

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

SONYA L. GREEN,

Appellant,

v.

U.S. AGENCY FOR GLOBAL MEDIA,

Agency.

DOCKET NUMBER
DC-0752-26-1338-I-1

DATE: May 6, 2026

ORDER DENYING REQUEST FOR ADJUDICATION AS A CLASS

On April 8, 2026, the appellant filed this appeal with the Merit Systems Protection Board (MSPB or Board) alleging an involuntary separation from the agency. Appeal File (AF), Tab 1. Specifically, the appellant argues the following:

On March 7, 2026, Judge Royce C. Lamberth of the U.S. District Court for the District of Columbia held that Kari Lake's "de jure or de facto service as acting CEO" of USAGM violated the appointments clause of the Constitution and the Vacancies Act. *Widakuswara v. Lake*, No. 1:25-cv-1015-RCL (D.D.C. Mar. 7, 2026). Judge Lamberth voided all actions taken by Lake during her asserted tenure as acting CEO and/or pursuant to the delegations of CEO authority to Lake between March 5, 2025 and November 19, 2025. Such voided actions include RIF notices and offers USAGM made to its employees to resign or retire pursuant to the Deferred Resignation Program (DRP), Voluntary Early Retirement Authority (VERA), and/or Voluntary Separation Incentive Payment (VSIP). I agreed to participate in these programs based on the mistaken belief that USAGM had legal authority to offer and enter into such agreements with its employees and to execute a RIF. Accordingly, my agreement with USAGM is voidable and my decision to resign or retire should be rescinded as involuntary.

Id. at 17 (spelling, punctuation, and grammar as in the original). The appellant includes a request for Board adjudication as a class and limited discovery. *Id.* at 2-15. In summation, the appellant's class request contains:

all former employees of the Voice of America (VOA), under the authority of the U.S. Agency for Global Media (USAGM or the Agency), who resigned or retired pursuant to the Deferred Resignation Program (DRP), Voluntary Early Retirement Authority (VERA), and/or Voluntary Separation Incentive Payment (VSIP) offered on or after March 5, 2025.

Id. at 2 (spelling, punctuation, and grammar as in the original). The agency responded in opposition to the appellant's class request and the appellant replied. AF, Tabs 3 and 6. Upon consideration and review of the parties' submissions, I **DENY** the appellant's class request for the following reasons.

The Board's class appeal regulations provide that, when an appellant requests class certification, "[t]he judge will hear the case as a class appeal if he or she finds that a class appeal is the fairest and most efficient way to adjudicate the appeal and that the representative of the parties will adequately protect the interests of all parties." [5 C.F.R. § 1201.27\(a\)](#). They further provide that "[i]n determining whether it is appropriate to treat an appeal as a class action, the judge will be guided but not controlled by the applicable provisions of the Federal Rules of Civil Procedure." [5 C.F.R. § 1201.27\(c\)](#); *see Patrick v. Department of Agriculture*, 72 M.S.P.R. 509, 517 (1996), *aff'd*, 173 F.3d 434 (Fed. Cir. 1998) (Table). Administrative judges have broad discretion regarding procedural matters including determinations regarding class actions. *Patrick*, 72 M.S.P.R. at 518.

Federal Rule of Civil Procedure 23(a) sets out the following prerequisites for a class action:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

A class action may be maintained if Rule 23(a) is satisfied and if:

[T]he court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Fed. R. Civ. P. 23(b)(3).

Here, I do not find that adjudication as a class would result in the fairest and most efficient way to adjudicate the appeals. Nor do I find that class adjudication would adequately protect the interests of all parties. To list a few of the myriad reasons, there is not sufficient evidence that a class would be so “numerous” to render joinder or consolidation “impracticable.” Per the appellant, around 200 individuals separated from the agency under the DRP, VSIP, and/or VERA. AF, Tab 1 at 11. It is unknown how many of these 200 would join a class. Further, the Board is in the midst of adjudicating consolidated appeals with more than 200 appellants, evidencing the practicality of consolidation over class adjudication.

Next, while there will certainly be overlap of common facts, and, perhaps, to a lesser degree, law, the resolution of all material issues cannot be resolved in, using the verbiage from the Supreme Court, “one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, [564 U.S. 338](#), 350 (2011). This is due to the need for individualized reviews of each appellant’s separation, as they could have separated under one or more of the various routes offered—DRP, VSIP, or VERA. Each has distinct statutory and regulatory provisions and procedures, requiring distinct analysis. *See, e.g.*, VSIP-[5 U.S.C. § 3521](#), *et seq.*; VERA for Federal Employees Retirement System-[5 U.S.C. § 8414](#), *et seq.* The agency persuasively summarized this in its response when it stated, “[a] class action purporting to adjudicate all three under a single mutual-mistake theory would require the Board to apply multiple statutory frameworks simultaneously; a task unsuited to class-wide resolution.” AF, Tab 3 at 7-8. Relatedly, the Board’s jurisdiction is at issue in each appeal because the putative class members agreed to a waiver of Board appeal rights as a term of their separations. *Johnson v. U.S. Postal Service*, 108 M.S.P.R. 502, ¶ 8 & n.5 (2008),

aff'd, 315 F. App'x 274 (Fed. Cir. 2009). Subjective assessments are required to determine if appellants sufficiently allege Board jurisdiction (*i.e.*, if the agreement is unlawful, entered into involuntarily, or the result of fraud or mutual mistake). *Wade v. Department of Veterans Affairs*, 61 M.S.P.R. 580, 583 (1994). The appellant's argument that each class member would proffer the exact same theory of Board jurisdiction is implausible.

Then, there are difficulties with protecting personally identifiable information of putative class members that would not be efficient to manage through class adjudication.

Lastly, common substantive issues can be addressed more efficiently, if later found appropriate, by consolidating appeals under [5 C.F.R. § 1201.36](#), (*e.g.*, all of the appellants that took VSIP in one consolidation).¹

In accordance with [5 C.F.R. § 1201.27\(b\)](#), any putative class member affected by this denial may file an individual appeal contesting his or her separation with the appropriate Board office **no later than June 10, 2026**, if he or she has not already done so. Take notice of this date, as an untimely filing without good cause could lead to dismissal of an appeal.

The four named appellants on this class request need not file new Board appeals, as their appeals will be processed accordingly under the above docket number. I will soon issue a case processing order.

Paul DiTomasso

FOR THE BOARD:

Paul DiTomasso
Administrative Judge

¹ Given the denial of the class request, the appellant's request for discovery is **MOOT**.

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

Electronic Service Sonya Green
Served on email address registered with MSPB

Appellant Representative

Electronic Service Marlene Laimeche
Served on email address registered with MSPB

Appellant Representative

Electronic Service Kevin Owen
Served on email address registered with MSPB

Appellant Representative

Electronic Service William Schubert
Served on email address registered with MSPB

Appellant Representative

Electronic Service Erik Snyder
Served on email address registered with MSPB

Agency Representative

Electronic Service

Jennifer DeMaster

Served on email address registered with MSPB

Agency Representative

Electronic Service

Danielle Hampton

Served on email address registered with MSPB

Agency Representative

Electronic Service

Brian Miller

Served on email address registered with MSPB

05/06/2026

(Date)

Paul DiTomasso

Paul DiTomasso
Administrative Judge