

Catholic Soc. Servs. v. Reno

United States District Court for the Eastern District of California

June 19, 1998, Decided ; June 19, 1998, Filed

NO. CIV. S-98-629 LKK/JFM

Reporter: 1998 U.S. Dist. LEXIS 10429

CATHOLIC SOCIAL SERVICES, INC., IMMIGRATION PROGRAM, et al., Plaintiffs, v. JANET RENO, Attorney General of the United States of America, et al., Defendants.

Counsel: [*1] For CATHOLIC SOCIAL SERVICES INC, IMMIGRATION PROGRAM, UNITED FARMWORKERS, AFL-CIO, ESAUL DELGADILLO-URIBE, GUSTAVO RODRIGUEZ, ANIL K URMIL, ISMAEL DE LA CRUZ, MIGUEL GALVEZ MORAN, ELMA BARBOSA, JESUS REYNA REYNA QUTB-E-ALAM KHAN, MOHAMMED HAQ, plaintiffs: Peter A Schey, Carlos Holguin, Center for Human Rights and Constitutional Law, Los Angeles, CA.

For CATHOLIC SOCIAL SERVICES INC, IMMIGRATION PROGRAM, UNITED FARMWORKERS, AFL-CIO, ESAUL DELGADILLO-URIBE, GUSTAVO RODRIGUEZ, ANIL K URMIL, ISMAEL DE LA CRUZ, MIGUEL GALVEZ MORAN, ELMA BARBOSA, JESUS REYNA REYNA QUTB-E-ALAM KHAN, MOHAMMED HAQ, plaintiffs: Michael S Rubin, Altshuler Berzon Nussbaum Berzon and Rubin, San Francisco, CA.

For JANET RENO, defendant: Donald E Keener, Stephen W Funk, Keisha Dawn Bell, United States Department of Justice, Office of Immigration Litigation, Washington, DC.

Judges: LAWRENCE K. KARLTON, CHIEF JUDGE EMERITUS, UNITED STATES DISTRICT COURT.

Opinion by: LAWRENCE K. KARLTON

Opinion

ORDER

On June 19, 1998, a hearing was held on plaintiffs' motion for a preliminary injunction in the above-captioned case. PETER SCHEY and CARLOS HOLGUIN appeared for plaintiffs; KEISHA BELL, M. JOCELYN LOPEZ WRIGHT and GLYNDELL [*2] WILLIAMS appeared for defendants.

I.

PROCEDURAL HISTORY

On June 5, 1998, a hearing was held on an expedited basis on plaintiffs' motion for an emergency temporary restraining order. After a telephonic hearing with counsel for both parties the court concluded that, given the foreshortened review necessitated by the manner in which the motion was brought, it appeared that serious legal questions were tendered and that the balance of hardships favored plaintiffs. Accordingly, the court entered a temporary restraining order in order to preserve the status quo pending a fuller hearing, setting the matter of preliminary injunctive relief for June 19, 1998. *See* Order filed June 5, 1998. Thereafter, the court vacated its initial order and entered a new temporary restraining order but maintained the same date for hearing on the preliminary injunction. *See* Order filed June 12, 1998.

Just prior to the hearing on plaintiffs' motion for a preliminary injunction, on June 18, 1998, the Ninth Circuit issued two orders in the related case, *Catholic Social Services, Inc. v. Reno*, Dist. Ct. Case No. CIV S-86-1343 LKK. In one order, the three judge panel that issued the opinion [*3] in *Catholic Social Services, Inc. v. Reno*, 134 F.3d 921 (9th Cir. 1998), ordered that "the mandate in this case is recalled." In a second order, the court held that the petition for rehearing and suggestion for a rehearing en banc was denied.

After oral argument on the question of how this court was to proceed in light of the Ninth Circuit's June 18, 1998 orders, the court concluded the existence of an ongoing case was implicit in the Ninth Circuit's assertion of power to issue orders in *Catholic Social Services, Inc. v. Reno*, Dist. Ct. Case No. CIV S-86-1343 LKK. Given that the case had been dismissed solely because the Circuit had remanded with instructions to dismiss and that the mandate had been recalled, this court issued an order in that related case vacating its March 10, 1998 order dismissing the case. *See* Order filed June 19, 1998 in *Catholic Social Services, Inc. v. Reno*, Dist. Ct. Case No. CIV 86-1343 LKK.

Plaintiffs assert that the Ninth Circuit's order vacating the interim relief orders is no longer effective. The government maintains that the interim relief orders are not in effect. Under the present circumstances arguments addressed to whether the recall [*4] worked a stay of the Ninth Circuit's order vacating the interim relief orders in *Catholic Social Services, Inc. v. Reno*, Dist. Ct. Case No.

CIV 86-1343 LKK, are not properly before this court, but should be addressed to the Ninth Circuit. Nonetheless, given the government's position, plaintiffs continue to be threatened with irreparable injury.

