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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PRAVEEN KUMAR GAMPALA,
Plaintiff,
v.
DEPARTMENT OF HOMELAND
SECURITY (DHS), et al.,
Defendants.

Case No. [18-cv-02302-JSC](#)

**ORDER RE: DEFENDANTS’ MOTION
TO DISMISS OR, IN THE
ALTERNATIVE, STAY CASE**

Re: Dkt. No. 12

Plaintiff Praveen Kumar Gampala alleges that the Department of Homeland Security, the United States Citizenship and Immigration Services (“USCIS”), and USCIS officials (collectively “Defendants”) have refused to timely adjudicate his naturalization application. Defendants’ Motion to Dismiss or, in the Alternative, Stay Case in the interests of commity is now pending before the Court.¹ (Dkt. No. 12.) Having considered the parties’ briefs, and having had the benefit of oral argument on September 6, 2018, as well as post-hearing briefing, the Court GRANTS Defendants’ motion to allow Plaintiff the opportunity to move to intervene in the Nio v. U.S. Department of Homeland Security, No. CV 17-998 (ESH), (D.D.C.), action.

BACKGROUND

A. Complaint Allegations

Plaintiff alleges that he has served in the Army since March 22, 2016 under the Military Accessions Vital to the National Interest (“MAVNI”) program. MAVNI is a Department of Defense (“DOD”) recruitment program that enlists noncitizens with certain language skills in the Selected Reserve of the Ready Reserve (“SRRR”) with the promise of expedited naturalization

¹ All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 6 & 13.)

1 under the Immigration and Nationality Act (“INA”) Section 329. See 12 USCIS Policy Manual
2 I.3. Plaintiff further alleges that he received a Form N-426 certifying his honorable service and
3 submitted a Form N-400 naturalization application to USCIS on February 22, 2017. (Id. at ¶ 13.)
4 He completed his biometrics for the naturalization process on March 20, 2017. (Id.) Since that
5 date, Plaintiff has received no updates or further requests from USCIS regarding his naturalization
6 application, and USCIS has not responded to any of his inquiries. (Id. at ¶¶ 13, 19, 23.)

7 **B. Procedural Background**

8 On April 17, 2018, Plaintiff filed a Complaint alleging that Defendants have violated the
9 INA, the Administrative Procedures Act (“APA”), and his due process rights under the
10 Constitution by failing to timely adjudicate the application. (Dkt. No. 1.) Plaintiff contends that
11 he has suffered hardship and is unable to progress in his military career as a result of the delay.
12 (Id. at ¶ 25.) He seeks an order requiring USCIS to adjudicate his application within 30 days, or a
13 reasonable period of time determined by the court, as well as reasonable attorney’s fees and costs.
14 (Id. at 5.²)

15 Defendants responded to the Complaint with the underlying Motion to Dismiss or Stay in
16 light of the pendency of *Nio v. U.S. Department of Homeland Security*, No. CV 17-998 (ESH)
17 (D.D.C.). The motion is now fully briefed. (Dkt. Nos. 17 & 21.) After Defendants submitted
18 their reply, Plaintiff filed a Notice of Supplemental Authority on August 20, 2018, and Defendants
19 then filed a motion for leave to file a sur-reply and the sur-reply. (Dkt. Nos. 22, 24, 25.) Finally,
20 Plaintiff filed a response to the sur-reply on August 31, 2018. (Dkt. No. 26.) The hearing on the
21 Motion to Dismiss or Stay occurred on September 6, 2018.

22 **C. The Nio Litigation**

23 The INA Section 329 provides that noncitizens who serve honorably in the armed forces
24 are eligible for naturalization through an expedited procedure. 8 U.S.C. § 1440(a). Until last year,
25 USCIS had a policy that MAVNI recruits could satisfy the honorable service requirement of 8
26 U.S.C. § 1440(a) through participation in SRRR drills. See *Nio*, No. CV 17-998 (ESH), 270 F.

27 _____
28 ² Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the
ECF-generated page numbers at the top of the documents.

1 Supp. 3d 49, 58-59 (Memorandum Opinion, Sept. 6, 2017); see also 12 USCIS Policy Manual
2 I.3.B. Then, in April 2017, USCIS issued a hold on all pending MAVNI naturalization
3 applications until the DOD clarified whether SRRR drills satisfied the honorable service
4 requirement. Nio, 270 F. Supp. 3d at 56.

