even were Plaintiffs able to show that discovery would be warranted in this case, any such
19 request is premature at this stage where Defendants have not yet responded to the amended complaint
20 and there has been no 26(f) conference. Also, such a motion finds no basis in the Civil Local Rules of
21 this district.
22

23
24 **5. AMENDMENT OF PLEADINGS**

25 Defendants and Plaintiffs do not foresee any amendments.
26

27 **6. EVIDENCE PRESERVATION**

1 The parties have not discussed evidence preservation and, as set forth below, have differing views on
 2 whether discovery is appropriate.

3 **7. DISCLOSURES**

4 Defendants' Statement

5 As all claims in the case are outgrowths of Plaintiffs' APA claims, Defendants view the case as one
 6 brought under the APA and thus no initial disclosures are required pursuant to Federal Rule of Civil
 7 Procedure 26(a)(1)(B)(i).
 8

9 Plaintiffs' Statement

10 Plaintiffs' agree initial disclosures are not required at this point because these disclosures aren't due until
 11 "at or within 14 days after the parties' Rule 26(f) conference." FRCP 26(1)(C). However, Plaintiffs
 12 disagree with Defendants' characterization of the case as "an APA case."

13 **8. DISCOVERY**

14 Defendants' Statement

15 Discovery, which would include the ex parte motion Plaintiffs state they seek to bring to support a
 16 forthcoming preliminary injunction motion, is improper because Plaintiffs' claims, although brought
 17 under both the APA and the Constitution, are outgrowths of their APA claims. Indeed, in cases where
 18 "constitutional claims . . . are fundamentally similar to their APA claims—plaintiffs argue that the
 19 agency's decision to deny their visas violated their due process and equal protection rights because the
 20 agency's decision was 'irrational and arbitrary' and failed to consider evidence submitted by plaintiffs,"
 21 discovery beyond the administrative record has not been permitted. *Chiayu Chang v. U.S. Citizenship &*
 22 *Immigration Servs.*, 254 F. Supp. 3d 160, 161 (D.D.C. 2017); *see also Bellion Spirits v. U.S.*, No. 17-
 23 2538, 2018 WL 4637013, at *7 (D.D.C. Sept. 27, 2018) (stating that district courts have been hesitant to
 24 permit a plaintiff asserting a constitutional challenge to agency action to avoid the APA's bar on extra-
 25 record evidence) (citing cases). This Circuit has found that ordering extra-record discovery in a case
 26 involving both APA and Constitutional claims before the administrative record was produced was an
 27 abuse of discretion. *Ramos v. Wolf*, 975 F.3d 872, 901 (9th Cir. 2020) (Nelson, J concurring).
 28

1 Plaintiffs' Statement

2 Plaintiffs view is that denying the court its authority to decide important constitutional questions upon a
 3 fully developed factual record would intrude on the separation of powers underlying the judiciary's
 4 obligation to protect individual liberties. *Marbury v. Madison*, 5 (U.S. 1 Cranch) 137, 163 (1803). To aid
 5 the court with determination on Plaintiffs' forthcoming Motion for Preliminary Injunction, Plaintiffs
 6 also. plan to file an Ex Parte Motion for Expedited Discovery for a narrow scope of records that could
 7 aid the court.
 8

9 **9. CLASS ACTIONS**

10 Plaintiffs renewed their motion for class certification on January 14, 2021, noticing a hearing with the
 11 previously assigned judge for Thursday, February 18, 2021 at 10:00 a.m. Dkt. No. 16. Plaintiffs propose
 12 certification of the following class: "All immigrants impacted by Presidential Proclamation 10014 and
 13 its extensions, including but not limited to: (F1) Unmarried sonsand daughters of U.S. citizens, (F2A)
 14 Spouses and Children of Permanent Residents, (F2B) Unmarried Sons and Daughters of Permanent
 15 Residents, (F3) Married Sons and Daughters of U.S. Citizens, (F4) Brothers and Sisters of Adult U.S.
 16 Citizens, (IR-5) Parents of a U.S. Citizen who is at least 21 years old, and Diversity Visa program
 17 selectees." *Id.* at 2. Plaintiffs also propose the court appoint Plaintiff Janan Varghese JACOB as
 18 representative of the class, appoint Plaintiffs' counsel as counsel for the class, and require the
 19 government to identify and recognize all members of the class. *Id.*
 20
 21

