IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANDRE JUSTE, *et al*.,	)	
	)	
	)	
Plaintiffs,	)	Civil Action No. 17-327
	)	
v.	)	Judge Cathy Bissoon
	)	
JOHN F. KERRY, *et al*.,	)	
	)	
Defendants.	)	

ORDER OF DISMISSAL

For the reasons that follow, this case will be dismissed, with prejudice, *sua sponte*, pursuant to the provisions of 28 U.S.C. § 1915, for lack of subject matter jurisdiction.

Having been granted leave to proceed *in forma pauperis* ("IFP"), Plaintiff Andre Juste ("Plaintiff" or "Mr. Juste") is subject to the screening provisions in 28 U.S.C. § 1915(e). See Atamian v. Burns, 2007 WL 1512020, *1-2 (3d Cir. 2007) ("the screening procedures set forth in [Section] 1915(e) apply to [IFP] complaints filed by prisoners and non-prisoners alike") (citations omitted). Among other things, that statute requires the Court to dismiss any action in which subject matter jurisdiction is lacking and/or the plaintiff has failed to state a claim upon which relief may be granted. See Muchler v. Greenwald, 624 Fed. Appx. 794, 796-97 (3d Cir. Aug. 18, 2015).

As best the Court can tell, Mr. Juste wants this Court to declare him a United States citizen. The crux of Plaintiff's Complaint is that, in 1996, when Mr. Juste was under 18 years old, Franz Melon became his legal guardian. Plaintiff claims that one year later, in 1997, Mr. Melon was naturalized. Accordingly, Plaintiff claims that he gained derivative citizenship under both the Child Protection Status Act (CSPA) and the Child Citizenship Act of 2000 (CCA).

(Doc. 5 at 7). Through his Complaint, Plaintiff seeks a "Writ of Mandamus directing the defendants to issue . . . a declaration of United States Citizenship" pursuant to 28 U.S.C. § 1651 and 28 U.S.C. §§ 2201-2202. (Id. at 2). The Court finds that it lacks subject matter jurisdiction over this action, and thus will dismiss the Complaint with prejudice.

There are two avenues by which an alien may seek judicial review of a derivative citizenship claim. First, "[w]here an individual is subject to removal proceedings, and a claim of derivative citizenship had been denied [in the removal proceedings], that individual may seek judicial review of the claim only before the appropriate court of appeals, not a district court." Henriquez v. Ashcroft, 269 F. Supp. 2d 106, 108 (E.D.N.Y. 2003) (citing 8 U.S.C. § 1252(b)(5)). Second, an alien may file an Application for Certificate of Citizenship ("Form N-600") with the United States Customs and Immigration Services. 8 C.F.R. § 341.1. If the application is denied, the applicant may appeal the decision to the Administrative Appeals Unit ("AAU"). 8 C.F.R. § 322.5(b). In certain circumstances, an applicant whose appeal is denied by the AAU is entitled to bring an action in federal district court seeking a declaratory judgment of citizenship. See 8 U.S.C. § 1503(a) (permitting "persons within the United States" to seek declaratory judgment of citizenship in federal district court unless "such person's status as a national of the United States (1) arose by reason of, or in connection with, any removal proceeding . . . or (2) is in issue in any such removal proceeding."). "Under either scenario—raising the citizenship claim in removal proceedings or filing an N-600 application with the [Customs and Immigration Services] for a declaration of citizenship—[§1252(d)(1) of] the INA requires that all available administrative remedies be exhausted before seeking judicial review." Ewers v. Immigration & Naturalization Serv., Civ. A. No. 03-104, 2003 WL 2002763, at *2 (D. Conn. Feb. 28, 2003). The exhaustion

requirement of § 1252(d)(1) is jurisdictional. Duvall v. Elwood, 336 F.3d 228, 234 (3d Cir. 2003).

