2015 WL 12030113
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United States District Court,
W.D. Washington,
at Seattle.

J.E.F.M., et al., Plaintiffs,
v.
Loretta E. Lynch, et al., Defendants.

C14-1026 TSZ
|
Signed 05/05/2015

Attorneys and Law Firms

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MINUTE ORDER

Thomas S. Zilly, United States District Judge

***1** The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Pursuant to Federal Rule of Civil Procedure 25(d), Loretta E. Lynch, in her official capacity as Attorney General of the United States, is hereby SUBSTITUTED for Eric H. Holder as a defendant in this action.

(2) Plaintiffs' motion for reconsideration, docket no. 129, is DENIED for the following reasons.

(a) In support of their contention that removal proceedings are pending as to A.E.G.E., plaintiffs have submitted a document indicating that the three-year old was directed to appear for a hearing on September 17, 2014. Ex. B to Inlender Decl. (docket nos. 130-1 & 131). Plaintiffs have offered no explanation for why this evidence could not have been brought to the Court's attention earlier with reasonable diligence, *see* Local Civil Rule 7(h)(1), and this information appears to contradict the later allegations of the Second Amended Complaint, which states that A.E.G.E. "is awaiting an immigration court date." 2d Am. Compl. ¶ 101 (docket no. 95). A.E.G.E.'s claims were dismissed without prejudice, and if A.E.G.E.'s circumstances change, plaintiffs may file a motion for leave to amend.

(b) G.J.C.P.'s claims were likewise dismissed without prejudice, and in the event that G.J.C.P.'s removal proceedings are reopened, plaintiffs may file a motion for leave to amend. Because G.J.C.P. has missed the 180-day window for presenting to an immigration judge a motion to reopen on the basis of "exceptional circumstances," *see* 8 U.S.C. § 1229a(b)(5)(C)(i), any motion to reopen must be premised on either a lack of notice or confinement in federal or state custody, *see id.* at § 1229a(b)(5)(C)(ii). Thus, contrary to the argument plaintiffs make in their motion for reconsideration, any denial of counsel at government expense could not be used as a ground for reopening G.J.C.P.'s removal proceedings.

(c) Plaintiffs' assertion that the striking of their request for classwide injunctive relief conflicts with *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2009), lacks merit. *Rodriguez* interprets the following statutory language:

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to *enjoin or restrain the operation of the provisions of part IV* of this subchapter [*i.e.*, 8 U.S.C. §§ 1221-1232], as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

8 U.S.C. § 1252(f)(1)(emphasis added). *Rodriguez* drew a distinction, for purposes of § 1252(f)(1), between "the operation of the

immigration detention statutes" and conduct "not authorized by the statutes." 591 F.3d at 1120. Plaintiffs' statutory claim has been dismissed, and no motion has been made to reconsider such dismissal. In connection with their constitutional claim, plaintiffs do not allege that defendants are improperly interpreting, misapplying, or violating a statute. *Cf.* *R.I.L–R v. Johnson*, ___ F. Supp. 3d ____, 2015 WL 737117 at *12 (D.D.C. Feb. 20, 2015) ("Section 1252(f)(1) 'prohibits only injunction of 'the operation of' the detention statutes, not injunction of a *violation* of the statutes.' " (emphasis in original)); *Reid v. Donelan*, 22 F. Supp. 3d 84, 90 (D. Mass. 2014) ("an injunction 'will not prevent the law from operating in any way, but instead would simply force Defendants to *comply* with the statute" (emphasis in original)). Rather, plaintiffs' constitutional claim challenges the validity of, and plaintiffs' prayer for classwide injunctive relief seeks to "enjoin or restrain the operation of," 8 U.S.C. § 1229a(b)(4)(A),1 which is a provision of part IV of subchapter II of the Immigration and Nationality Act.

***2** (3) Defendants' motion to hold all deadlines in abeyance, docket no. 133, is DENIED in part and DEFERRED in part as follows.

(a) Defendants' motion is DENIED as to the pending motion for class certification. Plaintiffs' motion for class certification, docket no. 117, is RENOTED to May 22, 2015, and any response and any reply shall be due in accordance with Local Civil Rule 7(d)(3).

(b) Defendants' motion is also DENIED as to the deadlines for Rule 26(f) conference, initial disclosures, and combined Joint Status Report and Discovery Plan set forth in the Minute Order entered April 22, 2015, docket no. 127.

(c) Defendants' motion to hold all deadlines in abeyance is otherwise DEFERRED, and remains noted for May 22, 2015. Any response and any reply shall be due in accordance with Local Civil Rule 7(d)(3). The Court will consider whether to stay this case after it rules on defendants' motion, docket no. 132, to certify the Order entered April 13, 2015, docket no. 114, for interlocutory appeal under 28 U.S.C. § 1292(b).

(4) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 5th day of May, 2015.

All Citations

Slip Copy, 2015 WL 12030113

Footnotes

1 8 U.S.C. § 1229a(b)(4)(A) indicates that, in removal proceedings, "the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings." *See also* 8 U.S.C. § 1362.