

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RAUL DOMINGUEZ, <i>ET AL.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. SA-07-CA-0549-FB
	§	
STATE OF TEXAS, <i>ET AL.</i> ,	§	
	§	
Defendants.	§	

MOTION TO AMEND ORDER AND JUDGMENT

Plaintiff Jose Silva files this Motion to Amend Order and Judgment pursuant to FED. R. CIV. P. 52(b), 59(e) or, in the alternative, FED. R. CIV. P. 60 and respectfully asks the Court to amend its Order and Judgment dismissing as moot his claims against Defendants State of Texas and the Texas Higher Education Coordinating Board and to re-open the case for the purpose of adjudicating his claim for damages resulting from tuition he paid as a result of his wrongful exclusion from the Hazlewood Act, but was never reimbursed by Defendants. In support of this Motion, Plaintiff Silva states the following:

Facts

On September 30, 2008, the Court issued its Order and Judgment, denying Plaintiffs' Motion for Partial Summary Judgment and granting the various defendants' motions to dismiss on the grounds of mootness. (Dkt Nos. 102 & 103) In its Order, the Court recognized that three of the plaintiffs were previously denied the Hazlewood Exemption based on their status as legal permanent resident immigrants at the time they entered the service, and subsequently, were forced to pay their college tuition in full. *See id.* at 5 and 6. The Court later noted that Defendants had addressed the issue of damages by paying Plaintiffs Lujan and Dvizac for their

previous tuition paid. *See id.* at 8. However, the Court did not address the issue of outstanding damages sought by Plaintiff Silva against Defendants State of Texas and Texas Higher Education Coordinating Board for his tuition previously paid to San Antonio College. Plaintiff Silva now seeks an order from the Court reopening his case awarding him damages in the amount of the tuition he paid that was not refunded by Defendants.

Argument

I. Standard of Review

Under FED. R. CIV. P. 59(e), a party may file a motion to alter or amend a judgment no later than 10 days after entry of the judgment. Motions to amend or alter the judgment should be granted when there exists “a manifest error of law or fact, so as to enable the court to correct its own errors and thus avoid unnecessary appellate procedures.” *Meghani v. Shell Oil Co.*, 2000 U.S. Dis. LEXIS 17402 *2, (S.D. Tex. Aug. 24, 2000) (citing *Divane v. Krull Elec. Co., Inc.*, 194 F.3d 845, 848 (7th Cir. 1999) (internal citations omitted)); *see also Kyle v. Texas*, 2006 WL 3691204 (W.D. Tex. Oct. 31, 2006) (granting a motion to reconsider under FED. R. CIV. P. 59(e) and reversing the court’s previous denial of a motion to remand based on a manifest error of law)). A court has discretionary authority to amend its prior decision. *See Weber v. Roadway Exp., Inc.*, 199 F.3d 270, 276 (5th Cir. 2000). Fed. R. Civ. P. 60(a) further provides that “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.” Under Fed. R. Civ. P. 60(b), the Court may relieve a party from a final judgment or order if a mistake was made or any other reason that justifies relief.¹

¹ To the extent that the Court’s Order Concerning Pending Motions was intended to incorporate or substitute as findings of fact and conclusions of law, Plaintiff asks the Court to amend its findings and conclusions to correct

II. The Court's Order and Judgment did not Address State Defendants' Failure to pay Plaintiff Silva Damages

Plaintiff Silva's causes of action included a claim based on national origin discrimination under Title VI and a request for actual and compensatory damages against the defendant entities, including the State of Texas and the Texas Higher Education Coordinating Board. *See* Second Am. Compl. at 18 (Dkt. No. 54). Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally-assisted programs and permits a claim for compensatory damages. *See* 42 U.S.C. § 2000d; *see also Alexander v. Sandoval*, 532 U.S. 275, 279 (2001) (holding that private individuals may sue under Title VI to obtain both injunctive relief and damages).

Article III of the U.S. Constitution prohibits courts from ruling on nonjusticiable controversies, including cases in which the controversy has become moot. *See Flast v. Cohen*, 392 U.S. 83, 95 (1968). However, a case involving a claim for damages that has yet to be determined is not moot. *See Gulf Pub. Co. v. Lee*, 679 F.2d 44, 46 n.2 (5th Cir. 1982) ("Claims for money damages ordinarily preclude a finding of mootness unless the parties have settled the case."); *see also* 13A Wright, Miller & Cooper, Federal Practice and Procedure § 3533.3 at 262 (2d ed. 1984) ("Damages should be denied on the merits, not on grounds of mootness."). Even in cases where one of the several issues presented becomes moot, the remaining live issues fulfill the constitutional requirement of a case or controversy. *Powell v. McCormack*, 395 U.S. 486, 497 (1969).

manifest errors of law and fact consistent with the arguments in this motion. Under FED. R. CIV. P. 52(b), a motion to amend findings of fact and conclusions of law must be predicated on the need to correct manifest errors of law or fact. *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986). A district court should correct its findings and conclusions when its judgment is not guided by sound legal principles such as: 1) when a court relies on clearly erroneous fact findings; 2) relies on erroneous conclusions of law; or 3) misapplies its factual or legal conclusions. *Alcatel U.S.A., Inc. v. DGI Techs, Inc.*, 166 F.3d 772, 790 (5th Cir. 1999).

As discussed in Plaintiffs' Partial Motion for Summary Judgment, Plaintiff Silva attended San Antonio College ("SAC") for two years. *See* Dkt. No. 90-2 at 8. Plaintiff Silva applied for the Hazlewood Exemption but was rejected on the basis of his national origin and because he was not a United States citizen at the time he entered into active duty. *Id.* Plaintiff Silva was then forced to pay his tuition out of pocket and he has not received reimbursement. *Id.*

Because Plaintiff Silva's claim for damages outstanding, and he has not been compensated by Defendants, the Court need not reach the issue of mootness until the damages claim can be settled or resolved on the merits. Accordingly, Plaintiff Silva requests that the Court amend its Order and Judgment dismissing Plaintiff Silva's Title VI claim as moot against Defendants State of Texas and the Texas Higher Education Coordinating Board and to reopen the case in order to adjudicate Plaintiff Silva's damages.

Prayer

WHEREFORE, Plaintiff Silva requests that this Motion be granted and the Court amend its Order and Judgment in accordance with the above-requested relief.

DATED: October 15, 2008

Respectfully submitted,

David Hinojosa/s/
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CERTIFICATE OF CONFERENCE

I certify that on October 15, 2008, I attempted to confer with lead attorney for each state defendant but I did not receive a response at the time of the filing of this motion.

By: David G. Hinojosa /S/
David G. Hinojosa

CERTIFICATE OF SERVICE

I certify that on October 15, 2008, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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