

The Honorable Lauren King

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf of
himself and other similarly situated,

Plaintiffs,

v.

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

Defendants.

CASE NO. C17-00094-LK

**NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE A
MOTION TO DISMISS CLAIMS OF
NATURALIZATION CLASS FOR
LACK OF SUBJECT MATTER
JURISDICTION**

(Note on Motion Calendar for:
August 18, 2023)

Defendants hereby request leave of the Court to promptly file a motion to dismiss the claims of the “Extreme Vetting Naturalization Class” and their individually named class representatives (hereafter “the naturalization class”) as asserted in the operative complaint in this lawsuit, the Second Amended Complaint (Dkt. # 47), for lack of subject-matter jurisdiction pursuant to Federal Rules of Civil Procedure 12(b)(1) and (h)(3).

1 While the dispositive motion cut-off date in this lawsuit has expired, the filing of a motion to
2 dismiss on subject-matter jurisdiction grounds at this stage of the lawsuit is nevertheless proper
3 because objections to the Court’s subject-matter jurisdiction “may be raised by a party, or by a court
4 on its own initiative, at any stage in the litigation, even after trial and the entry of judgment.”
5 *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006). Moreover, the recent focus on the naturalization
6 class (with the stay of the other class claims in the case), as well as additional legal developments,
7 further warrant a motion concerning the Court’s jurisdiction over the naturalization class claims.

8 The intended arguments in Defendants’ proposed motion would primarily rely on recent
9 decisions in *Axon Enterprise, Inc. v. Fed. Trade Comm’n*, ___ U.S. ___, 143 S. Ct. 890, 900 (2023)
10 (citing and discussing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994)), and *Miriyeva v.*
11 *United States Citizenship & Immigr. Servs.*, 9 F.4th 935, 945 (D.C. Cir. 2021). Both decisions
12 consider the extent to which specialized judicial review schemes foreclose general federal question
13 subject-matter jurisdiction under 28 U.S.C. § 1331, which Plaintiffs assert is the sole basis for the
14 Court’s jurisdiction here. The decisions issued only after the completion of the summary judgment
15 briefing in this case. *Miriyeva* was issued approximately a month after completion of that briefing;
16 *Axon* was issued in April of this year. With the recent bifurcation of the case and expected
17 narrowing of the Court’s focus on the sufficiency of claims related to the naturalization class,
18 Defendants assessed new and supplemental authorities, as well as the potential applicability of the
19 holdings and rationale of these cases on the subject matter jurisdiction of the Court. Defendants
20 concluded that the important jurisdictional implications of these holdings necessitated that they bring
21 them to the Court’s attention at this juncture, before it rules on the pending summary judgment
22 motions.

23 Defendants intend to assert, relying principally on *Axon* and *Miriyeva*, that the Immigration
24 and Nationality Act’s special judicial review scheme for naturalization applications forecloses the
25 Court’s general federal question jurisdiction under 28 U.S.C. § 1331 to consider constitutional and
26 Administrative Procedure Act-based challenges to the propriety of USCIS’ procedures for vetting
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1 and adjudicating naturalization applications, such as those advanced by the naturalization class in
2 this lawsuit.

3 Defendants also intend to assert, in the alternative, that the claims of the naturalization class
4 are not ripe because they cannot yet be brought under the special judicial review scheme, a
5 contention that dovetails with *Thunder Basin* principles.

6 Lastly, Defendants intend to assert that the special judicial review scheme established in
7 8 U.S.C. § 1447(b) and 8 U.S.C. § 1421(c) provides adequate alternative remedies for the claims of
8 the naturalization class and that the adequacy of those judicial remedies therefore deprives the
9 class's claims of the Administrative Procedure Act's waiver of sovereign immunity, upon which
10 they depend to support the Court's subject-matter jurisdiction.

11 12 **CONCLUSION**

13 For the foregoing reasons, Defendants respectfully request that they be granted leave to file
14 their motion to dismiss for lack of subject-matter jurisdiction. Defendants further request that if the
15 Court grants this motion, that it direct that Defendants file their motion to dismiss within two weeks
16 of the Court's order granting leave.

17 18 **CERTIFICATION**

19 The Parties met and conferred on Tuesday, August 1, 2023, to discuss Defendants' proposal
20 to file this motion. Plaintiffs' counsel indicated that they would oppose this motion for leave.

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Respectfully Submitted,

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Dated: August 1, 2023

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CERTIFICATE OF SERVICE

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I hereby certify that on August 1, 2023, I electronically filed the foregoing via the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Jesse L. Busen
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