

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JESSICA M. COLOTL COYOTL,

Plaintiff,

v.

**JOHN F. KELLY, Secretary,
Department of Homeland Security;
MARK J. HAZUDA, Director,
Nebraska Service Center, U.S.
Citizenship and Immigration
Services; JAMES McCAMENT,
Acting Director, U.S. Citizenship and
Immigration Services; THOMAS D.
HOMAN, Acting Director, U.S.
Immigration and Customs
Enforcement; and SEAN W.
GALLAGHER, Atlanta Field Office
Director, U.S. Immigration and
Customs Enforcement,**

Defendants.

CIVIL ACTION FILE

NO. 1:17-CV-1670-MHC

ORDER

Defendants have filed a Motion for Reconsideration of this Court's June 12, 2017, Order granting a preliminary injunction. Defs.' Mot. For Recons. [Doc. 34].

Defendants describe their motion as follows:

Defendants move to reconsider one narrow portion of this Court's June 12, 2017 Preliminary Injunction Order – the portion of the order that expressly interprets the scope of the February 20, 2017

Memorandum issued by Secretary John Kelly entitled “Enforcement of Immigration Law to Serve the National Interest” (“Kelly Memo”) and implicitly construes the June 15, 2012, Deferred Action for Childhood Arrivals (DACA) Memorandum. Specifically, Defendants respectfully request that this Court delete the final sentence on page 29 of its Order and delete or otherwise modify footnote 7.

Mem. In Supp. of Defs.’ Mot. For Recons. [Doc. 34-1] (“Defs.’ Br.”) at 1-2.¹

Under the Local Rules of this Court, “[m]otions for reconsideration shall not be filed as a matter of routine practice[,]” but only when “absolutely necessary.” LR 7.2E, NDGa. Such absolute necessity arises only when there is “(1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact.” Bryan v. Murphy, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003). A motion for reconsideration may not be used “to present the court with arguments already heard and dismissed or to repackage familiar arguments to test whether the court will change its mind.” Id. at 1259. Nor may it be used “to offer new legal theories or evidence that could have been presented in conjunction with the previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the

¹ For purposes of this Order, the “Napolitano Memo” refers to the June 15, 2012, memorandum issued by former Secretary of Homeland Security Janet Napolitano in which the DACA program was created [Doc. 14-14]. The “Kelly Memo” refers to the February 20, 2017, memorandum issued by current Secretary of Homeland Security John Kelly entitled, “Enhancing Public Safety in the Interior of the United States.” [Doc. 18-2] at 48-53.

litigation.” Adler v. Wallace Comput. Servs., Inc., 202 F.R.D. 666, 675 (N.D. Ga. 2001). Finally, “[a] motion for reconsideration is not an opportunity for the moving party . . . to instruct the court on how the court ‘could have done it better’ the first time.” Pres. Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Eng’rs, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995). “If a party presents a motion for reconsideration under any of these circumstances, the motion must be denied.” Bryan, 246 F. Supp. 2d at 1259; see also, Brogdon ex rel. Cline v. Nat’l Healthcare Corp., 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000).

Defendants acknowledge they are not seeking to reargue the merits of the case which led to the Court’s entry of a preliminary injunction; rather, they seek a modification of the June 12, 2017, Order based on their contention that it was improper for this Court to “opine” on the “issue” of “the scope of the Kelly memo and whether the June 15, 2012, DACA Memorandum permits consideration of prevailing enforcement priorities and other discretionary factors” because the issue was not raised by Plaintiff in her Amended Complaint or her motion for preliminary injunction. Id. at 2-3, 10-12. Defendants also contend that this Court “improperly substitute[d] the Court’s interpretation [of the Kelly Memo] for that of the Department of Homeland Security.” Id. at 13.

Although Defendants call into question two small portions of this Court's June 12, 2017, Order based upon the alleged failure of Plaintiffs to raise any issue with respect to the Kelly Memo in their complaint or motion,² it was Defendants themselves who attempted to rely on the Kelly Memo as an explanation of their actions with respect to Plaintiff. At the hearing on Plaintiff's motion for a preliminary injunction, Defendants denied that Plaintiff's prior pre-trial diversion agreement played a role in any decisions with respect to her DACA status. Tr. of Emergency Mot. For TRO and/or Prelim. Inj. Hr'g [Doc. 29] ("Tr.") at 4-5. Defendants then indicated that Plaintiff's conviction for driving without a license "could and, we believe, was considered by DHS [the Department of Homeland Security] in its decision making." Id. at 5. The following colloquy between the Court and Defendants' counsel then occurred:

² Defendants' position on this point is inaccurate. Plaintiff referenced the Kelly Memo in her Amended Complaint and her motion for injunctive relief, contending that it appeared inconsistent with Defendants' current position with respect to Plaintiff. Am. Compl. [Doc. 8] ¶ 32; Pl.'s Mot. For TRO/Prelim. Inj. [Doc. 14-1] at 4. In her motion for preliminary injunction, Plaintiff also cited to a brief filed by counsel for Immigration and Customs Enforcement ("ICE") in opposition to Plaintiff's motion to reopen her removal proceeding and administratively close her case, in which ICE counsel made the following argument: "[O]n February 20, 2017, the Department [of Homeland Security] issued a memorandum, titled 'Enforcement of the Immigration Laws to Serve the National Interest.' Due to the respondent's criminal history, she is an enforcement priority under this memorandum." DHS's Suppl. Br. on Eligibility for Relief [Doc. 14-12] (filed as Ex. 9 to Pl.'s Mot. For TRO/Prelim. Inj.).

