

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-61561-CIV-COHN

FRANCESCO FRANCO ZAMBUTO,
DOMENICO F. ZAMBUTO and
ANGELINA ZAMBUTO,

Plaintiffs,

vs.

THE COUNTY OF BROWARD, BROWARD
COUNTY SHERIFF'S OFFICE, et al,Defendants.

OMNIBUS ORDER AND ORDER REGARDING SERVICE

_____ THIS CAUSE is before the Court upon Plaintiff's Motion for Clarification of the Court's Prior Order [DE 14], Plaintiff's Motion to Strike [DE 15], Plaintiff's Motion for Leave to Request Defendants for Discovery Materials [DE 16], Plaintiff's Motion for Service of Process on State Defendants [DE 17], Plaintiff's "Notice and Requests" for extension of time due to surgery [DE 19], Plaintiff's motion for Leave to File Belated Response to Court Order at DE 11 [DE 21], Plaintiff's Request for Clerk to Supplement Record [DE 23] and Plaintiff's Motion to Instruct U.S. Marshal to Serve Copy of Complaint on Defendants and Motion to Compel Discovery [DE 25]. The Court has carefully considered all of the Plaintiff's filings and is otherwise fully advised in the premises.

Plaintiff Francesco F. Zambuto ("Plaintiff"), a current resident of Italy, filed this action on September 30, 2008, seeking various forms of relief, including a review of his citizenship status, a challenge to his 2001 removal from the United States, and various

civil rights claims based upon his treatment while incarcerated on state charges within Florida. Although Plaintiff is not presently incarcerated, because he seeks *in forma pauperis* status, the Court reviewed his 149 page complaint pursuant to 28 U.S.C. § 1915(e)(B), and dismissed all but the federal agency defendants [DE 11].

Plaintiff has moved for the Court to clarify which Defendants remain in this case. The Court takes this opportunity to clarify that the only remaining Defendants are the United States of America, the United States Department of State, and the United States Department of Homeland Security (as the agency overseeing the Bureau of Immigration and Custom Enforcement (“ICE”), formerly known as the Immigration and Naturalization Service within the Department of Justice), for claims arising out of Plaintiff’s recent application for citizenship made during his visa application regarding the possibility that the Child Citizenship Act of 2000 could apply to his case.

Plaintiff has also moved for extensions of time to “respond” to the Court’s order dismissing the state and individual federal defendants. The Court interprets this request as one for leave to file a belated motion for reconsideration. Plaintiff may file such a motion by March 24, 2009 (60 days from the date of his request at DE 21).

Turning next to the service of process issues, the Court regrets the delay in the Court’s preparation of summonses for the federal defendants. The Court notes that neither the Marshal’s Service nor the Clerk of Court staff bear responsibility for the delay. As the Court noted in its prior order (DE 11], the Court is departing from normal procedure in preparing the summonses and copies of the 149 page complaint itself, in deference to Plaintiff’s disabled status and location in Italy. It should be noted that the Defendants’ addresses needed to prepare the summonses has always been publicly

available on the Internet, with the forms and rules available on the Court's website (www.flsd.uscourts.gov). Nonetheless, the summonses for the federal agency Defendants are being prepared today for submission to the Marshal's Service.

As for discovery matters, the Court will deny Plaintiff's motions to compel, without prejudice, as being premature at this point. His earlier request [DE 16] did not include the specific discovery Plaintiff was attempting to receive. The recent motion [DE 25-2] is also premature as service of process has not been completed.


Finally, the Court has reviewed Plaintiff's earlier lawsuit, Case No. 01-2446, concerning conditions at the Krome Detention Center, where Plaintiff was housed prior to his deportation, and notes that it was dismissed after he was deported. The Court has reviewed the legal grounds upon which dismissal was based, namely that an alien's claims for injunctive relief and for mistreatment while in INS detention are mooted after the alien's exclusion from the United States. See page 2 of DE 34, adopted by the District Judge at DE 35. Thus, Plaintiff's request to reinstate that prior lawsuit is denied.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for Clarification of the Court's Prior Order [DE 14] is hereby **GRANTED**, as explained above;
2. Plaintiff's Motion to Strike [DE 15] earlier filing [DE 12] is hereby **GRANTED**;
3. Plaintiff's Motion for Leave to Request Defendants for Discovery Materials [DE 16] is hereby **DENIED**, without prejudice;
4. Plaintiff's Motion for Service of Process on State Defendants [DE 17] is hereby **DENIED**;

5. Plaintiff's "Notice and Requests" for extension of time due to surgery [DE 19] is hereby **DENIED** as moot;
6. Plaintiff's motion for Leave to File Belated Response to Court Order at DE 11 [DE 21] is hereby **GRANTED** until March 24, 2009;
7. Plaintiff's Request for Clerk to Supplement Record [DE 23] is hereby **DENIED** as moot, as the discovery request is now included at pp. 8-13 of Plaintiff's filing at DE 25;
8. Plaintiff's Motion to Instruct U.S. Marshal to Serve Copy of Complaint on Defendants [DE 25] is hereby **GRANTED**. The summonses prepared by chambers staff and issued by the Clerk of Court shall be served upon the United States of America to the attention of the Attorney General in Washington, DC, the United States Attorney for the Southern District of Florida in Miami, Florida, with copies to the federal agencies involved, the Department of Homeland Security and the Department of State.
9. Plaintiff's Motion to Compel Discovery [DE 25] is hereby **DENIED**, without prejudice as premature.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 4th day of March, 2009.


JAMES I. COHN
United States District Judge

copies to: Francesco F. Zambuto
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Stefanie Moon, AUSA