IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer Plaintiffs versus United States, US Department of Justice, USPS, USPS OIG, USPS BoG, US CIGIE, Department of State, Department of State OIG, USCIS, DHS OIG, and SSA Defendants	Civil No. 3-23CV2875 - S Response to Defendants' Motion to Dismiss Motion to Amend Complaint Motion for Partial Summary Judgment

Response to Defendants' Motion to Dismiss

Unfounded Claim of Sovereign Immunity

The U.S. Attorney for the Northern District of Texas (hereafter USATXN) mis-characterizes the basis for the complaint to 'seek money back' in order to support an improper claim of 'sovereign immunity' which is unfounded and malformed.

Within the United States and original forming colonies, 'sovereign immunity' referred to the historic immunity of the king / sovereign from any form of litigation. Needless to say, it has always been controversial and the courts have not been consistent in their occasional support for the disputed immunity.

The contested cases in which 'sovereign immunity' was upheld have uniformly been attempts to extend civil tort and contract law to apply to the U.S. government.

These expansions were contested through 'sovereign immunity'.

The unsuccessful attempted extensions of civil tort law always used the guise of suing the agent of the United States for tort or contract violations and then sought to hold the U.S. accountable for the actions of the agents. The classical example would be the demand for monetary relief for the negligence of the federal agent and asking the court to order the disbursement of treasury funds for that purpose.

This is in direct contrast to the legitimate (and consistently upheld) demands that the agents of the U.S. must abide by the constitution (and the civil rights included therein) and lawful statutes. It would be absurd to claim that U.S. agents can commit any crime and violate any civil rights and then deny the courts the opportunity to intervene under the doctrine of 'sovereign immunity'. This right to hold U.S. agents accountable was made clear very early in Marbury v. Madison (1803) which stated:

> mandamus could issue against a high federal executive officer, reasoning that the importance of the office was no barrier to relief where the head of a department "commits any illegal act, under colour of his office, by which an individual sustains an injury"; ...
>
> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury ....

Certainly, 'sovereign immunity' does not permit any agent of the U.S. to order Seal Team Six to assassinate a U.S. political opponent, an unruly judge, a contentious

U.S. attorney, or pestering plaintiffs without being subject to judicial review. Indeed, Mr. Carr trusts that any military service officer (MSO) would recognize the direct order to assassinate is an illegal order and would not permit the assassination. Of course, any military officer who refuses to obey an illegal order must be able to rely on a strong judiciary to protect the officer from the consequences of refusing a direct order (in spite of: the strong bias to the commander within UCMJ, 'sovereign immunity' and executive discretion).

The critical difference is that legitimate court review asks the court to order an agency (through its head) to perform acts already authorized through lawful statutes or the U.S. constitution. In contrast, the prototypical demand 'seeking money' where 'sovereign immunity' is usually upheld, asks the court to order an agency to perform acts based solely on the court's discretion bypassing any legislative approval, in particular, Congressional budgeting of 'money'.

It is important to note that in this case the Plaintiffs have not asked for any direct payments but instead are seeking credits for future services. This may seem like a superficial ruse to avoid the classical 'sovereign immunity' exclusion, but in fact it is a conscientious effort to seek only congressionally authorized relief.

The three applicable agencies, USPS, DoS, and USCIS provide services and are each substantially funded by fees for services. If the court finds that the different agencies have not provided the services in a lawfully prescribed manner, then it is quite reasonable for the court to order the agency to provide the paid for services or equivalent services without further fees.

Sovereign Immunity Precluded By 5 USC section 702

Further, the Defendants' claim of 'Sovereign Immunity' is specifically precluded under 5 USC section 702 which states:

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance.

The Plaintiffs have conscientiously specified the federal officer by title who is the head of the specific agency in every case outside of USATXN who is only tasked to represent the United States.

Federal Crimes and Constitution not Discretionary

The USATXN also attempts to apply the discretionary function exception to the to cover the actions of the Defendants.

Agencies have numerous conflicting and ambiguous statutes that they must follow and obey as best they are able, but this requires good judgment and discretion. As a result, the courts are naturally hesitant to interfere in the detailed management of agencies. The courts do not want to and are not able to micro manage the executive agencies.

For example, there might be a statute which requires an agency to file quarterly reports to congress and the public at large. However, if a reduced budget does not support full detailed reports on inspections quarterly, the agency might reasonably decide to provide full detailed accurate reports on an annual basis rather than eliminating or severely curtailing inspections. Such decisions about how to most effectively manage the resources available to the agency should be left to the management of the agency and the courts have consistently so held.

Of course this executive discretion is not unbounded. The constitution and clearly stated statutes take precedence over ambiguous statutes. All federal agents must obey the constitution and the clearly stated intention of Congress. Federal crimes are often mentioned in these pleadings, but that is because any action which Congress has lawfully deemed to be a crime are strictly prohibited.

Beyond the primary agencies of USPS, DoS, USCIS, and SSA all the other defendant agencies have supervisory / enforcement responsibilities for the primary agencies. In that regard, the supervisory / enforcement agencies should be permitted executive discretion but they can never permit any monitored agency to ignore the constitution or commit federal crimes. This court is asked to order the supervisory agencies to fulfill their non discretionary obligations to correct

breeches of constitutional requirements and criminal acts by the monitored agencies.

The Plaintiffs hope that the courts will conclude that federal crimes and violations of Fifth Amendment rights to due process are never protected by 'discretionary function exception'. The 'discretionary function exception' should never be a shield for any form of unlawful behavior from falsified government records to assassinations.

USPS Extensive Falsified Documents Damaged Plaintiffs Carr

USATXN claims 'sovereign immunity' for USPS in this matter citing Dolan v. Postal Service, 546 U.S. 481 (2006) but apparently USATXN did not understand this decision which actually makes it clear that 'sovereign immunity' does not apply in this case. In Dolan, the court held that 'sovereign immunity' had been waived under the FTCA due to specificity of section 2680(b) which permitted tort claims including, according to the court, negligent acts claims such as careless driving and, apparently, inappropriate placement of delivered packages.

Dolan did declare that tort claims for late delivery would not be supported by the FTCA exemption for 'sovereign immunity' as 'losses of the type for which immunity is retained under section 2680(b) are at least to some degree avoidable or compensable through postal registration and insurance.' There it is explicitly stated that plaintiffs can seek compensation for late delivery when they have purchased 'insurance' from USPS. Mr. Carr did this as can be seen in Doc 18-3, USPSrcpt.pdf, a receipt for guaranteed delivery via 'Overnight Express' with the

compensation being limited to the cost of the mailing ($26.35). In the case at hand, the slight delay (Doc 18-4, USPStrack15Apr.pdf) caused only minor hindrances but the compensation was also restricted to a paltry sum.

Previously Mr. Carr had mailed his passport to the Thai embassy in D.C. via Priority Mail. In that case there was a significant 'late delivery' in that the item was accepted on 16 Mar 2021 with an expected delivery date of 18 Mar 2021 and an actual attempted delivery date of 27 Mar 2021. See Doc 18-5, USPStrk.pdf.

This caused significant disruption for Mr. Carr, but damages were never sought because, as stated in Dolan. 'sovereign immunity' would apply, but also because damages would have been precluded under civil tort as well as contract law. There is no guaranteed delivery date for Priority Mail.

In contrast, the falsified delivery time referred to in Complaint (Doc 11-1) Count 1 para 24 to 41 resulted in a falsified record of 'Dispute paid' and have prevented the actual refund to Mr. Carr's credit card.

The USATXN raises doubt as to whether Mr. Carr has received the credit, but Mr. Carr has used credit cards for over 50 years with tens of thousands of transactions and many hundreds of refunds. In those years there have been several dozen cases where merchants promised refunds that were not reflected in the credit card statements. In every case other than this USPS charge, when Mr. Carr asked the merchant for the bank transaction ID of the missing credit so that he could pursue the matter with his bank, the merchant admitted that there was an error at their end and issued the proper credit. USPS has had over two years to provide the

transaction ID of the credit they claim was made, but has never provided the transaction ID or, it seems, properly issued the credit. See Doc 18-4, 18-8, and 18.9.

While it is remotely possible that Mr. Carr's bank mis-routed the credit this should be easily resolvable with the transaction ID of the credit. The absence of any transaction ID from USPS led Mr. Carr to conclude that intentional falsified delivery times (270 million in 2017 alone according the cited OIG audit (see Doc 18-7) and the Complaint Doc 11-1, para 48) and broken business processes to not actually issue approved credits has defrauded thousands of postal customers each year.

The magnitude of the falsified tracking records seems incredible until it is considered that these delivery times are used to measure individual employees' performance for retention and promotion purposes. Further, for management, bonuses as well as retention and promotion can depend on these quality metrics as well as profitability. The profitability of each section and division is improved by fraudulently rejecting claims for refunds and this improved profitability benefits management at all levels. It appears that with USPS they are retaining and promoting employees and managers based on their ability to falsify performance metrics and defraud postal customers rather than their ability to actually perform.

