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ENTERED
JAN 16 2003
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA OFFICE
BY *MG* DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
JAN 15 2003
CENTRAL DISTRICT OF CALIFORNIA
BY *MG* DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

AMERICAN-ARAB ANTI-)
DISCRIMINATION COMMITTEE; et)
al.,)
)
Plaintiffs,)
)
)
v.)
)
JOHN ASHCROFT; et al.,)
)
Defendants.)
)
)

SA CV 02-1200 AHS (ANx)

MEMORANDUM OPINION ON
ORDER DENYING PLAINTIFFS'
APPLICATION FOR TEMPORARY
RESTRAINING ORDER

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JAN 16 2003
MG

I.

RULING

On January 9, 2003, the Court denied plaintiffs'
Amended Application for Temporary Restraining Order which sought
to enjoin the Immigration and Naturalization Service ("INS")
(1) from removing any individual who has registered or will
register under the Special Registration Procedure for Certain
Non-immigrants (SRPCN), who entered the United States under the
Visa Waiver Program, but who has a pending application for lawful

1 immigration status, and (2) from arresting without a warrant any
2 individual who has registered or will register under the SRPCN
3 but as to whom there has been no showing of an individualized
4 determination that the registrant is likely to flee or abscond.

5 At no time have plaintiffs challenged the lawfulness or
6 constitutionality of the SRPCN itself. In fact, plaintiffs have
7 expressed agreement that an effective registration program is in
8 their best interests as well as those of the INS. (Rep. Tr. at
9 13-14; Am. Application for T.R.O. and Order to Show Cause re
10 Prelim. Inj. at 1). It became evident that the special
11 registration procedures merely offer the opportunity for the
12 removals and arrests to occur since the out-of-compliance aliens
13 appear in the INS offices and are then found to be subject to
14 removal or detention.

15 The Court found that plaintiffs did not carry their
16 burden to justify the relief sought. First, there is a serious
17 question about the district court's jurisdiction. See 8 U.S.C.
18 § 1252(g). Even so, plaintiffs failed to establish entitlement
19 to an injunction that overrides the INS's broad, discretionary
20 authority to review and remove out-of-status aliens who entered
21 the United States under the Visa Waiver Program. Second, and
22 assuming jurisdiction is vested in the district court, plaintiffs
23 made no showing that the Los Angeles INS agents failed to make
24 individual determinations of flight risk in violation of the
25 legal standards for warrantless arrest of aliens who have
26 violated immigration law or are otherwise illegally present in
27 the United States. As such, plaintiffs' evidence and legal
28 arguments did not justify the requested remedies.

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II.

PROCEDURAL BACKGROUND

On December 24, 2002, plaintiffs filed an Application for Temporary Restraining Order and Order to Show Cause in re Preliminary Injunction. Defendants filed opposition on December 26, 2002. On December 30, 2002, plaintiffs provided a status report requesting a stay of decision pending further notice.¹ On December 31, 2002, defendants filed a status report concerning the impending removal of DOE 1.

On January 6, 2003, plaintiffs filed an Amended Application for Temporary Restraining Order and Order to Show Cause in re Preliminary Injunction. Defendants filed opposition on January 8, 2003. The motion came on for hearing on January 9, 2003, after which the Court issued an oral ruling denying relief to plaintiffs. The Court made it clear that the hearing on the Temporary Restraining Order application was concerned solely with the individual plaintiffs² and not whether all plaintiffs had standing or whether plaintiffs could maintain a class action. Upon issuance of the ruling from the bench, the parties waived further findings of fact and conclusions of law. (Rep. Tr. at 64). This

¹ This document does not appear on the docket but was forwarded to chambers with other filings generated by plaintiffs. It suggests that ongoing discussions between the parties might resolve the conflicts.

² The parties dispute whether plaintiffs' attorneys have made disclosure about the true identities of the DOE plaintiffs whose individual predicaments are described in detail in the papers filed with the Court. (Rep. Tr. at 41; Defs.' Opp. to Am. Application for T.R.O. and Order to Show Cause re Prelim. Inj. at 2). The Court file has names disclosed on the Certification and Notice of Interested Parties filed December 24, 2002, but service of this document is not substantiated by the file.

1 memorandum opinion provides a brief reiteration of the issues
2 raised and arguments made.

3 III.

4 DISCUSSION

5 Plaintiffs' amended application requests: (1) an
6 injunction against the removal or detention of DOE 1 and any
7 individual who has registered or will register under the SRPCN,
8 67 Fed.Reg. 52584 (August 12, 2002), and who entered the U. S.
9 under the Visa Waiver Program, 8 U.S.C. § 1187, but who has a
10 pending application for lawful immigration status; and (2) an
11 injunction against the arrest without warrant of any individual who
12 has registered or will register under the SRPCN where there has
13 been no showing of an individualized determination that the
14 registrant is likely to flee or abscond. (Am. Application for
15 T.R.O. and Order to Show Cause re Prelim. Inj. at 1; Proposed
16 T.R.O. and Order to Show Cause re Prelim. Inj.).

17 As is the case with all applicants before the Court, and
18 as plaintiffs acknowledge, the individual plaintiffs are out of
19 compliance with immigration law. They seek to enjoin the Attorney
20 General's exercise of discretion in removing or arresting without
21 warrant these individuals. To obtain injunctive relief, a
22 plaintiff must show either: "(1) a likelihood of success on the
23 merits and the possibility of irreparable injury, or (2) the
24 existence of a serious question going to the merits and the balance
25 of hardships tipping in [plaintiff's] favor." S.O.C. Inc. v.
26 County of Clark, 152 F.3d 1136, 1142 (9th Cir. 1998).

