

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL VENTURE CAPITAL
ASSOCIATION, et al.,

Plaintiffs,

v.

KIRSTJEN M. NIELSEN,¹
Secretary of Homeland Security, et al.,

Defendants.

Civil Action No.: 1:17-cv-01912-JEB

**PLAINTIFFS' MOTION FOR DISCOVERY REGARDING
DEFENDANTS' COMPLIANCE WITH THE COURT'S JUDGMENT**

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¹ Under Fed. R. Civ. P. 25(d), Secretary Kirstjen M. Nielsen, in her official capacity, is substituted for her predecessor, Elaine C. Duke.

**PLAINTIFFS' MOTION FOR DISCOVERY REGARDING
DEFENDANTS' COMPLIANCE WITH THE COURT'S JUDGMENT**

Plaintiffs respectfully request that this Court grant them leave to conduct discovery as to whether Defendants are complying with this Court's judgment of December 1, 2017, and to grant any other relief that the Court deems appropriate. Plaintiffs submit that this requested relief is essential to ensure enforcement of this Court's judgment.²

STATEMENT

On December 1, 2017, the Court issued a final judgment in this case, vacating defendants' unlawful delay of the International Entrepreneur Rule (IER). *See Nat'l Venture Cap. Ass'n v. Duke*, No. CV 17-1912 (JEB), 2017 WL 5990122, at *8 (D.D.C. Dec. 1, 2017). In particular, the Court vacated the *International Entrepreneur Rule: Delay of Effective Date*, 82 Fed. Reg. 31,887 (July 11, 2017) (Final Delay Rule). Defendants did not appeal. By virtue of that Order, the IER program is now legally effective. On December 14, 2017, U.S. Citizenship and Immigration Services (USCIS) posted instructions and the form to apply for parole under the Rule. Hughes Decl. ¶ 1.

Plaintiffs have grave concerns as to whether Defendants have chosen to disregard the Court's Order. Not only have Defendants failed to take action on Plaintiffs' applications, but—most troublingly—USCIS has made certain public statements that suggest it is not implementing the IER program.

Plaintiffs filed three separate IER applications in December 2017. Not one of those applications has been adjudicated. *See* Hughes Decl. ¶ 2-3.

On April 4, 2018, USCIS Director L. Francis Cissna stated that Defendants “have not approved any parole requests under the International Entrepreneur Final Rule at this time.” Hughes

² Plaintiffs asked the government's position on this motion earlier today, May 9, 2018, at around 9:40am. Plaintiffs have not received a reply during this admittedly short window.

Decl. ¶ 4. In that same letter, Cissna confirmed Defendants’ intent to rescind the rule at some time in the future. *Id.*

On April 24, 2018, Bloomberg published an article relating to the IER. Hughes Decl. ¶ 5. In that article, USCIS spokesperson Carter Langston is identified as saying that the agency has no timeline for resolving IER applications and he is quoted as saying that foreign-born entrepreneurs should “consult an immigration attorney and find an alternative vehicle.” *Id.*

ARGUMENT

Plaintiffs are concerned as to whether Defendants are complying with the Court’s Order: (a) Plaintiffs’ applications have not been processed, (b) the USCIS Director has stated as a blanket matter that no IER applications have been approved, and (c) an agency spokesman has said that foreign-born entrepreneurs should “consult an immigration attorney and find an alternative vehicle.” In particular, the statement from the USCIS spokesperson—which informs the public that qualified entrepreneurs should *not* use the IER program, and those who have applied should seek other relief—appears to indicate that USCIS is not processing these applications in good faith. If that is so, Defendants are continuing to adhere to the Final Delay Rule, notwithstanding this Court’s Order vacating it.

The Court has broad, inherent authority to enter orders to ensure compliance with its final judgment: “Courts invested with the judicial power of the United States have certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities.” *Degen v. United States*, 517 U.S. 820, 823 (1996).

Plaintiffs respectfully request the Court grant permission to take discovery as to whether Defendants are continuing to apply (or functionally apply) the Final Delay Rule. In particular, Plaintiffs seek to discover whether USCIS has adopted any policies or practices with respect to the IER that circumvent this Court’s judgment, which includes whether Defendants are in fact

processing IER applications in good faith. Plaintiffs respectfully request that the Court enter any additional relief it deems appropriate.

CONCLUSION

Plaintiffs respectfully request that the Court allow them to take discovery regarding whether Defendants are complying with the Court's Order, and that the Court enter any other relief that it deems appropriate.

Respectfully submitted,

/s/Paul W. Hughes

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Dated: May 9, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing to be filed via the Court's CM/ECF system on May 9, 2018, which will send notice of filing to all counsel of record registered with the system.

/s/ Paul W. Hughes
Paul W. Hughes