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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Olga Clarissa Ortega,
Petitioner,
vs.
Hillary Rodham Clinton, Secretary of
State of the United States,
Respondent.

No. CV-11-0140-PHX-LOA

ORDER

This case arises on Respondent’s Motion to Stay Civil Proceeding Pending Outcome of Criminal Proceedings and Motion to Stay Discovery. (Docs. 34, 35) Petitioner Olga Clarissa Ortega opposes both Motions with a single response, entitled “Response to Motion to Stay Civil Proceedings - Opposed,” requesting that “the Court deny the Motion to Stay Proceedings, deny the Motion to Stay Discovery, and order that this matter proceed as set forth in the May 16, 2011 Scheduling Order.” (Doc. 41 at 6) Respondent timely replied on August 8, 2011. (Doc. 42) Upon consideration of the parties’ briefing, the Court finds Respondent has failed to demonstrate good cause to stay either this case or its discovery. Respondent’s Motions will be denied.

I. Background

Petitioner commenced this action on January 20, 2011, seeking a writ of mandamus, pursuant to 28 U.S.C. § 1361 and 8 U.S.C. § 1503(a), compelling Respondent to issue Petitioner a passport as proof of her disputed United States citizenship, as

1 authorized by 22 U.S.C. § 2705, and a judicial declaration, pursuant to 28 U.S.C. § 2201,
2 finding Petitioner is a United States citizen because of her purported birth in Monterey
3 Park, California, on March 14, 1975. (Doc. 1) Petitioner claims that she has previously
4 met her burden of proving her birthright in the United States due to “the Order of the
5 Superior Court of California, Los Angeles County, which ordered that Petitioner’s birth
6 be registered by the County of Los Angeles Recorder’s Office.” (Docs. 12 at 2; 31 at 2-3)
7 Petitioner argues Respondent and the federal courts must give “full faith and credit” to
8 this State order. (*Id.*)

9 Contending that the District Court of Arizona lacks subject matter
10 jurisdiction, the mandamus statute does not authorize this Court to establish Petitioner’s
11 citizenship, and the Petition fails to state a claim upon which relief may be granted,
12 Respondent alleges that on December 16, 1998, an Immigration Judge determined
13 Petitioner was an alien and ordered her removal from the United States. (Doc. 31 at 3)
14 Respondent further claims the Government subsequently executed that order, removed
15 Petitioner to Mexico, and, on February 28, 2006, the Bureau of Immigration Appeals
16 (“BIA”) dismissed Petitioner’s appeal of the 2005 denial of her Motion to Reopen. (*Id.*)
17 Respondent further advises that Petitioner’s petition for review of the 2006 BIA decision
18 is pending before the Ninth Circuit. (*Id.*)

19 As counsel are well-aware, Petitioner is presently awaiting a criminal trial
20 in Tucson, beginning on September 19, 2011 in CR-10-2444-TUC-DCB (DTF), as a
21 result of an indictment, charging her with 15¹ felonies for Re-Entry After Deportation,
22 False Statements in Application and Use of Passport, Fraud and Misuse of visas, permits
23 and other documents, False Claims to U.S. Citizenship, and False Statements. (Docs. 5,
24 44 in CR-10-2444-TUC-DCB (DTF)).

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27 ¹ Count 12 was dismissed on July 29, 2011 for multiplicity with Count 13. (Doc. 47
28 in CR-10-2444-TUC-DCB (DTF)).

1 **II. Pending Motions**

2 Respondent’s Motion to Stay requests a stay of this civil case until after the
3 conclusion of Petitioner’s criminal case because of “[t]he similar issues in the two cases,
4 the limited duration of the stay, conservation of party and judicial resources, public policy
5 favoring deference to the criminal case, and due process considerations, all support a stay
6 of this civil case.” (Doc. 34 at 2) Respondent argues that:

7 [p]ermitting the civil case to proceed is tantamount to allowing discovery in
8 the criminal case under the more liberal discovery rules under Federal Rules
9 of Civil Procedure, circumventing the more restrictive criminal discovery
10 rules. Congress enacted The Victim Witness Act of 1982 (“VWPA”), in
11 part, to protect witnesses in federal criminal prosecutions. Staying the civil
12 proceedings furthers Congressional recognition of the importance of
13 protecting witnesses in federal criminal cases. Permitting the case to
14 continue into discovery in the civil case violates the intent of this VWPA.