In this case, it appears that Plaintiff is attempting to bring a claim for declaratory judgment pursuant to 8 U.S.C. § 1503(a). The Court finds that it lacks jurisdiction over this action for two reasons. First, Plaintiff has not shown that he has exhausted the proper administrative remedies before filing this declaratory judgment action. Second, the Court's authority to review these types of actions is proscribed by 8 U.S.C. § 1503(a), which provides that no action may lie:

> if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any removal proceeding under the provisions of this chapter or any other act, or (2) is in issue in any such removal proceeding.

Id. Here, the Court finds that Plaintiff's derivative citizenship claim arose in response to pending removal proceedings.

Plaintiff's immigration status is discussed in detail in a Magistrate Judge's Report and Recommendation filed in a pending action in the Western District of New York:

> Plaintiff is a native and citizen of Haiti, who unlawfully entered the United States. Payan Declaration [9-1], ¶5. While in the United States, Plaintiff was convicted of a number of criminal offenses from March 2000 through January 2010. Id., ¶¶6(a)-(l). On September 22, 2015, Plaintiff was encountered at the Peace Bridge Port of Entry in Buffalo, New York, and was placed into the custody of the United States Department of Homeland Security ("DHS"). Id., ¶10. Shortly thereafter, Plaintiff was served with a Notice of Intent to Issue a Final Administrative Removal Order under the Immigration and Nationality Act, 8 U.S.C. §1101 et seq., which alleged that he was deportable as an alien who had been convicted of an aggravated felony. Id., ¶11. He admitted the allegations in the Notice of Intent, acknowledged that he was deportable, and requested to be removed to either Canada or the Netherlands. Id., ¶12. Consequently, a Final Administrative Removal Order was issued. Id., ¶13.
>
> However, Plaintiff appealed that order on October 16, 2015, and requested a stay of removal. Id., ¶15. While the appeal was pending, DHS cancelled the Final Administrative Removal Order and placed Plaintiff in immigration removal proceedings pursuant to 8 U.S.C. §1182(a)(6)(A)(i), for being an alien present in the United States without being admitted or paroled, and pursuant to 8 U.S.C. §1182(a)(2)(A)(i)(II), for being an alien convicted of a controlled substance

offense. Id., ¶16; [9-2], p. 16. This was followed by additional charges alleging that he was deportable pursuant to 8 U.S.C. §1182(a)(2)(A)(i)(I), for being an alien convicted of a crime involving moral turpitude. Payan Declaration [9-1], ¶17; [9-2], p. 12.

On January 26, 2016, Immigration Judge John Reid denied Plaintiff's first request for a change in his custody status, concluding that he was subject to mandatory custody pursuant to 8 U.S.C. §1226(c). Payan Declaration [9-1], ¶18; [9-2], p. 11. That decision was appealed by Plaintiff to the Board of Immigration Appeals ("BIA"). Payan Declaration [9-1], ¶18.

On March 28, 2016, Judge Reid denied Plaintiff's applications for relief from removal, and ordered him removed to the Netherlands or Haiti. Payan Declaration [9-1], ¶20; [9-2], p. 9. On that date, after conducting a custody redetermination hearing, Judge Reid also denied Plaintiff's second request for a change in his custody status. [9-2], p. 8. Plaintiff appealed both determinations. Payan Declaration [9-1], ¶¶20, 21. While these appeals were pending, Plaintiff was transferred from the Buffalo Federal Detention Facility in Batavia, New York, to the Columbia Regional Care Center in Columbia, South Carolina. Id., ¶22.

. . .

In June 2016 the BIA dismissed Plaintiff's appeal from Judge Reid's January 26, 2016 decision ([9-2], pp. 6-7) and denied Plaintiff's appeal from his March 28, 2016 decision, concluding that there was no clear error in his determination that Plaintiff presents a danger to the community "[g]iven [his] extensive criminal history, which includes a 2013 conviction for possession of cocaine with a sentence of 12 months and 2007 conviction for simple possession of crack cocaine". Id., pp. 3-4. On July 21, 2016, the BIA also remanded the decision denying his application for relief from removal for consideration of Plaintiff's competency. [17], pp. 5-6 of 8.

