

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AFGHAN AND IRAQI ALLIES UNDER
SERIOUS THREAT BECAUSE OF THEIR
FAITHFUL SERVICE TO THE UNITED
STATES, ON THEIR OWN AND ON
BEHALF OF OTHERS SIMILARLY
SITUATED,

Plaintiff,

v.

MICHAEL R. POMPEO, *et. al.*,

Defendants.

Civil Action No. 18-cv-01388 (TSC)

ORDER

On September 20, 2019 the court granted in part and denied in part Plaintiffs' motion for a preliminary injunction, ordering that:

- Within thirty days of the resolution of the instant class certification dispute, Defendants shall submit a plan for promptly processing and adjudicating the applications of current class members.
- Within twenty-one days after submission of the plan, Plaintiffs shall file any objections to the plan.
- Upon approval by the court of the plan, Defendants shall file a progress report every 60 days.

(ECF No. 75 at 19.) The court certified the class on February 5, 2020 (ECF Nos. 87, 88) and Defendants timely filed their proposed adjudication plan on March 5, 2020 (ECF No. 96).

Plaintiffs filed a response to the plan (ECF No. 99) as well as a motion to find Defendants in contempt for failing to follow the court's orders (ECF No. 97). In the alternative, Plaintiffs moved for this court to enforce its September 20, 2019 and February 5, 2020 orders. (*Id.*)

At this time, Defendants' conduct does not warrant a finding of contempt, because Defendants have not "by clear and convincing evidence . . . failed to comply with [this court's] order." *Int'l Painters & Allied Trades Industry Pension Fund v. ZAK Architectural Metal & Glass LLC*, 736 F. Supp. 2d 35, 38 (D.D.C. 2010); *see also Armstrong v. Executive Office of the President*, 1 F. 3d 1274, 1289 (D.C. Cir. 1993). Nonetheless, Defendant's proposed adjudication plan is misguided and inadequate. Most fundamentally, the plan fails to commit to reducing the time that *Defendants* spend adjudicating applications. Instead, it targets SIV applicants and forces a reduction in their time to submit materials. That mechanism, which amounts to the majority of the plan, misapprehends the nature of this suit and the court's holdings, which relate to Defendant's processing time. To address the inadequacies of the proposed adjudication plan, it is hereby:

ORDERED that within 14 days of this order, Defendants shall confer with Plaintiffs regarding a new, JOINT proposed adjudication plan;

ORDERED that within 28 days of this order, the parties shall file a JOINT proposed adjudication plan that targets Defendant's processing time rather than applicant deadlines and includes, at minimum, the following:

- A clear basis by which the court and Plaintiffs can evaluate Defendants' progress in remedying the unreasonable delay such as target timeframes for processing class member applications and interim benchmarks for achieving those targets;
- A proposal for identifying class members consistent with the class certification order; and
- A proposed format for progress reports; and

ORDERED that if the court approves the new plan, Defendants shall submit a progress report every 60 days thereafter.

Any proposal filed separately will be stricken sua sponte. If the filed plan fails to comply with the clear requirements listed above, sanctions may be imposed.

Date: April 15, 2020

Tanya S. Chutkan

TANYA S. CHUTKAN
United States District Judge