The issues presented here are both difficult and subtle, and will take time to resolve. Because plaintiffs are threatened with irreparable injury if the court does not act while trying to resolve the motion for preliminary injunction, the court hereby issues a further temporary order maintaining the status quo for another ten (10) days while considering resolution of the motion for a preliminary injunction. *See Fed. R. Civ. P. 65 (b)*.

II.

THE ALLEGATIONS

Seven named plaintiffs allege that they completed the relevant application forms and tendered them to an INS official during the statutory period. Complaint at PP 17-18, 20, 22-23, 25. Plaintiff Esaul Delgadillo-Urbe alleges that he entered the United States before January 1, 1982 without inspection, that he briefly traveled abroad between May and June 1987, and that [*5] in June 1987 he tendered a completed application form to an INS legalization official at the Sacramento office. The INS official refused to accept the application because Delgadillo-Urbe had traveled abroad without inspection. Complaint at P 17. Plaintiff Gustavo Rodriguez also alleges that he otherwise met the statutory criteria and that his completed application and fee was rejected by an INS official at the Riverside office based on brief travel to Mexico in August 1987 to visit his sick mother. *Id.* at P 18. One named plaintiff, Anil K. Urmil, made three attempts to obtain an application from INS offices on Wilshire Boulevard in Los Angeles and in the San Fernando Valley between July 1987 and early 1988. He finally obtained a legalization form, tendered it, and was rejected based on brief travel. Complaint at P 19; *see also* Complaint at PP 20, 22-23, 25.

In addition to these and other named plaintiffs, more than seventeen other individuals have averred in declarations that they also were otherwise eligible to adjust their status, that they physically tendered applications to the INS, and that these applications were refused based on the INS' advance parole regulation at [*6] issue in this litigation. *See* Pltfs' Exh.'s 17-19, 21, 23-26, 28, 30, 34-36, 39, 47, 49-50.

III.

THE NATURE AND EXTENT OF THE INSTANT ORDER

A variety of people, sharing common concerns but having diverse experiences are potentially covered by this litigation. Below the court attempts to address those various persons.

A. COVERED INDIVIDUALS

i. *Individuals whose applications were denied*

As to those individuals who tendered applications during the statutory period and had such applications denied based on the challenged regulation, the Supreme Court held that the statutory scheme of the Immigration Reform Control Act of 1996 afforded some review, *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 60-61, 125 L. Ed. 2d 38, 113 S. Ct. 2485 (1993), and accordingly plaintiffs do not presently seek injunctive relief on behalf of individuals so situated.

ii. *Individuals who tendered an application to INS*

The court concludes based on the allegations of the complaint and the declarations on file herein, that there are individuals otherwise eligible for legalization who physically tendered applications to INS officials during the statutory [*7] period which were rejected based on the advance parole regulations. Suit by such people is ripe because they "took the affirmative steps that [they] could take before the INS blocked [their] path by applying the regulation to them." *Reno*, 509 U.S. 43, 59, 125 L. Ed. 2d 38, 113 S. Ct. 2485 (1993).

This court's exercise of jurisdiction over individuals who tendered applications to the INS appears consistent with the plain language of § 377 of the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") and the Ninth Circuit's decision in *Catholic Social Services v. Reno*, 134 F.3d 921 (9th Cir. 1998).

Relative to these plaintiffs, the court concludes that plaintiffs have raised serious questions requiring litigation on their claim that they are entitled to relief because the regulation on which the INS relied to bar their claims for adjustment of status was inconsistent with the statute. The court also concludes that such individuals are threatened with irreparable injury, and that it appears on the current record they the balance of hardships tips in their favor.

iii. *Individuals who were denied applications*

Plaintiffs have also included declarations [*8] from otherwise eligible individuals who were refused applications from INS officers based on the INS' advance

parole policy. Their claims implicate § 377. ¹See Pltfs' Exh.'s 10-11, 17, 19, 22, 31, 37-38, 48. These individuals argue that § 377 should be interpreted as not barring their suit so as to avoid the issue of whether the statute violates the Equal Protection Clause because it arbitrarily discriminates. At oral argument, the court considered the Ninth Circuit's conclusion in *Catholic Social Services, Inc. v. Reno*, Dist. Ct. Case No. CIV 86-1343 LKK, that it could not reach the Equal Protection claim raised by the plaintiffs there because there was no plaintiff before the court who had sufficiently plead that he or she had standing to assert such a claim. Plaintiffs argue that it is uncertain from the terms of the opinion whether the court's holding was that no individual who fell outside a narrow reading of § 377 would have standing, or whether the court simply resolved the question of standing on the basis on the record made in that case.

[*9] The court concludes that there are serious questions as to whether it has jurisdiction over claims brought by these individuals by virtue of § 377. Nonetheless their claim under the Equal Protection Clause presents serious issues, not clearly resolved by the Circuit.

Given questions both as to whether the Ninth Circuit's order or § 377 foreclose this court's jurisdiction over claims brought by individuals who were denied applications for adjustment of status based on the INS' advance parole regulation, and if so whether under such an interpretation § 377 violates the Equal Protection Clause, the court concludes that temporary injunctive relief sufficient to maintain the status quo shall also be granted as to these individuals while the motion for preliminary injunctive relief stands submitted.

