

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

JESSICA M. COLOTL COYOTL,

Plaintiff,

v.

**ELAINE C. DUKE, Acting Secretary,
Department of Homeland Security;
MARK J. HAZUDA, Director,
Nebraska Service Center, U.S.
Citizenship and Immigration
Services; L. FRANCIS CISSNA,
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

On June 12, 2017, this Court entered a preliminary injunction enjoining Defendants' termination of Plaintiff's status under the Deferred Action for Childhood Arrivals ("DACA") program (as well as the termination of her employment authorization) based upon Defendants' failure to comply with their own administrative processes and procedures with regard to the denial of her

DACA status. Order of June 12, 2017 [Doc. 28]. The Court ordered Defendants to “reconsider the termination of Plaintiff’s DACA status and re-adjudicate Plaintiff’s renewal application in a manner consistent with the Department of Homeland Security’s Standard Operating Procedures and this Order.” Id. at 33. The Court also clearly indicated that the preliminary injunction would remain effective “until further Order from this Court, which will issue only after Defendants have submitted sufficient proof that they have followed all relevant standard operating procedures regarding the adjudication of Plaintiff’s renewal application and any termination of Plaintiff’s DACA status.” Id.

After denying Defendants’ motion for reconsideration [Doc. 43], Defendants moved to stay all proceedings in this case pending further administrative action [Doc. 44], and this Court granted a stay of proceedings in order for Defendants to delay filing a responsive pleading to Plaintiff’s Amended Complaint until October 2, 2017 [Doc. 47]. Defendants then asked for a second extension of time until October 30, 2017, for the same purpose [Doc. 48], which this Court granted [Doc. 49].

On October 25, 2017, Defendants filed with this Court the following:

(1) a Notice of Compliance with this Court’s June 12, 2017, Order; (2) an Emergency Motion to Dismiss Plaintiff’s Amended Complaint or, in the

Alternative, Dissolve Preliminary Relief; and (3) a request for an expedited hearing on their emergency motion. [Docs. 50, 51.] Defendants assert that they have re-adjudicated Plaintiff's request for renewal of her DACA status and denied her request "consistent with the Court's interpretation of USCIS's DACA Standard Operating Procedures." Mem. in Supp. of Defs.' Mot. to Dismiss Pl.'s Am. Compl. [Doc. 51-1] at 9. Attached to Defendants' Notice of Compliance are USCIS's August 18, 2017, "Notice of Intent to Deny" and October 23, 2017, "Decision," both of which contain the following:

While your re-opened renewal request was pending, U.S. Immigration and Customs Enforcement (ICE) informed USCIS of the following: that ICE opposed your motions to administratively close your case with the Executive Office for Immigration Review; that on July 10, 2017, an Immigration Judge denied your motion to administratively close your proceedings; that ICE is actively seeking a final order of removal against you in immigration proceedings; and that ICE intends to remove you if an administratively final order of removal is issued.

Deferred action is not a form of protection from removal; rather it is merely an acknowledgement that the Department of Homeland Security does not at this time intend to pursue removal. Since ICE informed USCIS that it was actively pursuing your removal, USCIS did not contemporaneously conclude that removal action should continue to be deferred in your case.

Accordingly, USCIS [has] determined, in its unreviewable discretion, that you did not warrant a favorable exercise of prosecutorial discretion.

Exs. 1 & 2 attached to Notice of Compliance [Docs. 50-1 & 50-2]. Given the purported “emergency” nature of Defendants’ motion and request, on October 26, 2017, the Court ordered expedited briefing on Defendants’ motion and set a hearing for November 9, 2017 [Doc. 54].

After this Court signed its October 26, 2017, Order, Plaintiff filed a Second Amended Complaint that same day.¹ The Second Amended Complaint alleges that Defendants’ most recent decision to deny Plaintiff’s DACA status again violates the Administrative Procedure Act and Defendants’ own procedures for adjudicating DACA applications. Second Am. Compl. [Doc. 53] ¶¶ 91, 93.