USPS OIG Provides Immunity to Widespread Federal Crimes

The recent focus in USPS on improving profitability should have been coupled with a focus on improved accuracy and less falsified records to avoid an explosion

in falsified records.

When Mr. Carr reported the falsified USPS delivery record which caused him damages in an approved minor refund which was never paid through additional falsified documents (and provided Mr. Carr standing in this matter), the USPS OIG refused to report the matter to DoJ as the USPS OIG had decided that these delivery related crimes should not be prosecuted but instead were consistently referred back to local USPS management. No action or investigation were ever taken by USPS OIG (see Complaint, Doc 11-1, para 53-55)

Clearly USPS local management does not wish to restrict this criminal behavior which increases their bonuses and improves their careers. Apparently local management's response is to make token disciplinary actions with a 'wink and a nod' to encourage the continuance of the criminal behavior to their own benefit.

When USPS OIG audits and investigations demonstrate widespread criminal falsification of government documents through improper 'stop the clock scans' (see Doc 18-7) they widely report the problem along with recommendations for how USPS management could substantially reduce the improper scans but USPS management never allocates the resources to correct the problem. This is not surprising as the practice improves USPS managers' careers and bonuses.

USPS BoG is Likely Source of Immunity for Widespread Federal Crimes

When congress created the USPS OIG they tried to provide the USPS with more independence by having USPS IG report to the USPS BoG. However, Congress

did not give USPS OIG or USPS BoG the authority to commit or encourage federal crimes (e.g. falsifying government records) with impunity.

It appears that the USPS BoG has successfully prevented the involvement of DoJ with these problems through illegal orders. The USPS BoG has fallen into the trap of gaining immediate apparent success through illegal orders and falsified documents. As stated previously, illegal orders almost always are verbal only informal guidance to preserve the option of deniability in the event the illegal orders are found out.

Mr. Carr suspects that the illegal order took the form of a guarantee from any candidate for USPS IG position to not involve the DoJ in any delivery or tracking problems (as 'it is not necessary and only complicates the matter for local management'). It came with a clear understanding that the IG would be fired if the DoJ was ever involved in USPS delivery and tracking problems. Of course this is purely speculation.

While the illegal order would not explicitly require the IG to take illegal actions, the IG act of 1978 (5a U.S.C. IG Act 1978 Section 4) explicitly requires the IG to expeditiously report to the AG (a.k.a. DoJ) all likely federal crimes. Given the importance of delivery times within USPS, every one of 1.9 million improper 'stop the clock' scans in their 2017 audit should have been reported to the DoJ.

USPS management never made the USPS OIG recommended changes to reduce such improper 'stop the clock' scans. Further, it is argued that the DoJ on notice of such crimes should have insisted that USPS reduce the falsified records with the

resulting decline in reported profitability and quality measures. This, apparently, is what the USPS BoG feared.

The verbal illegal order likely did not directly threaten to terminate the USPS IG for reporting improper 'stop the clock' scans to DoJ, it simply demanded that the USPS IG and OIG insure that the DoJ did not get involved in USPS delivery affairs. This is the sort of ambiguity common for actual illegal orders as it can not be clearly shown that it violated 5 USC Section 2302(b)(9)(D) as they did not require the prohibited 'explicit violations of federal statutes', they simply threatened termination for the IG if the DoJ got involved. Of course, the USPS IG could only hope to keep DoJ out of these matters by disregarding the clear intention of Congress that the DoJ be the sole decider of prosecution for federal crimes.

The USPS OIG defense of this unlawful refusal to report federal crimes to the DoJ in their reply on 7 June 2022 in USPSoigRsps.pdf (Doc 10-1) states 'When employee conduct does not meet the threshold for prosecution, we typically refer such matters to Postal Service management officials for their determination of possible administrative action' (from the Complaint Doc 11-1, para 53).

Mr. Carr had not ever asked that anyone be prosecuted for these comparatively minor federal crimes and had explicitly suggested that USPS OIG could easily meet the requirements of the IG act of 1978 (5a U.S.C. IG Act 1978 Section 4) by just copying the DoJ on any complaints of falsified delivery records before it forwarded the complaint to local USPS management. For example, in Doc10-2 Mr. Carr states to the USPS BoG:

> I am actually requesting that they be referred to the Attorney General and Justice Department where an unbiased determination of the appropriate remedy can be made. It would be absurd to suggest that every USPS employee who ever did a[n improper] 'Stop the Clock' scan be put in jail. However, the senior management who encouraged and supported the practice might be candidates for dismissal and even fines to the degree that they profited from their illegal criminal actions.

The ancillary relief of this court insisting the USPS OIG, USPS BoG, CIGIE, and DoJ all work together to prevent future violations of federal criminal statutes and provide relief to injured parties is actually a quite reasonable and well justified response to extraordinary numbers of federal crimes of falsified records and fraudulent accounting for the disbursement of federal funds.

DoS Non-immigrant Visa Are Not Discretionary

USATXN claims that the DoS denials are beyond judicial review due to the patently false claim that a non-immigrant tourist visa is a DoS discretionary relief with (Doc 15, page 7):

> "[T]he failure to receive discretionary relief," such as a non-immigrant tourist visa, "amount to a constitutionally protected deprivation of a property or liberty interest." Aguilera v. Holder, 354 F. App'x 882, 884 (5th Cir. 2009) (per curiam).

It is odd that USATXN would cite an opinion which also states 'the court has determined that this opinion should not be published and is not precedent'

In any case, the plaintiff Aguilera therein was a foreign national who had requested an actual discretionary exception to avoid deportation. It does not seem to have anything do with DoS or non-immigration tourist visas making the USATXN insertion of 'such as a non-immigrant tourist visa,' into the quote misleading at best and indicative of a negligent failure to review the cited case before the insertion. The plaintiffs herein have no basis to and do not claim that the misleading insertion by USATXN represented any intentional effort to mislead the court.

In fact, while such non-immigrant visas are certainly discretionary to Congress, Congress has published several statutes governing non-immigrant visas granting DoS authority to issue such visas and, in fact, requiring DoS to issue or deny such visas on a fee for service basis with the criteria for denial specified by statute. This is the opposite of "discretionary relief" to DoS.

It is a moderately complex statute with further confusion as the oft cited 214(b) is actually Section 1184 (b) of the current code (8 USC § 1184(b)). However, any thorough analysis of the code will conclude that Congress has delegated the implementation of visa issuance or denial to the AG and by extension (via other statutes such as the budget) DoS with clear and specific criteria for when a visa must be approved and when it must be denied.

In conclusion, this court has jurisdiction to consider whether the non-discretionary decisions by DoS meet the criteria for such decisions established by lawful statutes and, of course, the constitution and the Fifth Amendment Due Process.

DoS Visa Denials have no 'Facially Legitimate and Bona Fide Reason'

USATXN goes on to incorrectly claim this court does not have the jurisdiction to review the non-immigrant visa denials citing the antiquated and arcane 'doctrine of consular nonreviewability' and cites Kleindienst v. Mandel, 408 U.S. 753, 766 (1972).

'Consular Nonreviewability' had its origin in the 'Chinese Exclusion Act of 1882' and is offensive on its face and is without any legitimate foundation, similar to Dred Scott v. Sandford, 60 U.S. 393 (1856) which has been thoroughly discredited and refuted and EO 9066, Public Law 77-50 and the resulting Internment of Japanese Americans refuted in Ex parte Mitsuye Endo, 323 U.S. 283 (1944).

USATXN does cite Kleindienst v. Mandel which actually established the exceptions which show that the 'doctrine of consular nonreviewability' does not apply to the current matter. Kleindienst v. Mandel has been clarified in later cases such as Raduga USA Corp. v. United States Dept. of State, 440 F. Supp. 2d 1140 (S.D. Cal. 2006) which states that:

> judicial review exists when the government has denied a visa if the government did not act 'on the basis of a facially legitimate and bona fide reason' . . . and may also exist under circumstances pursuant to the Administrative Procedure Act." ... [Patel] at 932 n. 1 (citing Kleindienst, 408 U.S. at 753 for facially legitimate proposition)

citing Patel v. Reno, 134 F.3d 929, 121 F.3d 1277 (9th Cir. 1997) which states

> judicial review exists when the government has denied a visa if the government did not act "on the basis of a facially legitimate and bona fide reason." Kleindienst v. Mandel, 408 U.S. 753 (1972). In addition, ... judicial

> review may also exist under certain circumstances pursuant to the Administrative Procedure Act.

