Gorbach v. Reno

United States District Court for the Western District of Washington, Seattle Division
July 17, 1998, Decided ; July 17, 1998, Filed
CASE NO. C98-278R

Reporter: 1998 U.S. Dist. LEXIS 11850
IRINA GORBACH, et al., Plaintiffs, v. JANET RENO, et al., Defendants.

Subsequent History: Adopting Order of August 7, 1998, Reported at: 1998 U.S. Dist. LEXIS 13485.

Disposition: [*1] Recommended that this Plaintiffs' motion for class certification GRANTED.

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Judges: DAVID E. WILSON, United States Magistrate Judge.

Opinion by: DAVID E. WILSON

Opinion

REPORT AND RECOMMENDATION ON CLASS CERTIFICATION

I. INTRODUCTION

The ten named Plaintiffs in this case seek to certify a nationwide class of Plaintiffs that includes "all citizens against whom the [Immigration and Naturalization Service (INS)] has issued or will issue notices of intent to revoke [(NOIR)] naturalization under the [INS] Regulations", 8 C.F.R. § 340.1, promulgated in response to 8 U.S.C. § 1451(h). (Doc. # 1 at 5). The INS [*3] has issued NOIRs to all of the named Plaintiffs, and eight of the named Plaintiffs still face denaturalization proceedings before the INS that could result in the INS revoking their citizenship without a Court hearing.

The Court, having considered Plaintiffs' motion for class certification (Docs. # 8-9), all papers in support and in opposition, and the remaining record, recommends that Plaintiffs' motion be GRANTED and that this case be certified as a class action.

II. BACKGROUND

The facts surrounding this case were fully summarized by the District Court in its Order denying Defendants' motion

to dismiss and granting Plaintiffs' motion for preliminary injunctive relief. (Doc. # 73). Those facts need not be resummarized here, except to note that the proposed class of Plaintiffs is a nationwide class that may include over one thousand United States citizens. The ten named Plaintiffs and the proposed class all hold in common the fact that the INS has initiated administrative denaturalization proceedings against them by issuing NOIRs. The proposed class can raise the same legal defenses to those proceedings that the named Plaintiffs have raised in this action.

III. DISCUSSION

In order [*4] to maintain this action as a class action with the named Plaintiffs as class representatives, Plaintiffs must satisfy the provisions of *Fed. R. Civ. P. 23*. *Doninger v. Pacific Northwest Bell, Inc.*, 564 F.2d 1304, 1308-09 (9th Cir. 1977). Under *Rule 23(a)*, Plaintiffs must establish that "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defense of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." *Fed. R. Civ. P. 23(a)*. Because Plaintiffs claim that the class falls under *Rule 23(b)(2)*, Plaintiffs need also establish that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." *Fed. R. Civ. P. 23(b)(2)*.

A. *Rule 23(a)*

1. Numerosity

Under *Rule 23(a)(1)*, Plaintiffs must demonstrate that the class is so numerous "that joinder of all members is impracticable." The numerosity requirement [*5] is satisfied if joining all class members would be impractical in light of logistics or convenience. *See Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909 (9th Cir. 1964). Plaintiffs have met this requirement. The named Plaintiffs are geographically diverse, and as Plaintiffs note, the putative class probably consists of over one thousand citizens.

2. Commonality

Under *Rule 23(a)(2)*, Plaintiffs must prove that a common question of law or fact exists among the members of the potential class. *See Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987) (the commonality requirement is satisfied if a single issue is common to all proposed class members). Plaintiffs have satisfied this requirement. As Plaintiffs argue, both common questions of law and fact exist among the proposed class. As to the common factual issues, all members of the proposed class have been issued NOIRs and face the prospect of losing their citizenship through administrative denaturalization. As to the common legal issues, all members of the proposed class can challenge the legality of the administrative denaturalization proceedings based on the arguments raised by the named Plaintiffs.