B. INJUNCTIVE RELIEF

i. Expedited removal proceedings

At oral argument, the government agreed that the provisions relating to expedited removal proceedings apply only to aliens arriving at a port of entry. Defendants have raised questions about whether injunctive relief relative to such expedited removal proceedings treads on the government's ability to carry out such [*10] proceedings in violation of the limitations on judicial review expressed in the Illegal Immigration Reform and Immigration Responsibility Act of 1996 ("IIRIRA"). See *8 U.S.C. § 1252(e)*, IIRIRA § 242(e). Because plaintiffs seek

only relief intended to maintain the status quo pending hearing on the merits, the court does not make any order with respect to expedited removal proceedings. ²

ii. Burden on government

In order to reduce any burden on the government in carrying out its enforcement duties under the immigration laws, plaintiffs have not sought relief that would require the government to screen all aliens to determine whether they are individuals covered under this temporary order of relief. Accordingly, before taking action the [*11] government shall only be required to make a determination regarding whether an individual is covered by this order only if an individual asserts membership in one of the classes certified in *Catholic Social Services, Inc. v. Reno*, Dist. Ct. Case No. CIV 86-1343 LKK.

C. OTHER JURISDICTIONAL ISSUES

i. Section 242(f)

Section 242(f) provides in pertinent part that, "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of chapter 4 of title II, as amended . . . , other than with respect to the application of such provisions to an individual alien against whom proceedings under such chapter have been initiated." The court concludes that it has jurisdiction to restrain the operation of the provision of chapter 4 of title II only where such proceedings have been initiated against individual aliens.

ii. Section 242(g)

Defendants contend that section 242(g) of the IIRIRA deprives this court of jurisdiction to enter injunctive relief. On its face, section 242(g) provides that the court shall not have jurisdiction over "any cause or claim . . . arising from the decision or action [*12] by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." Because the claims of the plaintiffs in this action appear to arise under § 245A, for purposes of this temporary restraining order, the court is satisfied that defendants' argument must be rejected. See also *Walters v. Reno*, 145 F.3d 1032, 1998 U.S. App. LEXIS 9846, 1998 WL 257263 at *19-20 (9th Cir. 1998).

IV.

¹ Section 377 provides that "no court shall have jurisdiction of any cause of action or claim by . . . any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer."

² The court notes that previously defendants indicated that they would not place in expedited removal proceedings persons determined in *CSSI* to fall within the class certified in that action. This order, however, is not dependant upon that representation.

ORDERS

Until this court issues an order on plaintiffs' motion for preliminary injunctive relief, the court now issues a temporary restraining order as follows:

1. With respect to any individual alien who is prima facie eligible for legalization under Immigration and Nationality Act § 245A (as defined at 8 C.F.R. § 245a.1(n)) who timely filed for class membership under *Catholic Social Services v. Reno*, Case No. CIV. S-86-1343 (E.D. Cal.) and so identifies himself or herself to the Immigration and Naturalization Service, and who:

a. attempted to file a complete application and application fee with an authorized legalization officer, including with a Qualified Designated Entity, within the period specified in subsection (a)(1) but had the application and fee refused, [*13] or

b. was denied an application based on the Immigration and Nationalization Service's advance parole procedures, 52 Fed. Reg. 16206 (1987)(codified at 8 C.F.R. § 245a.1(g)),

and against whom proceedings under Chapter 4 of Title II of the Immigration and Nationality Act as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 have been initiated (except that with respect to work authorization, this relief is not limited to persons against whom proceedings under Chapter 4 of Title II have been initiated), unless defendants have reasonable grounds for believing that the applicant is otherwise excludable, removable or subject to detention on grounds not subject to waiver under INA § 245A,

2. The court ORDERS that:

a. Defendants are ENJOINED from executing final removal orders with respect to any covered individual

during the effective period of this order except that this order shall not apply to expedited removal proceedings. This order shall not be construed to impose any limitation on defendants' ability to engage in expedited removal proceedings. Defendants shall also not be required to admit any individual into the United States as a result [*14] of this order;

b. Defendants are ENJOINED from detaining any covered individual during the effective period of this order unless the individual is otherwise a danger to the public or there is a good faith belief that the individual is a flight risk. Defendants shall not be required by virtue of this order to release any covered individual who was in detention prior to issuance of this order;

c. Defendants are ENJOINED from revoking the work authorization of any covered individual during the effective period of this order. Defendants are not be required by virtue of this order to affirmatively grant or renew work authorization;

d. Defendants are ENJOINED from destroying or otherwise disposing of pending applications and supporting documents tendered by individuals who filed for class membership under *Catholic Social Services v. Reno*, CIV No. S-86-1343 (E.D. Cal.).

e. The bond heretofore tendered by plaintiffs shall suffice to cover the instant order.

IT IS SO ORDERED.

DATED: June 19, 1998.

LAWRENCE K. KARLTON

CHIEF JUDGE EMERITUS

UNITED STATES DISTRICT COURT