15 (*Id.*)

16 Alternatively, Respondent’s Motion to Stay Discovery seeks an order that
17 “stay[s] discovery in this case, suspend[s] compliance with Federal Rule of Civil
18 Procedure 26, and suspend[s] compliance with the Scheduling Order of this Court . . .
19 until after the Court resolves the pending Motion to Stay Proceedings Pending Outcome
20 of Criminal Proceedings . . . and the Government’s Motion to Dismiss for Lack of Subject
21 Matter Jurisdiction to be filed early next week, June 13-17, 2011.” (Doc. 35 at 1) To date,
22 however, Respondent has not filed any dispositive motion. Relying on Rule 26(c), Fed.R.
23 Civ.P., for a protective order, Respondent argues that “allowing discovery to commence, .
24 . . wastes resources and allows interference with the on-going criminal case. If the Court
25 grants the Motion to Dismiss, any Court and party time and expense spent on disclosures
26 and discovery is wasted[,]” citing *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353,
27 1367-68 (11th Cir. 1997) (denying or staying discovery until after resolution of motion to
28 dismiss avoids “unnecessary costs to the litigants and to the court system,” including “the
time, expense, and aggravation of preparing for and attending depositions,” and diversion
of “scarce judicial resources . . . from other cases to resolve discovery disputes.”) (*Id.* at
4)

To the contrary, Petitioner asserts that “the plain language of the governing

1 statute [8 U.S.C. § 1503(a)] requires this Court to hear the Petitioner’s claim to U.S.
2 citizenship, and any stay of these proceedings would thwart Congressional intent in
3 enacting section 1503.” (Doc. 41 at 2) Moreover, citing her Fifth and Sixth Amendment
4 rights, Petitioner claims she “has a fundamental due process right to establish her defense,
5 which requires her to seek an order of this Court that she is a U.S. citizen.” (*Id.* at 1)
6 Petitioner “asserts her constitutional right to present a defense . . . requires this Court to
7 maintain its jurisdiction over the Petitioner’s claim under 8 U.S.C. § 1503(a).” (*Id.* at 4)
8 Petitioner acknowledges she bears the burden by a preponderance of the evidence that she
9 is entitled to a passport, citing *Reyes v. Neely*, 264 F.2d 673, 674-75 (5th Cir. 1959), but
10 she argues her “burden can only be met with the production of *positive evidence* of her
11 citizenship, such as the delayed registration of birth she produced when she initiated these
12 proceedings.” (*Id.* at 5) Essentially, Petitioner’s argument is that she has a right to obtain
13 a passport in this civil action for affirmative use in her criminal case because her “citizen-
14 ship is a critical part of the Petitioner’s defense in” the Tucson criminal case. (*Id.* at 1)

15 Respondent’s Reply points out that “regardless of whether the Court grants
16 a stay of the civil proceedings, no decision will issue in time for Petitioner to use it in her
17 criminal case, even if petitioner prevails in the civil case.” (Doc. 42 at 1) Because
18 discovery does not close until May 4, 2012, and dispositive motions are not due until June
19 22, 2012, “Petitioner will not receive a decision in this civil case before her criminal trial
20 on September 19, 2011” (*Id.* at 2)

21 **III. Protective orders**

22 Upon a showing of “good cause . . . to protect a party or person from
23 annoyance, embarrassment, oppression, or undue burden or expense[,]” a district court
24 may issue an order “forbidding the disclosure or discovery”; “specifying terms, including
25 time and place, for the disclosure or discovery”; “prescribing a discovery method other
26 than the one selected by the party seeking discovery”; or granting other relief. Rule 26(c)
27 (A), (B), (C), Fed.R.Civ.P. The Supreme Court has interpreted Rule 26(c) as conferring
28 “broad discretion on the trial court to decide when a protective order is appropriate and

1 what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36
2 (1984).