[*6] *3. Typicality*

Under *Rule 23(a)(3)*, "claims or defenses of the representative parties [must be] typical of the claims or defenses of the class . . . ." The claims or defenses are typical among the class representatives and the class if "they arise from the same event or practice or course of conduct that gives rise to the claims of other class members and are based on the same legal or remedial theory." H. Newberg, Newberg on Class Actions § 3.19 at 192. Thus, the typicality requirement is satisfied if all members could derive benefit from the proposed class action based upon the nexus between the injuries alleged by the original Plaintiffs and the injuries allegedly suffered by the class. *See General Telephone Co. v. Falcon*, 457 U.S. 147, 155, 72 L. Ed. 2d 740, 102 S. Ct. 2364 (1982). "The requirement may be satisfied even though varying fact patterns support the claims or defenses of individual class members. . . ." 7A Charles Alan Wright, et al., Federal Practice and Procedure § 1764, pp. 235-245 (2d ed. 1987).

As noted in regards to the commonality factor, there exist common issues of law and fact between the named Plaintiffs and the proposed class. Legal issues common [*7] to Plaintiffs and members of the proposed class concern whether the INS has the statutory authority to conduct denaturalization proceedings, and if so, whether the administrative proceedings are nonetheless unconstitutional. The legal challenges that Plaintiffs have raised to the administrative denaturalization proceedings are typical of the challenges that the members of the proposed class can raise. *See Grasty v. Amalgamated Clothing & Textile Workers Union*, AFL-CIO, 828 F.2d 123, 130 (3d Cir. 1987) (noting that the typicality requirement was satisfied because the claims of the class and the representatives stemmed from the defendant's single course of conduct), *cert. denied*, *484 U.S. 1042, 98 L. Ed. 2d 860, 108 S. Ct. 773 (1988)*.

Although the INS is correct that each Plaintiff's case regarding whether they should be denaturalized under the terms of the statute may be unique, this fact sensitive inquiry is not relevant to the challenges raised by Plaintiffs or the reasons advanced by Plaintiffs for certifying the class. The challenge raised by Plaintiffs in this action is to

the use of the allegedly illegal administrative denaturalization procedures and the harm occasioned [*8] thereby, not to the substantive merits of each Plaintiff's case. Assuming that the Court ultimately upholds the legality of administrative denaturalization, the INS will then have to pursue the denaturalization proceedings to their conclusion before a court could then review the sufficiency of the evidence presented in each individual proceeding. *See* Walters v. Reno, 145 F.3d 1032, 1998 U.S. App. LEXIS 9846, 1998 WL 257263 at *12 (9th Cir. 1998) (noting that individual differences among class members does not defeat a challenge to a common procedure used against the members).

4. Adequacy

Under *Rule 23(a)(4)*, "the representative parties [must] . . . fairly and adequately protect the interests of the class." Representation is usually adequate as long as the representative parties will vigorously and competently represent the interests of the class and there appears to be no conflict among the class representatives and other members of the class. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Plaintiffs have satisfied the adequacy standard.

The Court is not aware of any conflicts among the named Plaintiffs and the proposed class that would warrant not certifying the class. [*9] Indeed, the interests of the named Plaintiffs and the proposed class appear to be perfectly aligned. In addition, the declarations from Plaintiffs' attorneys indicate that they are experienced class action litigators knowledgeable in the field of immigration law.

The INS argues that the named Plaintiffs are not adequate representatives because it has withdrawn administrative denaturalization proceedings against Plaintiffs Irina Gorbach and Adolpho Erazo, and because the named Plaintiffs can only lose their citizenship after the conclusion of the denaturalization proceedings.

As to the INS's mootness argument, regardless of whether it has withdrawn proceedings against Plaintiffs Gorbach and Erazo, it has not withdrawn denaturalization proceedings against the other eight named Plaintiffs. In addition, the claims of Gorbach and Erazno were ripe when they filed suit and, as explained herein, this action was a proper class action when filed. *See* 7B Charles Alan Wright, et al., Federal Practice and Procedure § 1785.1, pp. 164-65 (2d ed. 1987) (noting that "the fact that certification has not taken place before the representative loses his individual claim does not necessarily mean [*10] that the suit is not a proper class action"). As such, if this class is certified, the certification should relate back to the date Plaintiffs filed suit. *See* *County of Riverside v. McLaughlin*, 500 U.S. 44, 51, 114 L. Ed. 2d 49, 111 S. Ct. 1661 (1991) (permitting relation back).

As to the INS's ripeness and standing argument, the District Court has already rejected arguments that the claims of the named class members are not yet ripe, or that they otherwise lack standing. (Doc. # 73 at 9-10). For the same reasons advanced by the District Court in finding that the named Plaintiffs have standing to challenge the INS proceedings, the proposed members also have standing.

