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United States District Court, C.D. California.

Shamim DARCHINI, et al
v.
Michael R. POMPEO, et al

Case No. SACV 19-1417 JVS (DFMx)
|
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Attorneys and Law Firms

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Proceedings: [IN CHAMBERS] Order Regarding Motion for Sanctions

The Honorable James V. Selna, U.S. District Court Judge

***1** Plaintiffs filed a motion for sanctions against the United States Department of Homeland Security, the Department of State, and their senior leaders and consular officials ("the Government"). Mot., Dkt. No. 36. The Government opposed the motion. Opp'n, Dkt. No. 39.

For the following reasons, the Court **DENIES** the motion.

I. BACKGROUND

Plaintiffs in this action are U.S. citizens and lawful permanent residents ("Petitioner Plaintiffs") and their Iranian national relatives or fiancées who are visa applicants ("Beneficiary Plaintiffs"). Complaint, Dkt. No. 1, ¶ 2. Plaintiffs allege that the Government, through unreasonable delays, has denied them timely adjudication of their case-by-case waivers under Presidential Proclamation 9645, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats," which President Trump signed on September 24, 2017. 82 Fed. Reg. 45161 (2017) ("PP 9645") Id. ¶ 1.

Plaintiffs sought a preliminary injunction that would require the Government to complete its adjudication of their waivers within 15 days of the Court's decision. Dkt. No. 8. The Court denied the motion for a preliminary injunction. Dkt. No. 42.

On September 9, 2019, Plaintiffs filed the present motion for sanctions against the Government, arguing that a sentence in the Government's opposition to their motion for a preliminary injunction (Dkt. No. 28) was "false," meant to "intimidate" Plaintiffs, and asserted for an "improper purpose." See generally, Mot.

II. LEGAL STANDARD

"Rule 11 imposes a duty on attorneys to certify by their signature that (1) they have read the pleadings or motions they file and (2) the pleading or motion is 'well-grounded in fact,' has a colorable basis in law, and is not filed for an improper purpose." Smith v. Ricks, 31 F.3d 1478, 1488 (9th Cir. 1994) (citing Fed. R. Civ. P. 11; Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990)). "[T]he subjective intent of the pleader or movant to file a meritorious document is" not relevant. Zaldivar v. City of Los Angeles, 780 F.2d 823, 830 (9th Cir. 1986), overruled on other grounds by Cooter, 496 U.S. at 400. Instead, the Court must ask whether the "signed document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." Zaldivar, 780 F.2d at 830. An action is not warranted where no "plausible, good faith argument can be made by a competent attorney in support of the proposition asserted." Paciulan v. George, 38 F. Supp. 2d 1128, 1144 (N.D. Cal. 1999) (citing Zaldivar, 780 F.2d. at 829, 833).

Under Rule 11, sanctions may be imposed "when a filing is frivolous, legally unreasonable, or without factual foundation, or is brought for an improper purpose." Estate

of Blue v. Cnty. of Los Angeles, 120 F.3d 982, 985 (9th Cir. 1997). The cases warranting imposition of sanctions are "rare and exceptional." Operating Eng'rs Pension Trust v. A-C Co., 859 F.2d 1336, 1344 (9th Cir. 1988). Finally, sanctions imposed under Rule 11 shall be limited to what is sufficient to deter "repetition of the conduct or comparable conduct by others similarly situated." Fed. R. Civ. P. 11(c)(4). Rule 11 sanctions may include an award for "reasonable attorney's fees and other expenses directly resulting from the violation." Id.

III. DISCUSSION

***2** Plaintiffs bring their motion based on the following sentence in the Government's Opposition to their Motion for a Preliminary Injunction:

> Indeed, were the Court to order the State Department to decide the waiver requests within the next two weeks, the State Department would likely deny the waivers on the ground that the national-security and public-safety vetting required by the Proclamation has not yet been completed.

Dkt. No. 28 at 24. This sentence appears in the Government's argument that Plaintiffs had failed to show irreparable injury absent injunctive relief, because it was speculative that the Court's entry of preliminary injunctive relief would result in their admission to the United States. Id. The Government argued that the Court should not direct the government "to short-circuit national security vetting." Id.

Plaintiffs argue that this sentence constituted "retaliation" against them for bringing their mandamus action. Mot. at 3. Plaintiffs insist that because the Government has represented that it only takes "one business day" to adjudicate a waiver request, "this threat is audacious." Id. at 4. Plaintiffs argue that "if the Government's] counsel is allowed to make threats to deny visas in mandamus actions, there is a chilling effect in the immigrant community experiencing unreasonable delays of immigration benefits." Id.

The Court denies the motion for sanctions. Plaintiffs repeatedly cite a January 24, 2018 email from the Visa Office, Dkt. No. 8-82 at 1, and a January 28, 2018 internal "Operational Q&As on P.P. 9645," Dkt. No. 8-84 at 19, which state that a response from the Visa Office regarding waivers "can be provided in one business day." But, the remainder of the sentence states that these responses can be provided in a single day, "provided that the Visa Office has all the information needed." The Government suggests that this timing refers to "responses to questions on waivers from the Visa Office to consular officers," not "the timing of the ultimate decision itself on the applicants' waivers." Opp'n at 4.

PP 9645 states that a waiver may be granted "only if a foreign national demonstrates to the consular officer's ... satisfaction that ... entry would not pose a threat to the national security or public safety" of the United States. § 3(c)(i)(B), 82 Fed. Reg. 45161, 45168 (Sept. 24, 2017). As the Government notes, because a consular officer is not authorized to grant a waiver before national security vetting is complete, "requiring a consular officer to render a waiver decision before that no-threat determination has been made is likely to result in a denial." Opp'n at 3.

With this context, the Government's reasoning in its opposition to the preliminary junction motion does not suggest an improper purpose that would merit sanctions.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** the motion. The Court further finds that oral argument would not be helpful on this matter, and vacates the October 7, 2019 hearing. Fed. R. Civ. P. 78; L.R. 7-15.

IT IS SO ORDERED.

All Citations

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