

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.  

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**ORDER DENYING REQUEST FOR PERMISSION TO VISIT MOTHER DUE TO LACK  
OF JURISDICTION TO ORDER THE UNITED STATES OF AMERICA TO ISSUE VISA  
ORDER ON MOTIONS FOR EXTENSIONS OF TIME**

\_\_\_\_\_ THIS CAUSE is before the Court upon Plaintiff's Emergency Request for Permission to Visit His Mother [DE 29], the Government's Amended Response [DE 37-2], Plaintiff's Reply [DE 39], the Government's Motion to Enlarge Time to Answer Complaint [DE 42] and Plaintiff's Opposition thereto [DE 45]. 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 grant him a 90 day non-immigrant visa to come to the United States to visit his dying mother. The United States opposes the motion on the grounds that a district court lacks jurisdiction to review the Department of State's denial of his non-immigrant visa application, citing to DeCastro v. Fairman, 164 Fed.Appx. 930, 932 (11th Cir. 2006), 2006 WL 229022. Although an unpublished opinion, the decision is directly on point, follows several other United States Circuit Courts of Appeal on this issue, and has in turn been followed by at least one other court in this District. Castellanos v. Pfizer, Inc., 555 F.Supp.2d 1343, 1348 (S.D.Fla. 2008). To the extent Plaintiff is alleging constitutional claims, the DeCastro opinion also held that generalized due process claims fall within the scope of the consular non-reviewability doctrine. 164 Fed.Appx. at 933.


In his forty-page reply (well over the ten page limit contained in Local Rule 7.1.C.2), Plaintiff goes on to argue the merits of his case, pleading with the Court to use its inherent authority to allow him to visit. Although Plaintiff has clearly laid out a case for humanitarian relief with his request to visit his dying mother in the United States, this Court is without jurisdiction to review the denial of his visa application.

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

1. Plaintiff's Emergency Request for Permission to Visit His Mother [DE 29] is hereby **DENIED**, without prejudice to such relief being granted by the United States of America in their discretion;
2. Plaintiff's Request for Stay [DE 30], which seeks an extension of time to file a motion for reconsideration, is hereby **GRANTED**, *nunc pro tunc*, as Plaintiff's Motion for Reconsideration [DE 40] was filed on May 13, 2009;

3. The Government's Motion to Enlarge Time to Answer Complaint [DE 42] is hereby **GRANTED**, despite the Plaintiff's opposition. The response shall be due by June 30, 2009.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 2nd day of June, 2009.

  
JAMES I. COHN  
United States District Judge

copies to: Francesco F. Zambuto  
via email to [frank.pesco@yahoo.it](mailto:frank.pesco@yahoo.it)

Stefanie Moon, AUSA