

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JONATHAN ALEXANDER-MARTINEZ :
ROCHA, :

Plaintiff, :

V. : Case No. 3:07-CV-1115 (RNC)

ERIC H. HOLDER, JR.,¹ et al., :

Defendants. :

RULING AND ORDER

The minor plaintiff, a citizen of the United States, seeks declaratory and injunctive relief preventing the removal of his father to Guatemala until the plaintiff reaches the age of majority. The defendants have moved to dismiss the amended complaint contending that the Court lacks jurisdiction, the amended complaint fails to state a claim on which relief can be granted and the matter is not ripe. I agree that the plaintiff has failed to state a claim for relief and therefore grant the motion to dismiss.

Before this action was commenced, Immigration Judge Michael W. Straus found that the minor plaintiff's father was ineligible for cancellation of removal under section 240A(b) (1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b) (1), because he had not been physically present in the United States for a continuous period of at least 10 years and had failed to

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Eric H. Holder, Jr. is substituted for Alberto Gonzales.

establish that his removal "would result in exceptional and extremely unusual hardship" for his child. Since this action was commenced, Judge Straus's decision has been affirmed by the Board of Immigration Appeals and the Second Circuit Court of Appeals has denied a petition for review. See Martinez-Velasquez v. Holder, No. 08-3520, 2009 WL 454010 (2d Cir. Feb. 24, 2009) (summary order).

In the amended complaint in this case, the minor plaintiff claims that his father's removal proceeding violated his right to procedural due process because he was not given an opportunity to participate, the Immigration Judge lacked jurisdiction because only a federal district court can adjudicate matters affecting his interests, and his right to equal protection will be violated if the removal order is executed because it will result in his own constructive removal. These claims are similar to the claims the plaintiff's father presented to the Court of Appeals in his petition for review. There, the plaintiff's father claimed that Immigration Judge Straus lacked jurisdiction to issue an order of removal due to the effect it would have on his son. He also claimed that execution of a removal order would violate his son's due process rights by depriving him of constitutionally protected interests without giving him an opportunity to be heard. The Court of Appeals rejected these claims as "wholly without merit." Martinez-Velasquez, 2009 WL 454010, at *2.

The amended complaint fails to state a claim for relief for substantially the reasons stated by the Court of Appeals in denying the petition for review.² The due process claim is unavailing because there is no allegation that the minor plaintiff's father was prevented from offering evidence or argument that would have been presented by the minor plaintiff if he had been given an opportunity to be heard. See Encisco-Cardozo v. INS, 504 F.2d 1252, 1254 (2d Cir. 1974) (denial of minor child's motion to intervene in parent's deportation proceeding did not violate due process because child pointed to no evidence or argument that parent was prevented from presenting). The claim that the Immigration Judge lacked jurisdiction because of the impact removal of the plaintiff's father would have on the plaintiff is unavailing because, as the Court of Appeals stated, even assuming the plaintiff's father will be taking the plaintiff with him to Guatemala, "[t]his state of affairs [did] not deprive the agency of jurisdiction to order [the father's] removal." See Martinez-Velasquez, 2009 WL 454010, at *2. The equal protection claim is unavailing because, as the Court of Appeals observed, all courts that have addressed the issue have uniformly held that a parent's otherwise valid

² The Court of Appeals noted that it was expressing no view regarding the merits of the minor plaintiff's claims. See id. at *2 n.3. But the Court's decision makes it clear that the claims in this action are untenable.

deportation does not violate a child's constitutional rights.
See id. (citing Payne-Barahona v. Gonzales, 474 F.3d 1, 2 & n.1
(1st Cir. 2007) (citing cases)).³

Accordingly, the amended complaint is hereby dismissed under
Rule 12(b)(6) for failure to state a claim on which relief can be
granted.

So ordered this 26th day of February 2009.

/s/ RNC
Robert N. Chatigny
United States District Judge

³ Judge Eginton recently dismissed a case presenting
allegations, claims and arguments nearly identical to the ones
advanced here. See Aquiar v. Mukasey, 547 F. Supp. 2d 182 (D.
Conn. 2008), adhered to on reconsideration, 2008 WL 2648990 (D.
Conn. July 7, 2008).