These and later cases have clearly established that freedom of movement (and travel) is a protected right of all persons which can only be restricted with Due Process, see Khachatryan v. Blinken (9th Cir. 2021, 18-56359) and Sandra Munoz v. State Department (9th Cir. 2022, 21-55365)

Non-immigrant visas are governed by statute (contrary to the misleading summary conclusion inserted by USATXN with Aguilera above) and DoS did not provide any 'facially legitimate and bona fide reason' for the denials at hand. All four of the non-immigrant visa denial letters were described in the complaint (Doc 7-1) as:

> The actual denial letter had no references to any evidence presented or reviewed but simply cited section 214(b) [of the INA] and 'you did not overcome the presumption of immigrant intent, required by law, by sufficiently demonstrating that you have strong ties to your home country that will compel you to leave the United States at the end of your temporary stay'.[1]

DoS has essentially restated the requirements of INA 214(b) making it simpler and more clear, but an even more accurate, concise and understandable restatement of the section INA 214(b) would be 'You did not prove that you will not knowingly

[1] The four denial letters were all functionally identical form letters and were not retained by the Plaintiffs. The Plaintiffs sought copies of the actual denial letters via FOIA requests to DoS but they were not returned contrary to DoS stated FOIA policy of providing only documents which were received from or provided to applicants. The text cited in the complaint was found on the web as a normal denial letter and was consistent with the Plaintiffs' recollection of what the actual denial letters stated.

and intentionally overstay any temporary visit to the United States.'

In Sandra Munoz v. State Department (case no. 21-55365) (9th Cir. 2022) there is a more clear explanation that it is insufficient in a visa denial to simply cite the correct statutes (one half of the 'facially legitimate and bona fide reason' requirement) but the decision must also cite the facts which support the conclusion (an obvious requirement for anyone familiar with Due Process). It states:

> Because no "fact in the record" justifying the denial of ...[applicant]'s visa was made available to ...[applicant]s until nearly three years had elapsed after the denial,... we conclude that the government did not meet the notice requirements of due process when it denied ...[applicant]'s visa. This failure means that the government is not entitled to invoke consular nonreviewability to shield its visa decision from judicial review. The district court may "look behind" the government's decision. [Kleindienst v.]Mandel, 408 U.S. at 770.

It is important to note that most non-immigrant business / tourist (B-1 / B-2) visa denials are based on INA 214(b) as were all four of the visa denials given by DoS to the Plaintiffs. This particular justification ('you did not prove you would not overstay your visit') is problematic (being overly broad and very general) from the perspective of citing the facts to support the decision.

It is a significant burden on the applicant to prove they won't overstay (negatives are always a challenge to prove), but even a cursory review of the affirmations which the Mrs. Carr and Mrs. Von Kramer attempted to provide to DoS demonstrate that, along with the one inch of associated documents available for

review they clearly could have proven their burden (see Doc 12-3 DoJredactedI-29sStmt.pdf, a redacted version of statement referred to in Complaint (Doc 11-1) para 64 and Doc 12-4 DoJredactedBuakhaoAffirm2019.pdf which is a redacted version of the statement referred to in Complaint (Doc 11-1) para 89, 98, and 103).

In conclusion, all four visa denials did not have "facially legitimate and bona fide reason" because while they cited a legitimate statute, 214(b) of the INA, they did not include any facts to demonstrate that the statute was applied correctly. As such the 'doctrine of consular nonreviewability' does not apply to any of the visa denials and this court has jurisdiction to "look behind" the government's decision.

'Doctrine of Consular Nonreviewability' Based on False Premise

The 'Doctrine of Consular Nonreviewability' (hereafter DoCNR) denies federal courts from reviewing any executive decision to deny a visa. In Kleindienst v. Mandel it is based on:

> Congress's plenary power to exclude aliens or prescribe the conditions for their entry into this country. Congress has ... delegated conditional exercise of this power to the Executive Branch. When, as in this case, the Attorney General decides for a legitimate and bona fide reason not to waive the statutory exclusion of an alien, courts will not look behind his decision.

Of course the reasoning behind this is fundamentally flawed, much like Dred Scott and the EO 9066, Public Law 77-50 and the resulting Internment of Japanese

Americans. It is offensive as it denies that aliens are, in fact, persons. It is similar to current 'hate' rhetoric which considers aliens as animals “who are poisoning the blood of our nation”.

The flaw is the premise that Congress has a plenary power (or absolute power) to exclude aliens. The constitution confers no such power on Congress or any other part of the U.S. government. While Congress certainly can deprive aliens of the fundamental liberty to travel freely (i.e. Congress can exclude aliens) it can only do so through 'due process of law'. This requires Congress to pass lawful statutes empowering the executive branch to exclude aliens within the requirements of 'due process of law'. This implicitly authorizes some form of judicial review of every decision to exclude an alien.

To restate this, the DoCNR completely ignores the constitutional requirement to the federal government that:

> 'No person shall be ... deprived of life, liberty, or property, without due process of law'.

When the constitution was enacted this guarantee basically only applied to white, adult, male, Christian, property owners. Of course that was a rather lengthy and unwieldy description. Fortunately, there was a much more concise description which was citizen, a term also used in the constitution selectively.

However, when writing the Fifth Amendment it was decided to use 'No person' rather than 'No citizen'. This was largely aspirational as 'Due Process' was not originally commonly provided to non-whites, native Americans, women, slaves, indentured servants or the destitute. Over the last two hundred years due process

and other fundamental rights have been extended to include most people under most circumstances. The DoCNR is a throw back to the 'Chinese Exclusion Act of 1882' where aliens like the Chinese were not considered people entitled to 'Due Process' or other constitutional rights.

In 1882 the exclusion of the courts from such processes overseas (e.g. consular activities) was an essential expediency. Communication with the consulates could take weeks. There was no way for the U.S. courts to provide timely oversight. However, consulate officers now have 'instant' access to government records around the world and video conferences can eliminate the need for judges or witnesses to travel.

To be clear, the federal government has the right to deprive anyone: citizens, permanent residents, and other foreign nationals from life, liberty, and property as long as it is done with due process of law. So Congress certainly has the ability to restrict the fundamental right of movement and travel from aliens, barring entry to the U.S. and deporting them as appropriate.

The primary and fundamental requirement for such restrictions is Due Process but the requirement of Due Process can not be over-ridden by Congress under any circumstances. Due Process basically requires fair evidentiary hearings which can not be disassociated from judicial review.

As a result the DoCNR is fundamentally flawed as Congress never had any absolute power to exclude or deport aliens. This exposure was conceded in Kleindienst v. Mandel where the 'fundamental' rights of a citizen are impacted by

the improper treatment of an alien, e.g. the due process rights of an alien are reviewable if it can be shown a citizen is impacted.

Secondary Test of 'Doctrine of Consular Nonreviewability' Met / Extended

The Plaintiffs have had great difficulty understanding the DoCNR because it is offensive (classifying aliens as non-persons (? animals ?)) and based on a false premise (logic breaks down when you start with a false premise).

Even with the Plaintiffs limited understanding of DoCNR it appears that it does not apply because the none of the decisions denying visas cited any facts at all, only restated the statutory requirements as stated previously, i.e. the visa denials did not meet the 'facially legitimate and bona fide reason' test.

However, in the case of Kleindienst v. Mandel and the follow on cases it seems that the DoCNR restriction on court review also does not apply if the alien is married to a citizen and they wish to travel together. Bustamante v. Mukasey, 531 F.3d 1059, 1062 (9th Cir. 2008) states:

> Freedom of personal choice in matters of marriage and family life is, of course, one of the liberties protected by the Due Process Clause. See Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639-640, 94 S.Ct. 791, 39 L.Ed.2d 52 (1974); see also Israel v. INS, 785 F.2d 738, 742 n. 8 (9th Cir. 1986). Presented with a procedural due process claim by a U.S. citizen, we therefore consider the Consulate's explanation for the denial of Jose's visa application pursuant to the limited inquiry authorized by [Kleindienst v.

]Mandel.

It has been found that the freedom to travel together for married couples is a Due Process protected right. The Executive can not deprive a citizen from traveling freely with their foreign national spouse unless due process is provided to the citizen's spouse. This means that the proceedings to deny a visa to a foreign national must provide for due process if there is a citizen spouse who wishes to travel with the foreign national.

This provision for judicial review applies exactly for Mrs. Carr as the spouse of Mr. Carr, a U.S. citizen, who clearly wishes to travel with her. Further, it is relevant even though Mrs. Carr currently has a non immigration visa as the current non immigration visa has an expiration date and may need to be renewed in the future.

The Plaintiffs would like to also argue to extend exceptions for DoCNR in the first denial of Mrs. Von Kramer visa in that Mr. Carr is a U.S. citizen and desired to travel with and host his sister-in-law, Mrs. Von Kramer. In Thai culture families are very close and every marriage is between entire families. In marrying Mrs. Carr, Mr. Carr was establishing close ties (logically marrying in many ways) with Mrs. Von Kramer. Mr. Carr's citizen right to travel freely and host guests was improperly restricted when his sister-in-law's visa was denied. As such the court is asked to review the denial under a novel and untested exception to DoCNR applicable to a citizen spouse's siblings.