The INS also argues that the named Plaintiffs are not adequate representatives because they are not "similarly situated" with the proposed class. The INS notes that the proposed class includes citizens who have been issued NOIRs due to possible "mistake" in their naturalization proceedings, while the named Plaintiffs have all been issued NOIRs on the grounds that they were "ineligible" for naturalization in the first instance, or because their naturalization was obtained by "fraud or misrepresentation or concealment [*11] of a material fact." *See* 8 C.F.R. § 340.1.

Although the INS is correct regarding the possible factual differences among members of the proposed class, the differences appear legally irrelevant. The named Plaintiffs' challenges to the INS denaturalization proceedings also apply to members of the proposed class that were issued NOIRs on the grounds of "mistake" -- the "claim that the INS has no statutory or constitutional authority to conduct administrative denaturalization is the same regardless of the grounds upon which the INS seeks to predicate those proceedings." (Doc. # 49 at 5). It may be that Plaintiffs who have been issued NOIRs on the basis of fraud have an additional, stronger argument why administrative denaturalization on such grounds is statutorily unauthorized (*see* Doc. # 73 at 17-18); nonetheless, common issues still exist regarding the INS's general statutory authority to conduct denaturalization proceedings, as well as the constitutionality of such proceedings, which the named class can adequately present on behalf of the putative class. *See Walters*, 1998 WL 257263 at *13 (noting that "once again, the government erroneously emphasizes factual differences [*12] in the merits of the underlying [claims]. Such differences have no bearing on the class representatives' abilities to pursue the class claims vigorously and represent the interests of the absentee class members").

Furthermore, the grounds of mistake, or fraud and ineligibility, all may overlap when it comes to administrative denaturalization, in light of the INS's argument that it is improper to rely on *Fed. R. Civ. P. 60(b)* in interpreting these grounds. It would be an anomalous

result if the INS could avoid a class action challenge to its denaturalization procedures by simply issuing or reissuing NOIRs to members of the proposed class which only allege "mistake" as a basis for denaturalization.

B. *Rule 23(b)*

In addition to meeting the prerequisites of *Rule 23(a)*, Plaintiffs must also establish that the action satisfies one of the three conditions of subdivision (b). Plaintiffs assert that the requirements of *Rule 23(b)(2)* have been met. *Rule 23(b)(2)* requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the [*13] class as a whole." *Fed. R. Civ. P. 23(b)(2)*.

Plaintiffs have met the requirements of *Rule 23(b)(2)*. By issuing NOIRs to the named Plaintiffs and the proposed class which purport to administratively revoke citizenship of the class members, the INS has acted pursuant to its own regulations in a manner *generally* applicable to the whole class. If the District Court were to fashion injunctive relief in favor of the named Plaintiffs, the relief would also apply to the proposed class. It is notable that the preliminary injunctive relief which the District Court has already authorized on behalf of the named Plaintiffs would also be an appropriate remedy for the entire proposed class.

As a final matter, although *Rule 23(b)(2)* does not require an inquiry into the geographical scope of the class action, the INS argues that the Court should nonetheless limit the geographical scope in order to encourage opinions from other courts on the issues raised in this action. Arguably, the INS's argument has merit in one sense. It could be beneficial to have other courts examine the legal issues presented in this action in order to have the benefit of their decisions. On the other hand, Plaintiffs [*14] have satisfied the requirements of *Rule 23* and shown a likelihood of success on the merits. Furthermore, members of the proposed class, who are new citizens and may be unsure of their legal rights, face imminent harm. When balancing these competing interests, the balance must tilt in favor of certifying a nationwide class in order to prevent harm to a potential class member. *See Califano v. Yamasaki*, 442 U.S. 682, 702, 702, 99 S. Ct. 2545, 61 L. Ed. 2d 176 (1979) (certifying a nationwide class, but noting that the Court should determine that a nationwide class is appropriate).

IV. CONCLUSION

In light of the foregoing, the Court finds that Plaintiffs have met the prerequisites of *Federal Rule of Civil Procedure 23* for maintenance of a class action. Accordingly, the Court recommends that Plaintiffs' motion for class certification be GRANTED. A proposed order accompanies this Report and Recommendation.

DATED this 17th day of July, 1998.

DAVID E. WILSON

United States Magistrate Judge