

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

FEB 2 1990

Leopoldo M. Vasquez,)
)
Plaintiff-Appellant,)
)
v.)
)
Edward D. Baca, Major General,)
New Mexico Army National)
Guard and The National Guard)
Bureau,)
)
Defendants-Appellees.)

ROBERT L. HOECKER
Clerk

No. 87-2236
(D. C. No. CIV 87-0553-SC)
(D. New Mexico)

ORDER AND JUDGMENT*

Before **HOLLOWAY**, Chief Judge, **SETH** and **McKAY**, Circuit Judges

This appeal arises from the district court's order denying the plaintiff-appellant relief on his motion for a preliminary injunction. The district court ruled that there was not a substantial likelihood that plaintiff would prevail on the merits. Subsequent to this appeal being filed, the district court dismissed the Second Amended Complaint as to both defendant Edward D. Baca and defendant National Guard Bureau without prejudice. The court's Memorandum Opinion and Order stated that the matter is

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

not justiciable at least until certain military administrative appeals are exhausted.

Plaintiff-appellant Vasquez did not appeal the order dismissing his second amended complaint without prejudice. Since there is no live controversy, as shown by the record, between the parties concerning the merits of the second amended complaint, this appeal must be dismissed as the issues on appeal concerning the denial of the preliminary injunction are now moot. See U. S. ex rel. Bergen v. Lawrence, 848 F.2d 1503, 1512 (10th Cir. 1988); Park Cty. Res. Coun. v. U.S. Department of Agriculture, 817 F.2d 609, 614-15 (10th Cir. 1977); Baker v. Brey, 701 F.2d 119, 122 (10th Cir. 1983). For these reasons the appeal is DISMISSED.

Entered for the Court
William J. Holloway, Jr.
Chief Judge