The Plaintiffs would like to also extend exceptions for DoCNR in the second denial of Mrs. Von Kramer visa in that Mrs. Von Kramer is the widow of an

American Army pre-1968 veteran. In particular, Congress has added several special exceptions to restrictions on government assistance and social security survivors benefits for widows of pre-1968 veterans and DoS visa denial effectively improperly denied those benefits without due process. As such Mrs. Von Kramer's visa denial must be subjected to judicial review as a novel and untested exception to DoCNR applicable to surviving spouses of pre-1968 veterans.

The Plaintiffs would like to extend exceptions for DoCNR in the third denial of Mrs. Von Kramer visa in that Mrs. Carr is a lawful U.S. permanent resident and desired to travel with and host her sister, Mrs. Von Kramer. In Thai culture, extended families intrinsically share finances, property ownership, and liabilities with siblings, children, and parents. Thai tort law is very complex. Mrs. Carr's lawful permanent resident right to travel freely and host guests was improperly restricted when her sister's visa was denied. As such the court is asked to review the denial under a novel and untested exception to DoCNR applicable to lawful permanent resident's siblings.

If any of the above requests for judicial review of the three visa denials for Mrs. Von Kramer fail, the Plaintiffs requests that each visa denial be subjected to judicial review under the novel and untested premise that Mrs. Von Kramer is a person and entitled to all the rights and privileges included in the Fifth Amendment to include judicial review of adverse executive decisions in accordance with due process of law. The physical barriers to court oversight of consular activities in 1882 have been reduced by current electronic access and it is time that DoCNR be relegated to the trash can of history.

Plaintiffs have Standing and 'Sovereign Immunity' Does not Apply to DoS.

As stated in the Complaint Doc 11-1 para 108 and 153, the Plaintiffs had to pay the fees for the four improperly denied visas ($160 each, i.e. $640 total) so the Plaintiffs have standing (they paid the fees but did not receive the services of correctly adjudicated visa applications). As these were services offered for fees in accordance with lawful statutes it is quite legitimate for the Plaintiffs to ask for credits for future services as discussed in USPS above.

The evidence which the Plaintiffs attempted to present at their visa interviews which were denied can be seen in Doc 12-3, DoJredactedI-29sStmt.pdf which is a redacted version of statement referred to in Complaint (Doc 11-1) para 64 and Doc 12-4 DoJredactedBuakhaoAffirm2019.pdf which is a redacted version of the statement referred to in Complaint (Doc 11-1) para 89, 98, and 103. Any review of the sworn affirmations and the substantial documents which were attached will surely conclude that the Plaintiffs would not overstay any temporary visits they made to the United States.

If the court does not choose to provide a credit for future services (not a significant sum compared to the ability to travel lawfully and freely), the Plaintiffs will benefit if the court simply orders DoS, DoS OIG, and DoJ to correct its non-immigrant visa processing to provide due process of law prior to any visa denials. The Plaintiffs anticipate that they, along with their family and friends, will need to apply in the future for non-immigrant visas (when their current visas expire and when friends and family also wish to lawfully visit the United States).

DoS OIG Improperly Exempts Visa Denials from Oversight

Mr. Carr made numerous complaints of malfeasance, violations of due process and plausible federal crimes of omitting required information from government records related to visa denials to DoS OIG (see Complaint, Doc 11-1, para 125 - 134). In all cases DoS OIG refused to take any action other than forwarding the complaint to another agency as the DoS OIG does not consider visa denials.

The DoCNR has been alluded to provide DoS from judicial reviewability but even if the DoCNR were applicable (which the Plaintiffs deny as above) it only provides protection from judicial review, not executive review.

Indeed, the DoCNR only increases the need for executive review such as the DoS OIG as Congress has attempted to grant extended 'power' to the executive in these cases.

The INSPECTOR GENERAL ACT OF 1978 (5a U.S. Code section 4 - Duties and responsibilities; report of criminal violations to Attorney General) states in part that the 'Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law'. Plaintiffs argued that this statute does not request the IG to investigate every plausible allegation of a federal crime but, in the event the IG does not have the resources for such investigations the IG must report the plausible federal crime to the DoJ.

The IG does not have the option of deciding that any potential federal crime should

not be prosecuted as that decision is clearly reserved for the DoJ.

The Plaintiffs argue that had DoS OIG investigated visa denials and worked with DoS and DoJ to insure proper compliance with Due Process and other constitutional rights, Mrs. Carr and Mrs. Von Kramer's original visa applications would have been approved as they each had overwhelming evidence that they would not overstay any temporary visit.

RFRA Radically Limits USCIS Ability to Defacto Discriminate on Religion

The Religious Freedom Restoration Act of 1993 (RFRA), 42 USC Ch. 21B: RELIGIOUS FREEDOM RESTORATION gives broad ability to sue the U.S. for both injunctive relief as well as monetary damages. This broad relief was supported in the recent decision Tanzin v Tamvir No. 19-71. (SCOTUS 2020). It can be argued that this includes injunctive relief for de facto discrimination against the cultures of specific religions.

Historically Buddhist and Islamic cultures have been resistant to colonialism with the result that English and other Western languages were never widely accepted. The poor in those cultures are not exposed to the sounds or alphabet (shapes) of English during their formative years.

This creates a minor form of medical disability as those individuals will never be able to properly speak, read, write or understand English. Their brains just aren't wired for mastering English and this hurtle only increases with age.

Any requirement for citizenship which discriminates against individuals with that particular medical disability will be a de facto discrimination against members of Buddhist and Islamic cultures and, hence, the religions themselves.

Plaintiffs argue that RFRA prohibits this indirect discrimination against specific religions. Further this indirect discrimination can easily be resolved by extending the current waivers for age and medical disabilities. The suggested expanded waivers are self correcting such that as the different cultures promote early exposure to English and other Western languages (inevitable in our connected world), the waivers will be reduced to simple age based waivers.

USCIS Approved I-751 and N-400 in Final Decision Dated 31 Jan 2023

USATXN completely ignores the Final Decision Dated 31 Jan 2023 by USCIS which approved Mrs. Carr's I-751 and N-400 (Doc 10-5) and is undisputed. However, after making that Decision instead of USCIS implementing the Decision with the promised Naturalization Certificate or the approved 'Green Card', USCIS instead took several improper steps to overturn the prior decision.

In fact, the only legal option available to USCIS was to provide the promised relief or apply to this court to have that final decision overturned due to some new circumstances or evidence. USCIS and USATXN can not simply ignore a prior final decision to take actions in an illegal attempt to invalidate the prior decision.

Mrs. Carr I-751 Not Waived or Adjudicated as Required by Law

USCIS was required to adjudicate Mrs. Carr's I-751 application for a new 'Permanent Resident Card' (without the 2 year conditions) by 22 Nov 2020 (90 days from acceptance of the I-751 on 24 Aug 2020 in accordance with 8 CFR Section 216.4 (b) (see revised Complaint Doc 18-2, para 169).

USCIS instead unlawfully issued only ambiguous extension letters which expired on 13 Nov 2022, see Doc 18-6 (8 CFR Section 216.4 as well the Revised Complaint (Doc 18-2) para 147 and 152). When Mr. Carr tried to find out about the status of the illegally delayed I-751 adjudication, he could only access an online web account or call the phone number 1-800-375-5283.

The online web account told nothing other than the information already available on the notice form. There was no secure messaging facility and no ability to submit documents or request additional information.

The phone number was answered by an automated phone system which had an extremely limited number of requests that it could understand. It could not provide any statement about the anticipated interview date other than the interview had not been scheduled and date of the interview was pending (for over two years for an interview which statutorily mandated to be scheduled or waived within 90 days, 8 CFR Section 216.4).

If the caller asked to speak to a representative, the request would be denied unless the caller could request a particular service that was available (such as make an appointment). A persistent request to speak to a representative would be answered with 'Please request an available service or I will hang up on you'. The system

would, in fact, hang up on callers who continued to ask to speak to a representative (that was not a generally available service).

However, from Mr. Carr's experience, until the Carr's paid for and submitted an N-400 application, there was no way for Mr. Carr to speak to a representative at all and the system would always eventually hang up on Mr. Carr.

Mrs. Carr Unlawfully Stranded in Thailand by USCIS

When Mrs. Carr went to Thailand on an emergency basis to, it turns out, attend her mother's funeral, she was unable to return to the United States (see Doc 7-1, para 147 and 151 - 153) as a direct result of the illegal refusal of USCIS to process her over two year old I-751 application in a timely manner as explicitly required by law. (see Doc 7-1, para 152)

To return to the United States, the Carr's needed to arrange for Mrs. Carr to get a non-immigrant visa which was a great source of stress and some financial expense. (see Doc 7-1, para 153).