Plaintiff also has filed an opposition to Defendants’ motion to dissolve the Court’s preliminary injunction and, as an alternative, a second motion for a preliminary injunction based on her Second Amended Complaint [Doc. 56]. Defendants filed a response in opposition thereto [Doc. 57] alleging, in part, that Plaintiff’s Second Amended Complaint has been filed in violation of Rule 15(a)(2) of the Federal Rules of Civil Procedure. Subsequently, the parties filed a Joint Stipulation to the Filing of Plaintiff’s Second Amended Complaint [Doc. 58], in which Defendants consent to the filing of the Second Amended Complaint and Plaintiff agrees to

¹ Although the Clerk docketed Plaintiff’s Second Amended Complaint prior to docketing this Court’s Order, that order actually was signed prior to the filing of Plaintiff’s pleading.

extend Defendants' time to answer or otherwise respond to the Second Amended Complaint to December 22, 2017.

Defendants have failed to explain what the "emergency" is that would require the Court to now consider their motion to dismiss Plaintiff's Amended Complaint, particularly when Plaintiff has now filed a Second Amended Complaint to challenge the most recent action taken by Defendants to decline to renew her DACA status.² Defendants have consented to the filing of the Second Amended Complaint, which is now the operative complaint in this case. This renders the original complaint moot, as well as Defendants' Emergency Motion to Dismiss. See Dresdner Bank, A.G. v. M/V Olympia Village, 463 F.3d 1210, 1215 (11th Cir. 2006) (holding that an amended pleading supersedes the former pleading); Luster v. Audax Grp., LP, No. 1:15-CV-489-MHC, 2016 WL 7426572, at *2 (N.D. Ga. Oct. 4, 2016) (denying a motion to dismiss the first amended complaint because it was rendered moot by the filing of a second amended complaint). In addition, the fact that there is a pending removal proceeding against Plaintiff by ICE fails to

² In their emergency motion, Defendants alleged that "[g]ood cause exists to waive the usual time requirements and hold an expedited hearing because Plaintiff's reopened, reinstated, and twice-extended DACA and employment authorization expires after October 31, 2017." Defs.' Emergency Mot. to Dismiss Pl.'s Am. Compl. [Doc. 51] at 2. However, by the terms of this Court's June 12, 2017, preliminary injunction, Defendants are enjoined from terminating Plaintiff's DACA and employment authorization until further order of this Court.

create an emergency when there has been an open removal proceeding at least since October 6, 2016 [Doc. 14-11]. Although ICE indicated in March 2017 that Plaintiff was “an enforcement priority” due to her “criminal history” [Doc. 14-12], Defendants admitted at this Court’s preliminary injunction hearing that there was no disqualifying criminal history that arose after Plaintiff obtained DACA status.

Given Defendants’ most recent decision on Plaintiff’s DACA status and Plaintiff’s challenge of that decision in the Second Amended Complaint, including her renewed request for a preliminary injunction, it is premature to hold a hearing in this matter until all parties have had an opportunity to fully brief these issues.

Therefore, it is hereby **ORDERED** as follows:

- (1) Defendants’ Emergency Motion to Dismiss Plaintiff’s Amended Complaint or, in the Alternative, Dissolve Preliminary Relief [Doc. 51] is **DENIED WITHOUT PREJUDICE**;
- (2) The hearing previously scheduled for November 9, 2017, is cancelled;
- (3) Once Defendants file an answer or otherwise respond to the Second Amended Complaint on or before December 22, 2017, the Court will set a date for a hearing on the remaining pending motions, if necessary; and
- (4) The terms of this Court’s June 12, 2017, preliminary injunction shall remain in effect until further Order of the Court.

IT IS SO ORDERED this 8th day of November, 2017.

A handwritten signature in cursive script, reading "Mark H. Cohen".

MARK H. COHEN
United States District Judge