

Imasuen v. Moyer

United States District Court for the Northern District of Illinois, Eastern Division

February 7, 1992, Decided ; February 7, 1992, Docketed

No. 91 C 5425

Reporter: 1992 U.S. Dist. LEXIS 1449; 1992 WL 26705

GODWIN O. IMASUEN, ADALBERTO ALVARADO-AGUILAR, MICHAEL CHIKA OBI, JOSE JUAN GUERRA and KEMAL AZEEZ, ON THEIR OWN BEHALF AND ON BEHALF OF OTHERS SIMILARLY SITUATED, Plaintiffs, v. A.D. MOYER, CHICAGO DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, IN HIS OFFICIAL CAPACITY; THE VILLAGE OF LAGRANGE, ILLINOIS; GARY KONZAK, THE CHIEF OF POLICE LAGRANGE, ILLINOIS IN HIS OFFICIAL CAPACITY, Defendants.

Judges: [*1] HOLDERMAN

Opinion by: JAMES F. HOLDERMAN

Opinion

MEMORANDUM OPINION AND ORDER

JAMES F. HOLDERMAN, District Judge:

Plaintiffs Godwin Imasuen, Adalberto Alvarado-Aguilar, Michael Obi, Jose Guerra and Kemal Azeez have moved the court to certify a class under to *Fed. R. Civ. P. 23*. The proposed class consists of:

All persons under the jurisdiction of the Chicago District Office of the Immigration and Naturalization Service ("INS") who, on or after August 27, 1991, are or will be:

1. awaiting deportation or exclusion hearings before the immigration court, awaiting administrative voluntary departure granted by the INS, or awaiting departure under a final order of deportation; and
2. detained in facilities operated by INS or in facilities operated by counties or municipalities in Illinois which have agreed with INS to confine persons under INS jurisdiction.

Defendant A.D. Moyer, Chicago District Director, Immigration and Naturalization Service ("INS"), has opposed certification of the class. For the reasons stated in this memorandum opinion and order, the plaintiffs' motion to certify a class is granted.

FACTUAL BACKGROUND

Plaintiffs' complaint alleges that the INS maintains a detention [*2] system in the Chicago area under which alien detainees, members of the alleged proposed class, are rotated among several detention facilities operated by the county and municipal defendants. (Complaint, para. 1(b).) Plaintiffs claim that the system violates their constitutional rights by subjecting the members of the proposed class to inhumane conditions of confinement and by denying them access to legal materials and attorneys. *Id.* Plaintiffs want to pursue their claims as a class action on behalf of all INS detainees who are subject to the rotation system.

DISCUSSION

Fed. R. Civ. P. 23(a) imposes several prerequisites for the certification of a class. First, a proposed class must be so numerous that joinder of all members is impracticable. Second, there must be questions of law or fact common to the class. Third, the claims or defenses of the representative parties must be typical of the claims or defenses of the class. Fourth, the representative parties of the class must fairly and adequately protect the interests of the class.

Defendant Moyer argues that the proposed class fails to satisfy the requirements of commonality, typicality and adequacy of representation. [*3] Defendant bases his position on the contention that "plaintiffs have not established that all alien detainees . . . in fact object to the so-called rotation system allegedly employed by the INS or . . . wish to put an end to it." (Defendant's Memorandum in Opposition to Class Certification, p. 6.) Defendant Moyer asserts that some class members may be antagonistic to the claims of the named plaintiffs because abolition of the challenged rotation system may result in a system which those class members view as more inconvenient than the present one. *Id.*

A class action cannot proceed in face of conflicts of interest between class members over issues in contention in the lawsuit. See *Hansberry v. Lee*, 311 U.S. 32, 43-45 (1940). However, the court does not believe that the claimed dissension within the class cited by defendant warrants denial of certification.

First, the supposed disagreements between the class members described by defendant Moyer are largely speculative. While actual antagonism between class

members or a strong likelihood of antagonism would make class certification inappropriate, incantations of the potential for antagonism, such as those offered [*4] by defendant, are insufficient. See Littlewolf v. Hodel, 681 F. Supp. 929, 937 (D.D.C. 1988).

Further, the potential dispute between class members depicted by defendant Moyer relates to the effect of proposed remedies for any violation which is ultimately found, not to the primary issue of whether the conditions at the INS detention centers are actually unconstitutional. Presumably, all members of the class would favor the elimination of unconstitutional conditions, if they exist. Even if this were not the case, the fact that some class members may be satisfied with an unconstitutional system and would prefer to leave violations of their rights unremedied is not dispositive under Rule 23(a). See Waters v. Barry, 711 F. Supp. 1125, 1131-32 (D.D.C. 1989); Lanner v. Wimmer, 662 F.2d 1349, 1357 (10th Cir. 1981).