5 A month later, twelve MAVNI soldiers filed a class action lawsuit in the D.C. District
6 Court challenging the legality of the hold and alleging that USCIS, the DOD, and others have
7 violated the INA and the APA by implementing these changes. See *id.*, Dkt. No. 1 (Complaint,
8 May 24, 2017); Nio, 323 F.R.D. at 30. Less than two months later, USCIS revised its MAVNI N-
9 400 Guidance, directing that “MAVNI cases may not proceed to interview, approval, or oath until
10 confirmation that all enhanced DOD security check [sic] are completed.” Nio, 270 F. Supp. 3d at
11 56. On August 24, 2017, the Nio court ordered that the defendants make regular status reports to
12 the court regarding the Nio plaintiffs’ naturalization applications and enhanced DOD background
13 checks. See Nio, No. CV 17-998 (ESH), Dkt. No. 36 (Order Setting Deadlines and Briefing
14 Schedule, Aug. 24, 2017). In response to the defendants’ policy changes, the Nio plaintiffs
15 amended their complaint, including in part a claim challenging the legality of USCIS’s
16 requirement that MAVNI recruits complete DOD enhanced security screening prior to
17 adjudication of MAVNI recruits’ naturalization applications. Nio, 323 F.R.D. at 30-31.
18 Thereafter, on October 27, 2017, the Nio court certified a Fed. R. Civ. Proc. 23(b)(1)(A) and
19 23(b)(2) class of all persons who:

- 20 (i) have enlisted in the Selected Reserve of the Ready Reserve
21 (“Selected Reserve”) through the Military Accessions Vital to the
National Interest (“MAVNI”) program [before October 13, 2017];
- 22 (ii) have served honorably in the U.S. military through participation
23 in at least one Selected Reserve drill period or in an active-duty
status;
- 24 (iii) have received from the U.S. military executed Form N-426s
25 certifying their honorable service as members of the Selected
Reserve or in active-duty status;
- 26 (iv) have submitted N-400 Applications for Naturalization to United
27 States Citizenship and Immigration Services (“USCIS”); and
- 28 (v) have had the processing or final adjudication of their
naturalization applications (including naturalization itself) withheld

1 or delayed because of (a) a final USCIS processing hold for
2 MAVNIs, (b) a United States Department of Defense (“DoD”) N-
3 426 policy review, (c) a DoD N-426 recall/decertification policy,
4 (d) enhanced DoD security screenings, (e) a DoD Consolidated
Adjudications Facility (“CAF”) adjudication, (f) a ... national
security determination, and/or (g) a ... military service suitability
vetting or determination.

5 Nio, 323 F.R.D. at 31. The Nio plaintiffs have moved for partial summary judgment, and a
6 hearing on the motion is set for October 3, 2018. See Nio, No. CV 17-998 (ESH), Dkt. No. 117
7 (Plaintiff’s Motion for Partial Summary Judgment, Aug. 13, 2018).

8 LEGAL STANDARD

9 The principle of federal comity refers to the court’s discretion to decline jurisdiction when
10 the same issues are already pending before another federal court. “[T]hough no precise rule has
11 evolved, the general principle is to avoid duplicative litigation” in the interests of judicial
12 economy and avoiding inconsistent results. *Colorado River Water Conservation Dist. v. United*
13 *States*, 424 U.S. 800, 817 (1976). The Ninth Circuit employs a “first-to-file” rule to implement
14 the principle: district courts have discretion to transfer, stay, or dismiss an action if the same
15 parties and issues are already at issue in a proceeding before another district court. *Pacesetter*
16 *Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir.1982); *Alltrade, Inc. v. Uniweld*
17 *Products, Inc.*, 946 F.2d 622, 625-26 (9th Cir.1991). The parties and issues in each action only
18 need to be “substantially similar.” *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir.1989).
19 However, the Ninth Circuit cautions against outright dismissal if the first-filed proceeding remains
20 at risk of dismissal. *Alltrade*, 946 F.2d at 628-29.