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1 **A. Visa Waiver Program Entrants with Pending**
2 **Applications for Lawful Status**

3 Title 8 U.S.C. Section 1187, the Visa Waiver Program,
4 allows certain non-immigrants from designated countries to enter
5 the United States for a short period of time without a visa.
6 Entrants under the Visa Waiver Program waive the right to
7 immigration proceedings related to their removal. 8 C.F.R.
8 § 217.4(b)(1). Plaintiffs do not demonstrate that entrants under
9 the Visa Waiver Program are entitled to an injunction preventing
10 their removal pending adjustment of their status.

11 There is no question that the plaintiffs who have entered
12 the United States under 8 U.S.C. § 1187 are out of status. The
13 individuals have overstayed, in most cases, several years beyond
14 the period allowed by the Visa Waiver Program. Based on the
15 language of § 1187, they would appear to be immediately removable.

16 Plaintiffs have made a clear showing that Visa Waiver
17 entrants are entitled to apply for adjustment of status or to
18 initiate proceedings to adjust status. Defendant does not dispute
19 that the plaintiffs do have applications on file. But, the
20 existence of a pending application for lawful status does not
21 confer a right to stay or to defer removal. The adjustment of the
22 status of an alien with a pending application who has fulfilled
23 certain requirements lies in the discretion of the Attorney
24 General. 8 U.S.C. § 1255(a). The pendency of an alien's petition
25 alone does not warrant a stay of removal. Tongatapu Woodcraft
26 Hawaii, Ltd. v. Feldman, 736 F.2d 1305, 1308 (9th Cir. 1984).

27 Moreover, plaintiffs do not demonstrate irreparable
28 injury. While the deportation or removal of an individual is a

1 serious consequence, it appears to be the very consequence the law
2 contemplates. A legal consequence under the law has not been shown
3 to constitute an irreparable injury.

4 **B. Warrantless Arrest of SPRCN Registrants**

5 Title 8 U.S.C. Section 1226 authorizes the arrest of
6 certain aliens, stating, "On warrant issued by the Attorney
7 General, an alien may be arrested and detained pending a decision
8 on whether the alien is to be removed from the United States."

9 Title 8 U.S.C. Section 1357 authorizes the arrest without warrant
10 in limited circumstances.

11 Any officer or employee of the Service
12 authorized under regulations prescribed by the
13 Attorney General shall have power without
14 warrant -
15 to arrest any alien who in his presence or view
16 is entering or attempting to enter the United
17 States in violation of any law or regulation
18 made in pursuance of law regulating the
19 admission, exclusion, expulsion, or removal of
20 aliens, or to arrest any alien in the United
21 States, if he has reason to believe that the
22 alien so arrested is in the United States in
23 violation of any such law or regulation and is
24 likely to escape before a warrant can be
25 obtained for his arrest, but the alien arrested
26 shall be taken without unnecessary delay for
27 examination before an officer of the Service
28 having authority to examine aliens as to their

1 right to enter or remain in the United States.
2 8 U.S.C. § 1357(a)(2). Title 8 C.F.R. Section 287.3 establishes a
3 procedure for reviewing the determination of the warrantless arrest
4 and continuation of custody.

5 Plaintiffs do not contest the first prong of the
6 § 1357(a) analysis. As stated, each individual plaintiff was
7 illegally present in the United States and therefore subject to
8 arrest. However, plaintiffs do contend that the mass of arrests
9 that were made necessarily means that no individual determinations
10 were made about the detained immigrants' likelihood of escape.
11 Plaintiffs show, and defendant does not deny, that there were, in
12 fact, numerous arrests made during the registration process. (Am.
13 Application for T.R.O. and Order to Show Cause re Prelim. Inj. at
14 22). The fact of numerous arrests does not negate the existence of
15 individualized determinations of risk of flight or absconding in
16 any given case. Plaintiffs could not make any showing that the Los
17 Angeles Regional INS office and its agents did not comply with the
18 second prong of the requirements for arrest without warrant.
19 Plaintiffs offered no facts that prove that INS agents failed to
20 make individual judgments as to risk of flight or absconding. The
21 inference is to the contrary, for it is not disputed that numerous
22 SRPCN registrants appeared before the INS, registered, and left
23 without arrest or detention.

24 Plaintiffs made no contention that the INS failed to
25 follow proper post-arrest procedures for arrests without warrant
26 once persons were, in fact, taken into custody.

27 In sum, plaintiffs failed to demonstrate that the Los
28 Angeles Regional INS office's arrest procedures during the SRPCN

1 did not comply with the law. As discussed during the hearing, the
2 requested injunction would merely remind the INS of the applicable
3 standards already embodied in the law. (Rep. Tr. at 24-28). There
4 is no showing that the administrative process for review of
5 warrantless arrests is inoperative or that bail or bond has not
6 been allowed in proper cases.

7 IV.

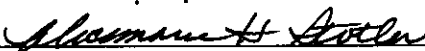
8 CONCLUSION

9 Plaintiffs have not shown a likelihood of success on the
10 merits and the possibility of irreparable injury or the existence
11 of a serious question going to the merits and the balance of
12 hardships tipping in plaintiffs' favor as to either the removal of
13 individual Visa Waiver entrants with pending applications for legal
14 status or the potential arrest without warrant of individuals
15 registering under the SRPCN. Accordingly, plaintiffs' application
16 for a temporary restraining order, and the concomitant request for
17 an order to show cause for a preliminary injunction, are denied.

18 IT IS SO ORDERED.

19 IT IS FURTHER ORDERED that the Clerk shall serve a copy
20 of this Order on counsel for all parties in this action.

21 DATED: January 15, 2003.

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23 ALICEMARIE H. STOTLER
24 UNITED STATES DISTRICT JUDGE
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