Any differences of opinion within the class concerning the effect of proposed remedies can be dealt with in the remedies aspect of the litigation, after the constitutionality of the INS detention system has been adjudicated. See Williams v. Lane, 96 FAD. 383, 386 (N.D. Ill. 1982). The possible "antagonism" is therefore [*5] no impediment to the pursuit of the substantive constitutional claims as a class action.

Defendant Moyer further objects to class certification on the grounds that the named representatives are no longer in INS custody. According to defendant Moyer, they are therefore no longer members of the class and their claims have become moot. Plaintiff Imasuen was released on bond on September 24, 1991. Plaintiff Obi was granted withholding from deportation and released on October 11, 1991. Plaintiffs Alvarado-Aguilar and Guerra have been deported.¹

In Gerstein v. Pugh, 420 U.S. 103, 110-111 n.11 (1975), the Supreme Court articulated an exception to ordinary principles of mootness in the context of class certification in cases where the claimed deprivation is "capable of repetition yet evading review." Id. The court found

certification of [*6] a class of pretrial detainees to be proper even though the named representatives were no longer subject to pretrial detention at the time of certification. Id. Citing several factors supporting certification, the Court explained:

Pretrial detention is by its nature temporary . . . It is by no means certain that any given individual named as plaintiff would be in pretrial custody long enough for a district judge to certify the class. Moreover, in this case the constant existence of a class of persons suffering the deprivation is certain. Id.

In Davis v. Ball Memorial Hospital Association, 753 F.2d 1410, 1416-17 (7th Cir. 1985), the Seventh Circuit explained that the "capable of repetition yet evading review" exception expressed in Gerstein may be applied where: 1) at least one of the named plaintiffs has a personal stake in the outcome of the controversy at the outset of the lawsuit; 2) the claim may arise again with respect to that plaintiff.

The short term INS confinement which is the focus of this case resembles the pretrial detention challenged in Gerstein. Both situations present conditions where the claims of named plaintiffs and class may [*7] regularly become moot before resolution of the issues, despite the continuing existence of a group of class members suffering the claimed deprivations.

Further, plaintiff Imasuen fulfills the requirements set forth by the Seventh Circuit in Davis. He was detained at the outset of the lawsuit and thus had a personal stake in the outcome. Additionally, revocation of his bond could cause his claim to arise again.² Because the circumstances of this case parallel those of Gerstein and satisfy the requirements for the "capable of repetition but evading review" exception, the court will apply the exception and will not deny class certification on grounds of the mootness of the named representatives' claims.

[*8] The defendant raises no other challenges to plaintiffs' motion for class certification. The numerosity of the proposed class is sufficient to justify certification.³ Plaintiffs allege that the same rotation and confinement

¹ The court notes that Kemal Azeez, an INS detainee who is still subject to the challenged rotation system, has joined the action as an additional named plaintiff.

² Even if Imasuen's claim were not capable of arising again, the proposed class is saved from mootness by the recent addition of named plaintiff Kemal Azeez, who is under the jurisdiction of the INS at this time. Mootness can be avoided through certification of a class before the expiration of all named plaintiffs' claims. See United States Parole Commission v. Geraghty, 445 U.S. 388, 398-99 (1980). Because Mr. Azeez is still a detainee, his claim has not yet expired and his presence as a named plaintiff at the time of certification renders the class non-moot.

³ According to plaintiffs' representations, which were not challenged by defendant Moyer, approximately 150 to 550 detainees come under the jurisdiction of the INS each year. (Plaintiffs' Memorandum in Support of Motion for Certification of a Class, p. 4.)

system was or is applied to all class members, including the named plaintiffs. The similarity or identity of treatment means that there are questions of law and fact common to all class members and that the named plaintiffs' claims are typical of those of the class.

In addition to the prerequisites listed in *Fed. R. Civ. P. 23(a)*, a proposed class must meet one of the conditions of *Fed. R. Civ. P. 23(b)*. In this case, the defendants have applied the same allegedly unconstitutional detention system to all class members. The situation therefore [*9] satisfies the requirement of *Fed. R. Civ. P. 23(b)(2)* that the party opposing the class have acted on grounds generally applicable to the class, making appropriate final injunctive relief with respect to the class as a whole.

CONCLUSION

For the foregoing reasons, plaintiffs' motion to certify a class is *GRANTED*. The court, pursuant to *Fed. R. Civ. P. 23* certifies a class consisting of:

All persons under the jurisdiction of the Chicago District Office of the Immigration and Naturalization Service ("INS") who, on or after August 27, 1991, are or will be:

1. awaiting deportation or exclusion hearings before the immigration court, awaiting administrative voluntary departure granted by the INS, or awaiting departure under a final order of deportation; and who are or will be
2. detained in facilities operated by INS or in facilities operated by counties or municipalities in Illinois which have agreed with INS to confine persons under INS jurisdiction.

The parties are urged to discuss settlement of the case.

ENTER:

JAMES F. HOLDERMAN

United States District Judge

DATED: February 7, 1992