Mrs. Carr joint I-751 and N-400 Interview Held on 30 Jan 2023

When Mrs. Carr was stranded in Thailand and after Mr. Carr had complained to USCIS that they had not fulfilled their statutory requirements to allow Mrs. Carr travel and work freely, Mrs. Carr was scheduled for a joint I-751 and N-400 interview on 14 Dec 2022. Mr. Carr reminded USCIS that Mrs. Carr was stranded in Thailand and USCIS had already refused to provide any assistance in her return,

the joint interview was rescheduled for 30 Jan 2023.

Please understand Mr. and Mrs. Carr were most distraught after USCIS had unlawfully left her stranded in Thailand in late 2022, unable to return to take her citizenship test. For older Thai people who were not exposed to English during their formative years (i.e. Mrs. Carr came from a poor family, a share cropper farmer with nine kids) the English and Civics test is incredibly hard.

Mrs. Carr had difficulty focusing on studying for the N-400 English test as she was distraught about the pending I-751 and being deported without notice or good cause. As the I-751 interview had been pending for over two years and there was no avenue to get feedback on the date interviews would actually be scheduled, it was very hard to systematically study for a test which might happen sometime in the next couple of years.

It turns out that the real interview was conducted with only a few weeks actual notice, not enough time to master English effectively. The N-400 interview was scheduled several months before the normal eight month queue for such interviews as published by USCIS when the application was submitted.

When Mrs. Carr finally was able to return to the US and take the test on 30 Jan 2023, Mr. and Mrs. Carr were crushed when they were told informally that not only did Mrs. Carr fail the citizenship tests, USCIS also would not approve her I-751 application removing the conditions on her 'green card' (which had left her stranded in Thailand in the first place). That was because she had not passed the 'understand spoken English' part of the test and could not go through the criminal

background questions (not part of I-751 application, but part of the N-400 application as well as the initial I-130 petition).

While Mrs. Carr had met all the statutory requirements to continue her permanent residence, USCIS would not provide her with any documentation to allow her to work and travel freely. Of course that is the unlawful part as explained in the Complaint.

Mrs. Carr's I-751 and N-400 Applications Both Approved

However, a week later Mr. and Mrs. Carr were elated when they received formal notice that both her I-751 and N-400 were approved (see Doc 10-5 as well as the text itself in the Complaint Doc 7-1 para 163). The text of the decision was:

> We have approved your I-751, Petition to Remove Conditions on Residence. Our records also indicate we have approved your Form N-400 Application for Naturalization. Because we also approved your N-400, you will not receive a new Permanent Resident Card (also known as a Green Card). Instead, once you have taken the Oath of Allegiance, you will receive a Certificate of Naturalization, which will be proof of your U.S. citizenship. If you have questions regarding this process, please contact the USCIS contact center at 800-375-5283.

Basically USCIS was not going to give her a new green card as she was instead going to get her citizenship. They were so relieved.

This decision was of great importance to Mr. and Mrs. Carr. USATXN's summary completely omits this decision probably because it undermines every later action of USCIS and the entirety of USATXN's USCIS arguments.

Mrs. Carr I-751 Application Illegally Denied

However, that formal notice seems to have been a ruse to deny her a new green card while also not allowing her to take the citizenship test again, possibly as retribution for Mr. Carr's numerous complaints to the IG, his US Representative and numerous other parties about USCIS's unlawful denial of his wife's freedom to work and travel freely.

The result was that Mr. and Mrs. Carr could not appeal a purportedly favorable decision (USCIS claimed that the I-751 was approved) but also never received any 'green card'.

This has left Mrs. Carr without any documentation of her permanent resident status or ability to work and travel freely. Her 'green card' has an expiration date of 13 Nov 2020 and the letter approving her I-751 and 'removing conditions' (see Doc 10-5) is hardly convincing to travel providers (e.g. international airlines), employers or, local law enforcement in light of Texas SB4.

In the event Governor Abbot borrows from Trump's promise to send the National Guard from Red states to Blue states to deport 'illegal' aliens, perhaps Abbot will send the Texas National Guard into Blue counties (like Dallas) to deport 'illegal' aliens. Would Mrs. Carr be able to explain to National Guardsmen from West

Texas that her 'green card' was still valid three years after its clearly printed expiration date as USCIS had 'removed the conditions'?

Can any non-white person feel secure that they won't be deported by vigilantes trying to get rid of the "poison in our nation's blood"? The absence of any proper paperwork is a great concern for Mrs. Carr.

USCIS Unlawfully Denies N-400 For Failure to Appear

USCIS completed the charade on 14 Oct 2023 when they denied Mrs. Carr's N-400 citizenship application for failure to appear through what was clearly retaliation (Complaint paragraphs 185-209) and which had no legitimate validity.

To reiterate,

- There was no jurisdiction as the N-400 application had been previously formally and finally approved on 31 Jan 2023 in the Decision of that date. See Doc 10-5 as well as the text itself in the Complaint Doc 7-1 para 163 and above.
- Formal notice by USCIS that the N-400 interview on 01 Sep 2023 that the interview of 30 Jan 2023 had been canceled due to unforeseen circumstances was a falsified document as all parties knew that there was an interview on 30 Jan 2023. See Doc 10-6 and the Complaint Doc 7-1 para 184.
- Insufficient notice was provided for a finding of 'Failure to Appear' as the notice scheduling the interview was dated 06 Sep 2023 for a 10 Oct 2023 interview but there was no evidence of actual notice in the USCIS record. Mr. Carr has provided evidence the notice was mailed on 12 Sep 2023 and received on 15 Sep 2023, providing only 24 days notice, less than the mandatory 30 days notice for

such important matters. See Doc 10-7 and 16-1 and the Complaint Doc 7-1 para 186 – 188.

- The notice scheduling the interview said 'If you cannot keep this appointment to call USCIS as soon as possible to reschedule your appointment' and Mr. and Mrs. Carr called USCIS on 19 Sep 2023, the earliest opportunity given Mrs. Carr work schedule and her inability to make calls while at work and USCIS's refusal to authorize Mr. Carr to represent Mrs. Carr. It turned out that phone representatives have no ability to reschedule interviews and are restricted to 80 characters in describing the reason for the request. Mr. Carr was concerned that the representative had attempted to summarize the reason for their trip as 'Leisure' he attempted to and did submit a lengthy document describing the huge difficulties of altering the schedule for a nine week international trip starting with a bus tour of Europe with complex visa requirements. USCIS claimed that Mrs. Carr had only one chance to request that the interview be rescheduled and sent an email denying the request to reschedule. There was no mention of the requests to reschedule in the USCIS decision itself though USATXN admits that Mrs. Carr did request to reschedule the interview and the request was denied. See the Complaint Doc 7-1 para 193 - 200.
- As Mr. Carr had informed USCIS of the dates of their travel in August of 2023 when he complained about the lack of documentation to permit Mrs. Carr to travel freely (the refusal of USCIS to provide any new documents after approving the I-751 in January) and before he complained to the DHS OIG, his US Representative and several others. This raises the possibility that the interview was scheduled to conflict with their extensive trip as a form of retaliation for the complaints which Mr. Carr had filed. See the Complaint Doc 7-1 para 193 – 200.

- The tribunal in the denial of Mrs. Carr's N-400 application for failure to appear seems to be the Director of the Dallas USCIS office and was not an impartial decider of facts. Several of her employees had been accused of falsifying documents via OIG complaints by Mr. Carr and so her career was likely to be impacted by the complaints. See the Complaint Doc 7-1 para 216 and 217.

USCIS Illegally Ignored Final Decision Dated 31 Jan 2023

USATXN has overlooked the Final Decision Dated 31 Jan 2023 by USCIS which approved Mrs. Carr's I-751 and N-400 (Doc 10-5) and which is undisputed.

The attempts by USCIS to overturn the prior decision were improper and illegal. This court is asked to order USCIS to promptly implement the relief required based on approved I-751 and N-400 applications.

In fact, the only legal option available to USCIS was to provide the promised relief or apply to this court to have that final decision overturned due to some new circumstances or evidence. USCIS and USATXN can not simply ignore a prior final decision to take actions in an illegal attempt to invalidate the prior decision.

CIGIE and DoJ Ignore Mandate for Statutory and Constitutional Compliance

The Plaintiffs informed CIGIE and DoJ (Doc 11-1 para 136 - 145, 247 - 252) of malfeasance and failure of the OIG's to report federal crimes. The Plaintiffs asked CIGIE and DoJ work with the applicable Defendants to prevent future violations of their charters and coordinate efforts to prevent future federal crimes and violations

of constitutional rights. CIGIE and DoJ took no actions but the Plaintiffs argue that had CIGIE and DoJ endeavored to fulfill their mandates, the Plaintiffs would have received the requested relief and this matter would not have been necessary.

