

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

_____)	
LIN, ET. AL,)	
)	
Plaintiffs,)	Civil Action No. 06-1825 (RMC)
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

MOTION TO STAY THE PARTIES' OBLIGATIONS UNDER RULE 26

Defendant, by and through undersigned counsel, respectfully move this Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to stay all discovery, including the initial Rule 26(f) conference, initial disclosures required under Rule 26(a), and the Rule 26(f) Joint Status report, pending resolution of Defendant's Motion to Dismiss Plaintiff's Complaint. Pursuant to Local Rule 7(m) and in accordance with Rule 26(c) of the Federal Rules of Civil Procedure, undersigned counsel certifies that he has conferred with plaintiff's counsel regarding this motion and that plaintiff's counsel does not consent to the requested stay of discovery.

Dated: July 16, 2007

Respectfully submitted,
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/s/
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**MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO
STAY THE PARTIES’ OBLIGATIONS UNDER RULE 26**

Defendant moves to stay all discovery in this case until after the Court rules on defendant’s Motion to Dismiss (Docket Entry #17) because so doing promotes efficiency and avoids conducting needless discovery. There is a high likelihood that this case will be resolved without the need for discovery. Plaintiffs are asking this Court to declare them nationals of the United States due to the mere fact that they reside in Taiwan. See Pl. Am. Compl. at ¶¶ 6,7. Defendant has moved to dismiss this action on the grounds that it presents a non-justiciable political question and plaintiffs have failed to state a claim under the Immigration and Nationality Act. This motion, which has been fully briefed, provides a purely legal basis for disposing of this action. Accordingly, discovery would not assist this Court in deciding this potentially dispositive motion.

BACKGROUND

On October 24, 2006, plaintiffs brought this action seeking a declaration that they are United States nationals. After full briefing on defendant’s motion to dismiss, plaintiffs amended their complaint to add that they were allegedly improperly denied passport applications.

Defendant moved for a second time to dismiss this action in its entirety. That motion to dismiss the was fully briefed on April 30, 2007. Almost two months later, plaintiffs sent discovery, dated June 26, 2007, to undersigned counsel even though the parties had never conducted a Rule 26(f) conference. Under Rule 26(d), discovery is not to commence until after such a conference. See Fed. R. Civ. Proc. 26(d) (“a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)”). Plaintiffs have now withdrawn those discovery requests but are now seeking to have a Rule 26(f) conference. Plaintiffs presumably seek the conference as a necessary precondition to commence discovery.¹ Because defendant does not believe that discovery is appropriate in this case, particularly at this juncture in the case, defendant is moving for a stay of discovery, including the parties obligations under 26(f).

ARGUMENT

Defendant’s Motion to Dismiss is potentially dispositive of this action, and therefore conducting discovery prior to the resolution of that motion is a waste of resources and an undue burden. Courts have consistently exercised such discretion to stay discovery where it appears

¹Although plaintiffs’ discovery was withdrawn, discovery of the scope and extent that plaintiffs contemplated at this stage of the proceedings indicates the burdensome and objectionable nature of the discovery they seek. For example, plaintiffs sought admissions that included asking the United States to “[a]dmit that Taiwanese People never issued a declaration of self-determination after 1930” as well as “[a]dmit that all military attacks against (Japanese) Taiwan in the December 1941 through Fall 1945 period were conducted by United States military forces.” Plaintiffs’ First Set of Requests for Admission to Defendant (“Exhibit 1”) at ¶¶ 22, 29. The interrogatories included asking the United States to “[i]dentify any and all treaties, international agreements, statutes, executive orders, memoranda, bulletins, and other Documents concerning or containing the United States’ policy towards Taiwan,” Plaintiffs’ First Set of Interrogatories to Defendant (“Exhibit 2”) at ¶ 8, and the documents requests included seeking “all Documents pertaining to any country exercising *de jure* and/or *de facto* sovereignty over Taiwan since 1890,” Plaintiffs’ First Set of Document Requests to Defendant (Exhibit 3) at ¶ 17.

that a case is subject to a potentially dispositive motion. See, e.g., Chavous v. Dist. of Columbia Fin. Responsibility and Mgmt. Assistance Auth., 201 F.R.D. 1, 2 (D. D.C. 2001) (“It is well settled that discovery is generally considered inappropriate while a motion that would be thoroughly dispositive of the claims in the Complaint is pending.”) (internal quotation marks omitted); Patterson v. United States, 901 F.2d 927, 929 (11th Cir. 1990) (holding that a district court did not abuse its discretion in entering protective order prohibiting discovery pending determination of motion to dismiss or for summary judgment); Jarvis v. Regan, 833 F.2d 149, 155 (9th Cir. 1987); Petrus v. Bowen, 833 F.2d 581, 583 (5th Cir. 1987) (citing Landis v. North Am. Co., 299 U.S. 248, 254 (1936)).

Staying discovery pending the outcome of a motion to dismiss is especially appropriate where, as here, that motion challenges the court’s jurisdiction to hear some or all of the counts of the complaint. See 8 C. Wright, A. Miller, & R. Marcus, Federal Practice and Procedure § 2040 (2d ed. 1994) (“[A] a court may decide that in a particular case it would be wise to stay discovery on the merits until challenges to jurisdiction have been resolved.”); see also U.S. Catholic Conference v. Abortion Rights Mobilization, Inc., 487 U.S. 72, 79-80 (1988) (“It is a recognized and appropriate procedure for a court to limit discovery proceedings at the outset to a determination of jurisdictional matters”). “[J]urisdiction is power to declare the law,” and without it, “the only function remaining to the court is that of announcing the fact and dismissing the cause.” Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998). In its motion to dismiss, defendant asserted that this entire action should be dismissed not only because it fails to state a claim upon which relief may be granted but also because it raises a non-justiciable political question. As defendant maintained in its motion to dismiss, it is a non-justiciable

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