THE HONORABLE LAUREN KING

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the United States, *et al.*,

Defendants.

No. 2:17-cv-00094-LK

PLAINTIFFS' OPPOSITION TO MOTION FOR LEAVE TO FILE A MOTION TO DISMISS CLAIMS OF NATURALIZATION CLASS FOR LACK OF SUBJECT MATTER JURISDICTION

NOTED ON MOTION CALENDAR: August 18, 2023

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Nearly two and a half years after the dispositive motion cutoff in this case, Defendants seek leave to file a successive motion to dismiss raising a jurisdictional question already decided by this Court: whether the statutory procedures pertaining to delayed and denied naturalization cases, 8 U.S.C. §§ 1447(b) and 1421(c), displace the Court's federal-question jurisdiction to decide Plaintiffs' constitutional and statutory challenge to the legality of CARRP—a USCIS policy for processing and adjudicating cases. The answer, as this Court has already decided, is no. Defendants' proposed motion would, in effect, seek reconsideration of the Court's earlier jurisdictional holding. But Defendants offer no basis for an untimely motion for reconsideration. They intend to rely on a recent Supreme Court case about the Federal Trade Commission and an out-of-circuit case about an individual naturalization denial that was decided *two years ago*. Neither opinion makes new law; on the contrary, each applies a factor-based test that has been around for three decades. The Court should deny Defendants' Motion for Leave.

The Court has already determined that it may hear Plaintiffs' naturalization-related claims pursuant to its general federal-question jurisdiction, notwithstanding the procedures set forth in 8 U.S.C. §§ 1447(b) and 1421(c). At the outset of this case, Defendants unsuccessfully moved to dismiss Plaintiffs' naturalization-related claims for lack of jurisdiction. Dkt. 56 (Defendants' Mot. to Dismiss). Among other things, Defendants argued that the Court lacked jurisdiction over Plaintiffs' claim that CARRP violates the Immigration and Naturalization Act's (INA's) naturalization provisions. *Id.* at 17–20. They asserted that Congress, through the INA, had created specific and exclusive rights of action for individuals bringing claims flowing from their naturalization applications: 8 U.S.C. §§ 1447(b) and 1421(c). *Id*. at 19; *see also id.* at 9, n. 6 (arguing Court lacks jurisdiction because "anyone denied naturalization has an adequate alternate remedy at law pursuant to 8 U.S.C. § 1421(c)."). These rights of action, said Defendants, were the only ones available to naturalization applicants challenging the government's compliance with the INA. *Id.* at 19. ("[T]here is no indication Congress intended to imply any private right of action to challenge alleged violations beyond those explicitly provided in 8 U.S.C. §§ 1421(c) and 1447(b)."); *id.* ("Congress' explicit creation of a private right of action in section 1447(b) for

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a naturalization applicant who has not received a decision within 120 days following examination on his application strongly suggests Congress did not intend to create a private right of action to challenge the pre-examination application of the INA."). According to Defendants, because the naturalization Plaintiffs did not avail themselves of 8 U.S.C. §§ 1447(b) or 1421(c), they lacked standing to sue for alleged violations of the INA, and the Court lacked jurisdiction over their claims. *Id.*

The Court disagreed. Dkt. 69 (Order Granting Plaintiffs' Mot. to Certify Class; Granting in Part and Denying in Part Defendants' Mot. to Dismiss) at 17–18. Specifically, the Court held that—notwithstanding any specific rights of action established by the INA's special review provisions—it could exercise jurisdiction over the Naturalization Class's claim that CARRP violates the INA because that claim arises under the Administrative Procedures Act (APA), 5 U.S.C. § 702. *Id.* at 18. And, critically, a district court's jurisdiction to hear APA claims derives from 28 U.S.C. §1331, which grants district courts general subject-matter jurisdiction over federal questions. *Bowen v. Massachusetts*, 487 U.S. 879, 891 n.16 (1988) ("[I]t is common ground that if review is proper under the APA, the District Court had jurisdiction under 28 U.S.C. § 1331."). Thus, the Court has already determined that the INA's special review procedures for certain types of naturalization disputes, as set forth in 8 U.S.C. §§ 1447(b) and 1421(c), do not prevent the Court from hearing the Naturalization Class's claims pursuant to the general subject-matter jurisdiction conferred by 28 U.S.C. § 1331.