3 “For good cause to exist, the party seeking protection bears the burden of
4 showing specific prejudice or harm will result if no protective order is granted.” *Phillips*
5 *v. General Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (citing *Beckman Indus.,*
6 *Inc. v. International Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (holding that “broad
7 allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not
8 satisfy the Rule 26(c) test”) and *San Jose Mercury News, Inc. v. United States Dist. Ct.*,
9 187 F.3d 1096, 1102 (9th Cir. 1999) (holding that to gain a protective order the party
10 must make “particularized showing of good cause with respect to any individual
11 document”). *See also* 8 Wright, Miller & Marcus, *Federal Practice and Procedure*, Civil
12 § 2036, at 489 (2d ed. 1994) (Depending on the issue, “[a] court may be as inventive as
13 the necessities of a particular case require in order to achieve the benign purposes of the
14 rule.”).

15 **IV. Discussion**

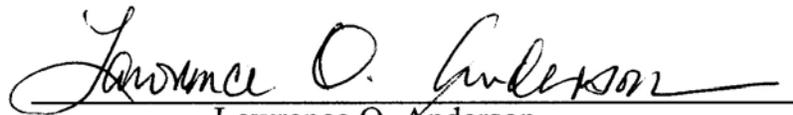
16 Respondent has not demonstrated any “specific prejudice or harm will
17 result if no protective order is granted” or made a “particularized showing of good cause”
18 that the United States government needs either a stay of this case or its discovery to
19 protect it from “annoyance, embarrassment, oppression, or undue burden or expense”
20 until after the conclusion of Petitioner’s criminal trial which is set to begin in a mere five
21 weeks or so. *Phillips*, 307 F.3d at 1210-11; *San Jose Mercury News, Inc.*, 187 F.3d at
22 1102; Rule 26(c), Fed.R.Civ.P. First, no examples of discovery propounded by Petitioner
23 have been provided to the Court to corroborate Respondent’s arguments that allowing
24 relevant discovery to proceed as usual is improper or “tantamount to allowing discovery
25 in the criminal case under the more liberal discovery rules under Federal Rules of Civil
26 Procedure[.]” (Doc. 34 at 2) Respondent has not identified any specific witness whose
27 deposition Petitioner seeks to take which would result in, as Respondent argues, a
28 violation of either the letter or spirit the Victim Witness Act, justifying a genuine need to

1 protect the Government's witnesses in the fast-approaching Tucson criminal trial.
2 Remarkably, the docket reflects that Petitioner has not initiated any discovery, much less
3 noticed a deposition, since the Court held the Rule 16 scheduling conference on May 13,
4 2011.² Moreover, as Respondent's Reply recognizes, "regardless of whether the Court
5 grants a stay of the civil proceedings, no decision will issue in time for Petitioner to use it
6 in her criminal case, even if petitioner prevails in the civil case." (Doc. 42 at 1) While the
7 Court may not agree with many of Petitioner's arguments why neither this case nor its
8 discovery should be stayed, Respondent has simply not shown that a protective order is
9 necessary to prevent specific prejudice or harm if a protective order is not granted. Thus,
10 good cause does not exist to grant Respondent's Motions.

11 Accordingly,

12 **IT IS ORDERED** that Respondent's Motion to Stay Civil Proceeding
13 Pending Outcome of Criminal Proceedings and Motion to Stay Discovery, docs. 34, 35,
14 are **DENIED**.

15 Dated this 10th day of August, 2011.

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18 Lawrence O. Anderson
19 United States Magistrate Judge
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24 ² While the Court has generously provided the parties a mutually-agreeable discovery
25 deadline of May 4, 2012, doc. 33 at 4, there will likely be no extensions due to the lack of
26 due diligence demonstrated over the last three months. *Williams v. City of Mesa*, 2010 WL
27 2803880, * 1 (D.Ariz. 2010) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,
28 607-08 (9th Cir. 1992); *Zivkovic v. Southern Calif. Edison Co.*, 302 F.3d 1080, 1087 (9th
Cir. 2002) (holding that party failed to demonstrate good cause where a continuance was
requested four months after the scheduling order was issued, and plaintiff was not diligent
in complying with the Rule 16 schedule) (citation omitted)).