21 “The most basic aspect of the first-to-file rule is that it is discretionary[.]” *Id.* at 628.
22 However, courts must consider the “chronology of the lawsuits, similarity of the parties, and
23 similarity of the issues” when determining whether to apply the rule. *Kohn Law Grp., Inc. v. Auto*
24 *Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1240 (9th Cir. 2015) (citation omitted). The analysis
25 “should be driven to maximize economy, consistency, and comity.” *Id.* (internal quotations marks
26 and citations omitted).

27 DISCUSSION

28 This action should be stayed under the first-to-file rule. The parties and issues are

1 substantially similar, and the interests of judicial economy, consistency, and economy favor a stay.

2 **A. The Parties are Substantially Similar**

3 “[T]he first-to-file rule does not require exact identity of the parties,” but does require
4 substantial similarity. *Kohn Law Grp.*, 787 F.3d at 1240. The parties disagree on two issues: first,
5 whether the Plaintiff is a member of the Nio class; and second, whether the different defendants in
6 this proceeding render the actions dissimilar enough to avoid the first-to-file rule.

7 i) Plaintiff is a Member of the Nio Class

8 Outside of a class action lawsuit, there is a general common law rule against nonparty
9 preclusion for the same claims against a common defendant. See *Taylor v. Sturgell*, 553 U.S. 880,
10 893-94 (2008); but see *Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999) (“If the
11 parties ‘represent the same interests’ the court may determine the second action is duplicative.”).
12 In contrast, a class action precludes class members from litigating the same claims against the
13 same defendants. See *Taylor*, 553 U.S. at 894; see also Fed. R. Civ. Proc. 23. Furthermore, class
14 members cannot opt out when class certification is based on Rule 23(b)(1) or (b)(2). *Wal-Mart*
15 *Stores, Inc. v. Dukes*, 564 U.S. 338, 362 (2011). Accordingly, if Plaintiff is a member of the Nio
16 class, he is precluded from litigating the same claims against the same defendants because the Nio
17 class was certified under Rules 23(b)(1)(A) and (b)(2). See *Nio*, 323 F.R.D. at 31.

18 Defendants insist that Plaintiff is a member of the Nio class: as with the Nio plaintiffs,
19 Plaintiff’s challenge here is to USCIS’s failure to adjudicate Plaintiff’s naturalization application
20 until it receives notification that DOD has completed the enhanced background checks. Plaintiff
21 does not dispute that he was a member of the Nio class at one time, but maintains that he is no
22 longer part of the Nio class. Plaintiff relies on quotes from an email he received from a DOD
23 representative that purportedly demonstrate that the DOD completed his enhanced background
24 checks on June 4, 2018. Defendants object to the quotes as hearsay, dispute the status of
25 Plaintiff’s background screening, and insist that as of the hearing on September 6, 2018, USCIS
26 had not yet received the DOD’s notification that Plaintiff’s background check was completed.
27 Defendants further argue that Plaintiff will remain a member of the Nio class, even after the DOD
28 background checks are completed, until USCIS adjudicates his application.

1 At the hearing, the parties disputed whether a draft status report, to be filed in the Nio
2 proceeding, demonstrated that the DOD had provided notice to USCIS regarding Plaintiff's
3 background checks. Plaintiff argued that the draft listed the checks as completed, and therefore
4 USCIS must have been notified because USCIS and DOD are both Nio defendants. However,
5 Plaintiff did not provide a copy of the June 20, 2018 status report in question. (Dkt. No. 29 at 2.)
6 Defendants countered that the draft does not state that the checks are completed, and subsequently
7 filed a redacted copy of the June 20, 2018 Nio status report to show that Plaintiff's entries in the
8 the "Completed_MSSD" column reads "Pending" and also that the
9 "USCIS_Notified_on_Final_Suitability_Determination_(Date)" column is blank. (Dkt. No. 32 at
10 2, Ex. A (Declaration of Chang and Nio Class Report).)

11 Based on the filings and oral argument, it appears that Plaintiff is a member of the Nio
12 class. The Complaint and Plaintiff's later filings do not allege sufficient facts to plausibly infer
13 that the checks are completed or that if so, DOD has notified USCIS of the completed background
14 checks. Plaintiff thus falls within the Nio class of individuals who are experiencing a delay due to
15 "enhanced DOD security screenings." See Nio, 323 F.R.D. at 31. Therefore, Plaintiff will remain
16 part of the class until USCIS adjudicates his application.