22 **10. RELATED CASES**

23 This case has been related to *Young et al. v. Biden et al.*, 3:20-cv-07183-EMC. Dkt. No. 20.

24 **11. RELIEF**

25 Plaintiffs request a temporary restraining order enjoining PP 10014 and its two extensions. Plaintiffs
 26 also plan to request, prior to the Initial Joint Case Management Conference, a motion for preliminary
 27
 28

injunction to address the unreasonable delays and APA claims that have been caused by PP 10014, its two extensions, and their implementation.

Defendants do not view any relief to be warranted.

12. **SETTLEMENT AND ADR**

Pursuant to Rule 3-5 of the ADR Local Rules, the parties have not yet met and conferred “to discuss the available ADR processes, to identify the process each believes will be most helpful to the parties’ settlement efforts, to specify any formal or informal exchange of information needed before an ADR session, and to attempt to agree on an ADR process and a deadline for the ADR session.” Defendants are always willing to explore ADR.

Plaintiffs express no additional view on ADR discussions except to note they sadly appear to be futile.

13. **CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

This case has been assigned to a U.S. District Court judge.

14. **OTHER REFERENCES**

The parties agree that this case is not suitable for binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. **NARROWING OF ISSUES**

No issues have been narrowed thus far.

16. **EXPEDITED TRIAL PROCEDURE**

It is Defendants’ view that this case is not suitable for the Expedited Trial Procedure of General Order No. 64 Attachment A.

Plaintiffs reserve all rights to expedite this case with all deliberate speed.

17. **SCHEDULING**

Defendants will file an Answer or Motion to Dismiss the Amended Complaint by March 16, 2021, per Fed. R. Civ. P. 4, as they were served on January 15, 2021.

18. **TRIAL**

INITIAL JCMS AND [PROPOSED] ORDER
CASE NO. 3:21-cv-00261-EMC

1 Defendants' Statement

2 As this is an APA matter, Defendants view a trial as unlikely. If summary judgment motions proceed,
3 and if that briefing does not resolve this case, Defendants propose that the parties agree to meet and
4 confer within two weeks of the order on the summary judgment briefing to determine when a trial could
5 take place and how long it would last.

6 Plaintiffs Statement

7 Again, Plaintiffs disagree with Defendants' characterization of this case as "an APA matter." Before the
8 proper production of discovery, Plaintiffs take no position on whether a trial is likely.

9
10 19. **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

11 As Plaintiffs disclosed to the Court already, Pursuant to Civil L.R. 3-15, the undersigned certifies that as
12 of this date, other than the named parties, there is no such interest to report." Dkt. No. 2.

13 Defendants, who are all government entities, are not required to file a Certification of Interested Entities
14 or Persons. *See* L.R. 3-15(a).

15 20. **PROFESSIONAL CONDUCT**

16 The parties of record have reviewed the Guidelines for Professional Conduct for the Northern District of
17 California.

18
19 21. **OTHER**

20 Nothing at this time.

21
22 DATED:

23 1/21/21

Respectfully Submitted,

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/s/ Kimberly A. Robinson
KIMBERLY A. ROBINSON
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/s/ Curtis Lee Morrison
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Attorneys for Plaintiffs

I, Kimberly Robinson, hereby attest that I have obtained the concurrence in the filing of this document from all parties.

/s/ Kimberly A. Robinson
KIMBERLY A. ROBINSON

[PROPOSED] ORDER

Within three weeks from today, the parties shall meet and confer regarding a deadline for production of the Administrative Record (AR) in this matter and a schedule for summary judgment cross-motions. The parties shall file a stipulation regarding these deadlines with the Court by January 29, 2021.

IT IS SO ORDERED.

DATED:

The Honorable Edward M. Chen
U.S. District Court Judge