THE COURT: Okay. So is it the defendant's position that the reason for their denying her a renewal of her DACA status and the reason for terminating her DACA status is because of her driving without a license conviction?

MR. ROBINS: That is an element of the decision.

THE COURT: Is that the only element?

MR. ROBINS: No, I don't believe so.

THE COURT: What do you believe?

MR. ROBINS: Well, there is a number of elements that the agency considered in the course of how it chose to exercise its discretion based on the enforcement priorities which are annotated in the president's 2000 – I'm sorry, in the Kelly memo, from February of this year.

Id. 5-6.

Later in the hearing, Defendants admitted that Plaintiff still satisfies the five criteria contained in the Napolitano memo to enable her to be considered for an exercise of prosecutorial discretion and be approved for the DACA program. Id. at 30; see Napolitano Memo at 1. In an effort to determine the precise reason for Defendants' actions with respect to Plaintiff (particularly given the Kelly Memo's statement that it has no application to the DACA program), the Court then engaged in a discussion with Defendants' counsel, continuing to eliminate grounds that could have supported the renewal or termination of Plaintiff's DACA status. Tr. at 31-

36. Defendants then represented that they exercised prosecutorial discretion to terminate Plaintiff's DACA status based on the Kelly Memo. Id. at 40.

THE COURT: So, basically, the only thing you're telling me today that happened between the last time she was renewed and now is the Kelly memo? That's why she's not been renewed and been terminated, because of the Kelly memo? Is that what you're telling the Court?

MR. ROBINS: In part, your Honor. It is because of the Kelly memo and the decision, in the agency's discretion, to terminate DACA on the basis of the Kelly memo.

THE COURT: Tell me what provision of the Kelly memo means that she loses her DACA status and is terminated?

MR. ROBINS: Well, your Honor, just to be clear – and there actually are a number of points with regard to the Court's discussion of termination process that I really would like to go back to clarify, as well. So can I do that, briefly?

THE COURT: Answer my question first.

MR. ROBINS: Yes.

THE COURT: You've just told me that the Kelly memo is a big piece of this, so I want to get reference as to what in the Kelly memo has caused this to occur?

MR. ROBINS: And I just want to be clear, again, your Honor, that there is nothing in the Kelly memo that demands a specific result. In each and every case of adjudicating an individual's request for DACA, and the decision with regard to the termination of that, that is an individualized factor. And I'll get to the Kelly memo in my very next sentence.

With regard to the Kelly memorandum, I, your Honor, based on USCIS's decision, am unable to point to the specific grounds that were considered. There is some bit of speculation based on the record and the facts before the Court here. I mean, I just want to acknowledge that, because I am, your Honor, I am not privy to the agency's internal operations, nor do I necessarily believe those are appropriate, but –

THE COURT: You're the lawyer defending them.

MR. ROBINS: Yes, your Honor. But the exercise of their discretion is, ultimately, the exercise of their discretion.

Id. at 40-43.


Contrary to Defendants' position in the present Motion for Reconsideration, there is nothing in the Court's June 12, 2017, Order which purports to analyze or interpret any provision of the Kelly Memo, other than to state the obvious: The Kelly Memo, by its own terms, supersedes and rescinds "all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal" "with the exception of the June 12, 2012, memorandum entitled 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children' (i.e., the Napolitano Memo). Kelly Memo at 2. That is why the Court stated in its Order: "[T]he Kelly Memo, by its own terms, has no application to the DACA program." June 12, 2017, Order [Doc. 28] at 29. Moreover, footnote 7 of that Order merely

summarizes Defendants' own representations that were made at the preliminary injunction hearing and referenced in the transcript excerpts cited above.

In summary, reconsideration of this Court's June 12, 2017, order is not required because Defendant has failed to present evidence or argument that there has been newly discovered evidence, an intervening development or change in controlling law, or a need to correct a clear error of law or fact. See Bryan, 246 F. Supp. at 1258-59. In addition, it was not improper for the Court to raise the fact that the Kelly Memo, by its own terms, specifically excepts the Napolitano Memo from its coverage because Defendants themselves raised the applicability of the Kelly Memo as a basis for their decision not to renew and to terminate Plaintiff's DACA status. Finally, because nothing in the Court's Order purports to interpret any provision contained in the Kelly Memo, there is no need for the Court to alter or delete the last sentence on page 29 of the Order or the language in footnote 7.

Therefore, it is hereby **ORDERED** that Defendants' Motion for Reconsideration [Doc. 34] is **DENIED**.

IT IS SO ORDERED this 31ST day of July, 2017.



MARK H. COHEN
United States District Judge