It is also important to explain that many of the orders requested of the court to improve USPS, DoS, USCIS, and CIGIE operations and compliance are intended to be suggestions for the appropriate OIG and DoJ to use to work with the applicable agencies to revise their internal processes. The agencies each perform many essential functions and the changes suggested could be highly disruptive if implemented without care and consideration.

The Plaintiffs do not have the time or experience or knowledge to properly implement such sweeping changes and they are asking the court to order the DoJ, OIGs and other agencies to work together to revise current policies and procedures to eliminate widespread federal crimes and violations of constitutionally protected rights.

It is assumed that the court also does not have the time or experience or knowledge to properly order such changes in detail (with full respect to the court) and so the court is asked to order the agencies to work together to submit a plan to the court on some mutually agreed upon timetable to solve the underlying problems while continuing to provide the essential services of each agency.

Several of the items of relief listed in the complaint should instead be viewed as suggestions for the objectives of this proposed plan to resolve the underlying problems.

Importance of Vigilance by DoJ, CIGIE, and OIG's

The role of DoJ, CIGIE, and OIG's in supporting the constitution and good government can not be overemphasized.

The fiasco of the rapid fall of the Afghan government represented a serious tragedy for millions of Afghans as well as America as a whole. It can be argued that this fiasco was also the result of insufficient oversight by the relevant IG's (not defendants in this matter), CIGIE and DoJ.

The commonly stated cause of the fiasco was inaccurate estimates of the number and training / capabilities of Afghan government soldiers and para-military police as well as similarly inaccurate estimates of Taliban soldiers / combatants / terrorists. A good approximation would be that the Afghan government had about half as many soldiers as reported and the Taliban had about twice as many combatants as reported.

These substantial deviations from the 'readiness reports' can be attributed to the high level of corruption in Afghan culture. Indeed, corruption is, practically speaking, not even a concept in Afghan culture as it is just normal gift giving and ordinary business practices, no different from purchasing an item in a store.

The result was that a substantial portion of the American funding for the expansion of the Afghan military was misdirected with Afghan government commanders siphoning money into their own pockets rather than hiring soldiers as reported and

even bribing Taliban units to not attack the areas of responsibility of their units. It was cheaper to pay the bribes to the Taliban rather than hiring the soldiers required to fight the Taliban. That left more money to pocket and better apparent results, the Taliban were no longer active in their area.

Of course there were American military service officers (MSOs) responsible for insuring that American funds were not misdirected in this fashion. But there is a problem with this as well.

In order to have well rounded senior MSOs, American MSOs are rotated through different assignments with about ten assignments in the critical first twenty years (to be eligible for retirement benefits as well as the potential for the most senior positions). As the required promotions are increasingly fiercely competitive, each MSOs must get an outstanding performance review from each assignment.

In the current environment, almost all soldiers in each unit are rotated. There is also an effort to stagger the rotations so that not too many soldiers are rotated at any one time. On arriving in a new two year assignment an MSO could expect that most of his subordinates would have about one year of experience as would the most of his / her superiors. This maintained some level of continuity for the various units.

An MSO on arriving in the assignment of monitoring Afghan units and the disbursement of American funds might find that his predecessor had attained an actual readiness of about 15% readiness but the reported readiness might have been 50%. The MSO would have received objectives from his / her commander to

improve the readiness up to 60% with decreasing Taliban activity within the next year and before the superior rotated out.

In any discussions with the superior of inaccurate reports by the MSO's predecessor, the superior would almost certainly verbally inform the MSO that the superior doesn't care about the mistakes of the MSO's predecessor, the MSO had better get his / her numbers up to snuff (meeting the objectives) before the MSO's superior rotated out or the superior would give the MSO a negative review thereby ending the MSO's career. Needless to say this is a verbal illegal order to falsify records, but being ambiguous and verbal the superior would have plausible deniability.

If the MSO were to properly insure that American funds were being properly disbursed and Afghan unit readiness was accurately reported, his readiness reports might increase to an actual level of 20% (from 15%) but show an apparent decline from the 50% of his predecessor.

He would almost certainly also be removed from the position for some other reason by his / her superior. The MSO can only make real corrections by 'throwing under the bus' all his superiors and subordinates by being a 'whistleblower'. It is certainly unclear how successful such a strategy would be as longevity as an MSO through 10 assignments really depends on low risk successes (no one can depend on winning 10 flips of a coin).

If the MSO chose to instead ignore falsified reports by the Afghans and encouraged them to improve their reports (with illegal orders similar to those of the

MSO's superior), then the Readiness Reports could easily improve to 70% though the actual readiness would likely decline to 10%.

In essence, because of the staggered rotations and the hyper competitive promotion process for MSO's, they are all playing 'hot potato' hoping that the whole thing won't explode on their watch, that they can rotate out before their negligence is found out.

Throughout the Afghan occupation there were sporadic reports of corruption within the Afghan military but instead of a massive investigation by the Army IG and DoJ, the problems were mostly ignored. Mr. Carr suggests that had there been an investigation of the magnitude of the Naval 'Tailhook' investigation then Afghan government military readiness would have been reported as much lower but could have improved over time.

The Afghan fiasco would have been completely different with Afghan government forces much stronger and the Taliban not as strong (and with accurate estimates of Taliban strength). Were a withdrawal made, the results would be more in line with the expectations of senior commanders.

Of course all this is purely conjecture relying solely on publicly available sources and Mr. Carr's experience as a junior MSO. When Mr. Carr graduated from West Point in 1975, he was allowed significant choice in first assignments due to his superior academic standing. Mr. Carr chose an academic assignment (graduate school at M.I.T.) for his first assignment. For his second assignment, Mr. Carr chose a short / hardship one year tour in Korea for his only normal military

assignment. For his third and final assignment Mr. Carr chose a scientific / technology assignment at an Army Research and Development Lab (Harry Diamonds Labs, HDL). Mr. Carr understood that choosing such assignments guaranteed that he would not be able to continue his career.

The Army 'passed over' Mr. Carr's promotion to captain twice before granting the promotion. Three passes and you're out according to the 'move up or move out' rules of the time. The Army and Mr. Carr understood that it would be appropriate for him to separate once his military service obligation was completed (three and a half years at HDL instead of the normal three).

Mr. Carr is deeply appreciative of his excellent training and experience from the Army. Mr. Carr parted ways with the Army amiably after completing his service obligations.

This discussion of the Afghan fiasco is included solely to explain Mr. Carr's conclusion that illegal orders and federal crimes such as falsified documents must be addressed by DoJ and can not be overlooked based on executive discretion. The DoJ should be encouraged to enlist the assistance of relevant OIG's and the CIGIE as feasible. The DoJ should also be encouraged to use the cudgel of the threat of prosecution to efficiently promote future compliance and minimize the demands on DoJ and OIG resources.

Accuracy of Government Records and Disbursements Foundational for Democracy

Mr. Carr also concedes that there are many criminal statutes that the DoJ must

enforce in precedence to falsifying government records or fraudulent disbursement of government funds. For example, assassinating a federal judge or federal attorney is most heinous. However, the question is how can the U.S. insure that Seal Team 6 is never ordered to commit such heinous acts.

The current Secretary of Defense (SoD) is Lloyd Austin (Mr. Austin) who also graduated from West Point in 1975 with Mr. Carr. Mr. Carr is comfortable that Mr. Austin could resist an illegal order to misuse Seal Team 6. Unfortunately, due to Mr. Austin's age he is in a civilian position and would certainly be removed on 'Day One' of any president elected who has promised to be a dictator on day one and deport millions of illegals on day one.

While it is Mr. Carr's belief that the majority of senior MSO's would not obey an illegal order to misuse Seal Team 6, it is not clear how many would be successful in that having seen one or two of their predecessors jailed and silenced for disobeying a direct order. It takes strong and courageous senior MSO's to collude and overcome a president who ignores the law.

The best way to insure we have senior MSO's and executives in the federal government who will support the constitution when it is required is to develop a culture where short cuts like falsifying records and disbursements leads to termination, not success.

Sanctions Plausible For Unfounded and Conclusory Claims of USATXN

In USATXN's argument E, USATXN claims 'The allegations in the complaint

appear frivolous.' stating:

> Lastly, the "allegations within the complaint 'are so attenuated and unsubstantial as to be absolutely devoid of merit, . . . wholly insubstantial, . . . obviously frivolous, . . . plainly unsubstantial, . . . or no longer open to discussion.'" Starrett v. Lockheed Martin Corp. et al., 735 F. App'x 169, 170 (5th Cir. 2018) (quoting Hagans v. Lavine, 415 U.S. 528, 536-37 (1974)). Put another way, the Fifth Circuit has affirmed that claims against the federal government and its agencies are subject to dismissal under Rule 12(b)(1) when the claims are "patently frivolous," and also under Rule 12(b)(6) when such claims are "fanciful, fantastic, or delusional." Starrett, 735 F. App'x at 170. Such is the case here. Plaintiffs' lengthy complaint appears to infer conspiracy and false documents from administrative delays without identifying a legal basis for the requested relief. And the broad scope of the requested relief is striking: ordering various federal agencies to open investigations into administrative issues - such as a delay in delivery of a package, the rescheduling of a naturalization interview to accommodate Plaintiffs' international vacation, and the challenges a resident of Thailand experienced in obtaining a non-immigrant tourist visa from the State Department to travel to the United States - or to reorganize their systems and processes, all of which constitutes the "patently frivolous," "fantastic, or delusional." See Starrett, 735 F. App'x at 170.