17 ii) The Defendants in the Two Actions are Substantially Similar

18 The parties also dispute whether the defendants are substantially similar. Initiating a
19 separate proceeding against fewer defendants than the first-filed suit does not defeat application of
20 the first-to-file rule. Kohn Law Grp., 787 F.3d at 1240. Rather, "[t]he rule is satisfied if some [of]
21 the parties in one matter are also in the other matter, regardless of whether there are additional
22 unmatched parties in one or both matters." Intersearch Worldwide, Ltd. v. Intersearch Grp., Inc.,
23 544 F. Supp. 2d 949, 959 n.6 (E.D. Cal. 2011).

24 The Nio plaintiffs brought suit against DHS, USCIS, DOD, and the head of each agency.
25 See Nio, No. CV 17-998 (ESH), Dkt. No. 61 (Second Amended Complaint, Oct. 20, 2017). In
26 comparison, the Defendants in the present case are DHS, USCIS, the head of each agency, and
27 two USCIS San Francisco Field Office Directors. The different defendants in each case do not
28 alter the character of the suit: in the event that the plaintiffs in either case prevail, the result would

1 be to compel USCIS to adjudicate the pending naturalization applications. Omitting the DOD
2 defendants and naming additional USCIS officials here does not have any practical effect on the
3 issues or remedies sought. See Kohn Law Grp., 787 F.3d at 1240.

4 **B. The Issues are Substantially Similar.**

5 The Court must also consider whether the issues in each case are substantially similar.
6 Nakash, 882 F.2d at 1416. This factor is satisfied if there is “substantial overlap” between the two
7 suits regarding the claims and remedies sought. Kohn Law Grp., 787 F.3d at 1241. The parties
8 disagree whether the claims and remedies in the present case are subsumed by Nio.

9 In Nio, the plaintiffs contend (1) that USCIS and DOD violated the APA through the
10 method used to change their policies and procedures, (2) that the defendants violated plaintiffs’
11 constitutional rights by imposing “unauthorized, unlawful, and arbitrary” requirements, and (3)
12 that defendants violated the INA by delaying adjudication in light of the new requirements. See
13 Nio, No. CV 17-998 (ESH), Dkt. No. 61 at 54-56, 62-64 (Second Amended Complaint, Oct. 20,
14 2017). In this case, Plaintiff brings three claims regarding the government’s failure to adjudicate
15 his naturalization application: (1) violation of the APA; (2) violation of Fifth Amendment Due
16 Process; and (3) violation of the INA. Each suit’s claims overlap because they are based on the
17 same statutes and constitutional rights and relate to the same actions by the common defendants.
18 Thus, the claims are substantially similar.

19 The Nio plaintiffs requested that the court provide the following relief:

- 20 1. Assume jurisdiction over this action;
- 21 2. Issue the declaratory judgment [...];
- 22 3. Grant the preliminary and permanent injunctive relief requested
23 [...];
- 24 4. Grant the relief requested pursuant to the APA [...];
- 25 5. Issue the mandamus requested [...];
- 26 6. Grant the [equitable] relief requested [for constitutional
27 violations...];
- 28 7. Award Plaintiffs and the Class reasonable costs and attorneys’
fees, including under the Equal Access to Justice Act;
8. Award such further relief as the Court deems just or appropriate.

26 Nio, No. CV 17-998 (ESH), Dkt. No. 61 at ECF 64 (Second Amended Complaint, Oct. 20, 2017).

27 Here, in comparison, Plaintiff requests that the Court assume jurisdiction, issue mandamus relief,
28 retain jurisdiction during the adjudication of the naturalization application, award costs and

1 attorneys' fees under the Equal Access to Justice Act, and any other relief the Court finds proper.
2 Although Plaintiff does not request declaratory or injunctive relief like the Nio plaintiffs, the core
3 of his requested relief is the same: that the Court order USCIS to adjudicate his pending
4 naturalization application and award costs and attorneys' fees. Plaintiff's additional request that
5 the Court retain jurisdiction is a procedural remedy rather than a substantive remedy since it is part
6 of "the judicial process for enforcing rights and duties recognized by substantive law and for justly
7 administering remedy and redress for disregard or infraction of them." *Sibbach v. Wilson & Co.*,
8 312 U.S. 1, 14 (1941). Because the remedies substantially overlap, they are substantially similar.