After years of resource-intensive work on this case by the parties and the Court, including on discovery and extensive summary judgment briefing (and coextensive briefing to strike expert testimony), Defendants now wish to give their jurisdictional argument another shot. The framing is tweaked, but the premise is the same: that 8 U.S.C. §§ 1447(b) and 1421(c) strip the Court of subject-matter jurisdiction over the Naturalization Class's claims. Dkt. 623 (Defendants' Mot. for Leave) at 2. The Court has seen and rejected this premise before. *Compare id.* at 3 ("the special judicial review scheme established in 8 U.S.C. § 1447(b) and 8 U.S.C. § 1421(c) provides adequate alternative remedies for the claims of the naturalization class") *with* Dkt. 56

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(Defendants' Mot. to Dismiss) at 19 ("there is no indication Congress intended to imply any private right of action to challenge alleged violations beyond those explicitly provided in 8 U.S.C. §§ 1421(c) and 1447(b)") *and id.* at 9, n. 6 ("anyone denied naturalization has an adequate alternate remedy at law pursuant to 8 U.S.C. § 1421(c)"). As the Court explained when it denied Defendants' prior motion to dismiss, "adjudicating the named Plaintiffs' applications does not resolve the core issue in this case: whether CARRP and any successor 'extreme vetting' program is lawful." Dkt. 69 (Order Granting Plaintiffs' Mot. to Certify Class; Granting in Part and Denying in Part Defendants' Mot. to Dismiss) at 11 (citations omitted).

Because Defendants seek to reopen a question that the Court has already answered, their proposed motion to dismiss is effectively a motion for reconsideration.[1] Motions for reconsideration must be filed within 14 days of the order to which they relate. L.R. 7(h)(2). Even when timely, such motions "are disfavored," and the court "will ordinarily deny" them absent "a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence." L.R. 7(h)(1). *See also United States v. Alexander*, 106 F.3d 874, 877 (9th Cir. 1997) ("The law of the case doctrine ordinarily precludes reconsideration of a previously decided issue."). Defendants can make no such showing.

According to their Motion for Leave, Defendants intend to "primarily rely" on two relatively recent opinions of the Supreme Court and D.C. Circuit: *Axon Enterprise, Inc. v. Federal Trade Commission*, 598 U.S.175, 143 S. Ct. 890, 900 (2023), and *Miriyeva v. United States Citizenship & Immigration Services*, 9 F.4th 935, 945 (D.C. Cir. 2021). Dkt. 623 (Defendants' Mot. for Leave) at 2. Yet neither *Axon* nor *Miriyeva* announces a new rule of law. Rather, both opinions apply a decades-old Supreme Court precedent: *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994). Put differently, the relevant law is the same now as it was in 2017,

[1] Defendants filed a motion for reconsideration of the Court's decision to certify the Naturalization and Adjustment Classes, but did not file a motion for reconsideration of the Court's denial of their motion to dismiss. Dkt. 73.

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when the Court denied Defendants' earlier motion to dismiss for lack of jurisdiction. *See generally* Dkt. 69.

Neither case, nor the *Thunder Basin* factors, changes the basic conclusion that Plaintiffs' claims cannot be litigated under 8 U.S.C. § 1421(c) and 8 U.S.C. § 1447(b). Here, the members of the Naturalization Class do not challenge the denials of their applications (indeed, their applications have not been denied), which would trigger 8 U.S.C. § 1421(c), or the failure to adjudicate post-interview (many class members have not even been interviewed), which would trigger 8 U.S.C. § 1447(b). They challenge the procedures and criteria applied to the adjudication of their *pending* applications (the CARRP policy). *See* Dkt. 69 at 8 (Naturalization Class consists of those "who have or will have an application for naturalization pending before USCIS. . . ."). That is, unlike the individual plaintiff in *Miriyeva*, the members of the Naturalization Class do not ask the Court to overturn an agency denial and grant them naturalization. *See Miriyeva*, 9 F.4th at 945 ("Miriyeva is in effect seeking a reversal of her naturalization denial.").

Accordingly, the Court should (1) deny Defendants' motion for leave to file a successive motion to dismiss and (2) adjudicate the pending motions for summary judgment.

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Respectfully submitted,

DATED: August 14, 2023

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