The first half of the claim is just quotes from Starrett with no attempt to indicate that Starrett applies to the current matter. Indeed the connection to Starrett is itself 'so attenuated and unsubstantial as to be absolutely devoid of merit'. It raises the question of whether USATXN has ever actually read Starrett rather than just

quoting the desired text without any consideration of its applicability.

The Starrett decision cited also includes the text 'this opinion should not be published and is not precedent' (as above) but there is no explanation about why Starrett is improperly cited rather than other decisions which might be applicable and intended to set precedent.

Starrett Decision Based Solely on Allegations, Not Relief

A more than superficial review of Starrett reveals:

> Starrett's 149-page complaint alleged that defendants conspired to use him for mind experiments, targeted him with "Remote Neural Monitoring," harassed him using "Voice to Skull" technology, and otherwise remotely monitored and controlled his thoughts, movements, sleep, and bodily functions.

Indeed the conclusory descriptions of "patently frivolous," "fantastic, or delusional." make complete sense when citing the specific allegations from Starrett's complaint. It is important to note that Starrett has no references to the relief sought, only the allegations.

USATXN Argument E Incorrectly Cites Starrett Concerning Relief

The second half of USATXN's Argument E describes the relief sought. The summary itself mangles the relief sought by mixing up unrelated relief and by removing the separate relief requests from the underlying allegations which justify

the relief.

Indeed, the Plaintiffs believe that any complex legal argument could be made to appear "patently frivolous" if selected words and phrases are mixed up and restated with the intent of making the resulting jumble appear nonsensical (just jumble the words and phrases until you get the desired level of nonsense as USATXN seems to have done).

All this is improper though, as Starrett is only applicable to 'fantastic' allegations not the relief sought. The court is asked to ignore the second half of USATXN's Argument E to the degree that it addresses relief sought. Starrett was cited but does not apply to relief sought.

USATXN Does Not Specify Allegations Where Starrett Applies

However, USATXN does not tie the conclusory descriptions to any specific allegation (of which there are over 250 numbered allegations). The only reference to allegations (as in Starrett) is:

> Plaintiffs' lengthy complaint appears to **infer conspiracy and false documents from administrative delays** without identifying a legal basis for the requested relief.[2]

Of course only the first 13 words of that sentence apply to allegations before USATXN starts the attack on the relief sought and only 8 words describe actual

[2] Bold added by Plaintiffs

allegations.

Those 8 words (bolded) do not seem to apply to any allegations in the complaint though some of the words are used in several allegations.

The Plaintiffs have been unable to find any reference to 'conspiracy' in the Complaint (search of document did not encounter that word). There were tangential references to RICO statutes which are more about corruption rather than 'conspiracy' and the question raised in the Complaint was whether threatening to fire a federal investigator (OIG staff) if they report a crime to DoJ constitutes a bribe (they get to keep their job if they obstruct justice). The Plaintiffs do not consider this question frivolous but rather an interesting legal question and it was stated as such.

Also, while there are numerous references to falsified government records in the Complaint, the Plaintiffs were unable to find any case these crimes were inferred from administrative delays.

USCIS Records Contradictory (Hence One or Both False)

There was the USCIS case where two or more records clearly contradicted each other, one claiming an interview (eight months previous) was canceled due to unforeseen circumstances (Doc 11-1 para 185, 10-6) and another (from the day after the interview) saying that both the I-751 and N-400 were approved (Doc 11-1 para 163, Doc 10-5).

The Plaintiffs inferred a contradiction based on the implications of each record, a canceled interview can not justify approving applications. However, once it is accepted that the documents contradicted each other, the conclusion that one or both is false is simple logic without any need for any inferences.

Congress has made it clear that false government records are a serious matter, a crime requiring only demonstration of intent. Further Congress has declared that taking action based on a false record is itself a crime.

This is problematic for government agents when they encounter two records which contradict each other, one of which must be false. It is arguable that the only action they can legally take is to identify and correct the false record, but this is also often beyond their authority, so Plaintiffs recommended solution is to report the contradictory records to their supervisor and / or IG and take no further action. USCIS agents do not follow this policy.

While the inference that those two records contradict each other is arguable, it is not based on any administrative delay. Also, every interaction with USCIS agents which the Plaintiffs spoke with consistently recognized that the N-400 interview on 30 Jan 2023 was completed and not canceled as stated in Doc 10-6.

DoS Records False Through Omission

There were also allegations of DoS falsifying records through the omission of required facts to support visa denials but this has nothing to do with administrative delays. Due process clearly requires a factual / evidence foundation for any Due

Process decision and this omission is cited as a plausible falsified record, but it has nothing to do with administrative delays, only a question of the requirements of Due Process. It is well established that visa denials must give both a statutory and factual basis for the decision but that has been discussed above.

USPS Has Extraordinary Falsified Record Problems

The Plaintiffs also cited a 2017 USPS OIG audit (DR-AR-18-001, doc 18-7) where extensive problems were found. It stated:

> [USPS OIG] analyze[d] ... 25.5 million scans and found that ... about 1.9 million scans (7 percent) were improper stop-the-clock scans that occurred at delivery units instead of at the delivery location.

This might be unclear to non-USPS personnel, so to clarify, the 'stop-the-clock scans' are the scanning of a package's bar code to record the final delivery time to the customer. The 'delivery units' means the Post Office where the delivery person received the packages to deliver. The delivery location is the customer's location or address. To restate:

> USPS OIG found 1.9 customer delivery times recorded at the Post Office rather than the customer's delivery address.

To be clear, delivery scans can be made in the truck as long as the customer's address / house is in sight or even an easy walking distance away. However, it is never acceptable to scan as delivered a package while still at the Post Office and none of these 1.9 million packages were scanned at the customer's address.

So, USPS OIG found 1.9 million falsified delivery times out of 25.5 million.

Finding this many falsified records certainly qualifies as extraordinary when the usage of delivery times is considered.

It is unrefuted that cumulative delivery times in USPS are used for retention, promotion, and even bonuses for USPS personnel. It is also unrefuted that these cumulative delivery times are used in computing quality measurements for Congress and the public. Falsifying such important records certainly qualifies as a crime though it has nothing to do with administrative delays.

Refund Denied Through Falsified Records

Lastly, the reported delivery times are critical in making refunds to customers who have paid extra to get the insurance of 'guaranteed delivery' times.

In Doc 18-8 and Doc 18-9 there are clear USPS records that Mr. Carr was paid a refund to his credit card on 5 May 2021, but we have the sworn statement of Mr. Carr that his credit card never reflected the credit and that numerous efforts to get the transaction ID of the credit were unsuccessful.

It is not unreasonable to assume that unless USPS is able to provide the transaction ID of the purported credit, then there are faulty business processes within USPS which do not correctly record expenses and payments, another and, perhaps, a more serious example of falsified records.

However, none of such falsified refunds are due to administrative delays. It

appears that USATXN has again taken words and phrases from a legitimate complaint and mixed them up in a jumble until they are nonsense.

It does leave the Plaintiffs with a dilemma. How can they respond to claims made based on Starrett when there are no clear references to any specific allegation?

USATXN Requested to Withdraw Argument E

USATXN is asked to withdraw in its entirety USATXN's Argument E as it is founded on Starrett but does not reference any identifiable section of the actual complaint.

The court is asked to ignore all references to Argument E in the Defendants Motion to Dismiss as the argument does not refer to the Complaint in any recognizable fashion.

The Complaint has numbered allegations of manageable size (over 250) and if USATXN had thought any specific allegation or group of allegations were "patently frivolous," "fantastic, or delusional." they could have been cited by number.

If USATXN attempts to clarify Argument E in USATXN's Response, the Court is asked to ignore all such clarifications as the Plaintiffs have had no opportunity to counter any legitimate concerns which USATXN may have been trying to express. USATXN can properly address his concerns in any Answer which will likely refer to each and every specific allegation.

Further, if USATXN does not unequivocally withdraw Argument E in his response, the court is asked to consider issuing an Order to Show Cause for Sanctions under Civil Rule 11(b) and (c).