Andre Juste v. Loretta Lynch, *et al*., Civil Action No. 16-433 (W.D. N.Y.) (Doc. 48).

Even more recently, in a pending action in the Southern District of Florida, the government updated the court as follows:

1. On November 18, 2016, Plaintiff Andre Juste ("Plaintiff" or "Juste") was transferred to Batavia Detention Center in Buffalo, New York.

2. On November 30, 2016, the Immigration Judge ("IJ") denied Juste's request for a change in custody status. The IJ determined that there have been no

change in Juste's circumstances since the March 28, 2016 Lora bond hearing. (Ex. A)

3. On December 2, 2016, Juste appealed the IJ's decision to the Board of Immigration Appeals ("BIA"). (Ex. B)

. . .

5. On January 11, 2017, Ysabel Hernandez, Esq. appeared in immigration court, as pro bono counsel on behalf of Juste, during which she requested an adjournment of the immigration court proceedings; the immigration court granted a 30-day enlargement of time for counsel to prepare, and set the matter for February 23, 2017.

6. On January 19, 2017, the IJ issued a Bond Memorandum, setting forth the basis for his bond decision, stating, among other things that "[s]ince this Court's Lora Bond decision of March 28, 2016, there have been no changed circumstances as far as this Court is concerned . . . [and] therefore . . . Respondent was not entitled to another Lora Bond hearing. " (Ex. D).

7. On January 26, 2017, the Board of Immigration Appeals issued a briefing schedule for the bond appeal. (Ex. E)

8. On February 3, 2017, Juste filed a pro se Motion to Expedite the Bond Appeal. (Ex. F)

. . .

10. On February 23, 2017, Juste's attorney appeared by phone. She requested that the case be transferred to another jurisdiction, which Mr. Juste opposed. Mr. Juste asked the court to discharge his attorney. The immigration court adjourned the case until March 8, 2017, to allow for Mr. Juste's attorney to confer with DHS regarding the case, and to allow Mr. Juste to decide if he wanted to retain Ms. Hernandez as counsel of record.

11. On March 8, 2017, the immigration court determined Juste, despite his mental health diagnoses, to be competent. The immigration judge certified his decision to the BIA, and requested that the Board issue a decision on the merits of Juste's case in removal proceedings. (Ex. H).

Juste v. ICE, *et al*., Civil Action No. 1-16-cv-23357 (S.D. Fla.) (Doc. 30).

Based on these filings (which are a matter of public record)[1], the Court finds that Plaintiff's derivative citizenship claim clearly arose in the context of pending removal proceedings, and thus the Court lacks jurisdiction over his request for a declaration of

[1] Documents contained in the record in other court proceedings have been construed as matters of public record. See In re Intelligroup Sec. Litig., 527 F.Supp.2d 262, 273 (D.N.J. 2007).

citizenship. See 8 U.S.C. § 1503(a); Phuc Huu Nguyen v. U.S. Citizenship & Immigration Servs., 09–CV–2211, 2010 WL 352191, at *5 (M.D. Pa. Aug. 31, 2010) ("Petitioner is seeking a declaration of citizenship to avoid being removed. The issue of Petitioner's status as a citizen thus traces back to the removal proceedings against him. It 'arose by reason of ... [the] removal proceeding.' Hence, we lack jurisdiction."). To the extent that Plaintiff attempts to seek review of a final order of removal, such a claim is governed by 8 U.S.C. § 1252(b), and should be brought before a court of appeals, not a district court.

For the reasons stated above, this case is **DISMISSED** with prejudice under 28 U.S.C. § 1915(e)(2)(B).

IT IS SO ORDERED.

April 5, 2017

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via First-Class U.S. Mail):

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