

33 Fed.Appx. 328

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,
Ninth Circuit.

Felicity Mary NEWMAN; et al., Plaintiffs-
Appellees/Cross-Appellants,

v.

IMMIGRATION AND NATURALIZATION
SERVICE; et al., Defendants-Appellants/Cross-
Appellees.

No. 99-56544, 99-56950. | D.C. CV-87-4757-WDK. |
Submitted April 3, 2002*.

* The panel finds this case appropriate for submission without oral argument pursuant to Fed. R.App. P. 34(a)(2).

| Decided April 15, 2002.

Appeal from the United States District Court for the Central District of California William D. Keller, District Judge, Presiding.

Before PREGERSON and HAWKINS, Circuit Judges, and WEINER,** Senior District Judge.

** The Honorable Charles R. Weiner, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

Opinion

329 ORDER**

*** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

A review of the record, the pending motions, and the briefs submitted in these cross-appeals discloses that the questions raised by the government's appeal are so insubstantial as not to require further argument. See

United States v. Hooton, 693 F.2d 857 (9th Cir.1982) (per curiam) (standard for summary affirmance). Accordingly, we deny the government's motion to remand and summarily affirm the portion of the district court's judgment appealed in No. 99-56544, such that all actually front-desked class members are entitled to have adjudicated by the Immigration and Naturalization Service their applications for relief under the Immigration Reform and Control Act of 1986.

Plaintiffs' motion to remand in No. 99-56950 is granted, and the portion of the judgment dismissing claims of constructively front-desked aliens is vacated. The remand is without limitation with respect to adjudicating the claims of these plaintiffs, but the district court shall proceed to define this portion of the class consistently with *Catholic Social Services, Inc. v. INS*, 232 F.3d 1139, 1146 (9th Cir.2000) (en banc), and in light of the repeal of section 377 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The district court shall also entertain the equal protection challenge to section 377 by class members not benefitted by the repeal of this statute. See *Catholic Soc. Servs.*, 232 F.3d at 1152-53.¹

¹ At page 20 of the brief submitted March 12, 2002, plaintiffs also refer to "challeng[ing] § 377's limited repeal on equal protection grounds." This appears to be a separate argument than the one recognized in *Catholic Social Services*. Because the remand here is without limitation with respect to constructively front-desked plaintiffs, nothing in this order precludes plaintiffs from raising this separate argument as well as the argument recognized in *Catholic Social Services*.

All other pending motions and requests are denied as moot. The statement on the February 13, 2002, order setting oral argument for April 3, 2002, is vacated.

The portion of the judgment appealed in No. 99-56544 is AFFIRMED. The portion of the judgment appealed in No. 99-56950 is VACATED and REMANDED.

Parallel Citations

2002 WL 554359 (C.A.9 (Cal.))