9 **C. The Purpose of the First-to-File Rule Weighs in Favor of a Stay**

10 "The first-to-file rule was developed to serve[] the purpose of promoting efficiency well
11 and should not be disregarded lightly." *Alltrade*, 946 F.2d at 625 (internal quotation marks and
12 citations omitted). Other district court judges have applied the first-to-file rule to stay the later
13 filed action where the first-filed suit is likely to resolve the claims of the later-filed suit. Compare
14 *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 1399441 (N.D. Cal. 2011) (granting a
15 limited stay on the common claims and plaintiffs where the first-filed proceeding was likely to
16 resolve those issues) with *Adedapoidle-Tyehimba v. Crunch LLC*, 2013 WL 1890718 (N.D. Cal.
17 2013) (denying the motion to stay under the first-to-file rule when the "off-the-clock" wage claims
18 of the second-filed suit were not included in the first-filed suit). Courts generally apply principles
19 of "maximiz[ing] economy, consistency, and comity" when deciding whether to stay or dismiss an
20 action. *Kohn Law Grp.*, 787 F.3d at 1240.

21 Each of these three factors is furthered by granting the motion to stay here. First, a stay
22 would maximize judicial economy because Plaintiff's claims and remedies are already at issue in
23 *Nio*. Second, absent a stay, the cases will likely proceed at different speeds and produce
24 inconsistent results. If this were to occur, USCIS could receive conflicting orders from two
25 district courts, which would undermine federal comity and the legitimacy of district court
26 decisions. Third, the *Nio* court is closely monitoring the status of all *Nio* class members through
27 regular reports. Proceeding with this case would undermine mutual respect between the courts,
28 particularly given the care and attention that the *Nio* court has already undertaken. Finally,

1 Plaintiff has not pointed to any prejudice that he would suffer due to a stay while the Nio case
2 proceeds. Plaintiff vaguely alleges that he is “unable to progress in his military career,” but he has
3 not specified how adjudication of his naturalization application has any effect (salary, rank,
4 assignment, etc.) on his military career. While Plaintiff does reference the general possibility of
5 arrest and removal proceedings, he has not alleged any facts to suggest that he is more at risk than
6 any of the other Nio class members. At the hearing, Plaintiff suggested that there is urgency to the
7 resolution of his naturalization action because, in the event that the DOD issues an adverse
8 decision regarding his military service prior to the adjudication of this naturalization, this could
9 have negative effects on his naturalization action. But the Nio court is equally well-equipped to
10 address this issue—and indeed, will have to address it for the approximately 149 similarly situated
11 individuals—and because Nio has been pending longer, it may well proceed more quickly than
12 this case.

13 However, to ensure that the Nio court is willing to address these issues and that Plaintiff’s
14 counsel has the opportunity to raise them with the Nio court directly, the Court will stay this action
15 to allow Plaintiff to move to intervene in Nio under Federal Rule of Civil Procedure 24, should
16 Plaintiff wish to do so. Defendants have represented that they will not object to such a motion on
17 venue grounds, nor will they argue that the Nio court lacks jurisdiction to adjudicate Plaintiff’s
18 naturalization application. (Dkt. No. 33.) Accordingly, the Court grants the motion to stay
19 pending the Nio court’s adjudication of Plaintiff’s motion to intervene or, if Plaintiff does not elect
20 to move to intervene, pending the Nio court’s resolution of the class claims.

21 **CONCLUSION**

22 For the reasons set forth above, Defendants’ motion to stay is granted. The parties shall
23 file a joint status report within six months of the date of this Order, or within 14 days of the Nio
24 court’s ruling on Plaintiff’s motion to intervene, if made, whichever date occurs first.

25 **IT IS SO ORDERED.**

26 Dated: September 28, 2018

27 
28 JACQUELINE SCOTT CORLEY
United States Magistrate Judge