The Plaintiffs are not filing the normal 11(c) motion for sanctions because USATXN has not had prior notice of the 11(b) complaint and it is expected that the matter can be simply and properly resolved with USATXN withdrawal of Argument E. Further, no serious sanction seems justified beyond admonishing USATXN to not repeat such behavior in the event USATXN does not withdraw Argument E.

Unjustified Dismissal With Prejudice

USATXN is also requested to replace the Word Document emailed to the Court chambers which states 'WITH PREJUDICE'. There is nothing in the Motion to Dismiss papers to justify 'WITH PREJUDICE' and the only reference to prejudice in the Motion papers says 'without prejudice'. This is almost certainly a typographical or clerical error of no importance, but it should be corrected with USATXN's response.

Conclusion

The Defendants' Motion to Dismiss should be denied and the court should consider what immediate relief is appropriate considering the included Motions for Partial Summary Judgment.

Motion to Amend Complaint

This Motion is timely according to FRCP Rule 15(a)(1)(b) as it is submitted within 21 days after service of a motion under Rule 12(b). Such motions are normally granted as a matter of course.

The revised Complaint includes changes to correct clerical and typographical errors, e.g. correct addresses for Department of State (DoS) and Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The revised Complaint also has changes to conform to the evidence, i.e. corrections to the description of Exhibits which were added to the record after redacting the final version of affirmations offered to the DoS in 2017 and 2018 (Docs 12-3 and 12-4 as referenced the Revised Complaint Doc 18-1 para 64, 89, 98, and 103 and Doc 18-2 and Doc 18-1 para 89).

There are also additions of affirmations to verify the complaint such that each allegation and claim is true to the best of the knowledge of each Plaintiff and each submitted document is true and accurate as described.

The revised Complaint also has updates made in response to Defendants' Motion to Dismiss adding appropriate citations and clarifications.

The numbered paragraphs, allegations and reliefs, have retained the numbers from the original complaint.

Attached as Exhibit 1 (Doc 18-1) is the resulting Complaint to be used in the event the Motion to Amend is granted.

Attached as Exhibit 2 (Doc 18-2) is a modified Complaint which shows the original complaint along with changes in green showing the old text (struck out) and new text.

Attached as Exhibit 3 (Doc 18-3) is a proposed Order granting the Motion to Amend and Motion for Summary Judgment.

The Plaintiffs ask that the court grant the Motion to Amend the Complaint.

Motion for Partial Summary Judgment

The court is asked to grant Partial Summary Judgment to:

Order the SSA Commissioner and any successors to conduct a hearing to consider Mrs. Von Kramer's 'lawful presence' status based on the three years (2019, 2020, and 2021) when she was improperly denied the ability to demonstrate her sincere desire to establish enduring ties to the U.S..

Order the USCIS Director and any successors to provide Mrs. Carr with:

- Proof of her permanent residence status (A.K.A. 'green card') until Mrs. Carr can apply for and receive her U.S. passport,
- Schedule and accept Mrs. Carr's 'Oath of Allegiance' and provide Mrs. Carr

with her Naturalization Certificate

Mrs. Von Kramer 'Lawful Presence'

SSA payments of survivor's benefits (widow's benefits) are restricted for foreign nationals who live overseas.

The basic restriction is that the applicant must be legally present in the U.S. for a full calendar month before they can apply for benefits. In turn, if they leave the U.S. for six months or more payments will be stopped. To reinstate payments they must be legally present in the U.S. for a full calendar month. The rules are actually more complex than this, but the basic requirement is that Mrs. Von Kramer visit the U.S. at least every six months or so and stay for longer than a month.

An exception is granted to surviving spouses who have established a 'lawful presence' in the United States with five years of demonstrated enduring ties to the United States. The requirements for these lawful presence visits are also complex and ambiguous (to the Plaintiffs) and there used to be the unusual requirement that for a visit to count for 'lawful presence' it must be longer than one day and shorter than 30 days (and not a full calendar month). A stay for an entire year was also counted. In SSA POM RS 02610.025 5-Year Residency Requirement for Alien Dependents/Survivors Outside the United States (U.S.), the current requirements have been clarified to focus on ‘demonstrate enduring ties to the United States’. Lawful presence trips can not just be for shopping or visiting relatives.

It is clear why visits of a month are not counted for lawful presence as it is

assumed the purpose of these visits are to qualify for payments.

The result is that as long as Mrs. Von Kramer is in good health and able to travel, she should make two longer visits to the U.S. (more than a month in length and less than six months apart) and one short visit (less than a month, ideally about 14 days) each year. The requirement for a short visit appears to be most easily met by Thais through a very short visit to Mexico or another nearby country to break a very long visit into a long and short visit according to SSA regulations. The new rules could make the very short visit to a nearby country unnecessary, but the Plaintiffs are not SSA attorneys.

It is important that Mrs. Von Kramer establishes her lawful presence while her health is good as there is a likely unintended consequence that if her health declines and she is unable to travel, her SSA payments will stop, possibly when her need is greatest.

This is not only demanding financially and physically (12 hour time zone change, 24 hour or longer flights) on Mrs. Von Kramer, it also places some tedious and time consuming record keeping demands on the SSA.

The requested relief would not alter the amount paid by SSA to Mrs. Von Kramer, but it could reduce the SSA verification requirements. Each of Mrs. Von Kramer's visits must be confirmed with two face to face meetings (one to confirm arrival and a second to confirm still present) along with record checks with other DHS agencies (CPB) to verify her lawful status for the duration of each visit.

This court is asked to review the affirmations which Mr. Carr and Mrs. Von Kramer provided to DoS in 2019 (Doc 12-4). The referenced numerous deeds, titles, diplomas, pay stubs, bank statements, and pictures of houses, car, family, and pets can be made available to the Defendants and court on request, but they are in Thai so that translation and redaction are problematic.

If the court concludes that Mrs. Von Kramer is a conscientious and lawful person who would not overstay any tourist / business visit, then the court can simply conclude that Mrs. Von Kramer should have been given the chance to demonstrate her sincere desire to 'have an enduring and close attachment to the United States for at least 5 years'. The court would only require the SSA to consider whether the improperly withheld visas were relevant in demonstrating her enduring ties to the U.S. It would be up to Mrs. Von Kramer to demonstrate that she has developed the required enduring ties to the U.S..

The evaluation of Mrs. Von Kramer lawful presence status would remain absolutely with the SSA.

Mrs. Carr Receives Certificate of Naturalization

It is an undisputed fact that on 31 Jan 2023 USCIS issued a Final Decision that Mrs. Carr's I-751 application (Permanent Residence Card or 'green card') and N-400 application (Certificate of Naturalization) were both approved.

It is also undisputed that since Nov 2022 USCIS has not provided Mrs. Carr with the statutorily mandated proof that she can work and travel freely.

It is also undisputed that Mrs. Carr was stranded in Thailand in 2022 as a result of USCIS failure to abide by clear and specific statutory mandates.

It is also undisputed that to date USCIS has not provided Mrs. Carr with any clear and understandable proof that she is permitted to work and travel freely at this time.

While this court can reach the conclusion that Mrs. Carr is in the U.S. legally by considering the various documents in this matter, it is not clear that she could convince a Texas vigilante under Texas Bill SB4 or a National Guardsman sent from Wyoming to deport illegals who are 'poisoning the blood of our nation' (promised by a current Presidential candidate) that she is in the U.S. legally. Indeed every person of Hispanic or Asian heritage has cause to be concerned.

These are extreme times that we are living in and it is not unreasonable for this court to order USCIS to abide by its Final Decision on 31 Jan 2023 and provide Mrs. Carr with the promised 'green card' and Certificate of Naturalization as soon

as possible (and hopefully before she is illegally deported without cause or due process).

While there are numerous other issues in this matter which require careful and deliberate consideration, these two orders are requested in a timely fashion by granting the Motion for Partial Summary Judgment.

Conclusion

This court is asked to deny Defendants' Motion to Dismiss and grant Plaintiffs' Motion to Amend the Complaint and Motion for Partial Summary Judgment granting an order to SSA to consider Mrs. Von Kramer five year lawful presence and orders to USCIS to properly implement the Final Decision of 31 Jan 2023.

Respectfully submitted,

Verification of Response and Motions

We the undersigned Plaintiffs hereby affirm under penalty of perjury in both the United States and Thailand that as individuals:

1. I have reviewed the above response and motions and believe all of the allegations to be true to the best of my knowledge.
2. I have reviewed the associated documents and exhibits and believe them to be true and accurate copies with the exception of the documents identified as being redacted. The redacted documents have only been altered to remove sensitive personal information according to normal redaction procedures.

I hereby reaffirm that the above is true to the best of my knowledge under penalty

of perjury in both the United States and Thailand.

/s *Brian P. Carr*

Brian P. Carr
1201 Brady Dr
Irving, TX 75061
Date: 28 Mar 2024
Location: Irving, Texas

/s *Air Carr*

Rueangrong Carr
1201 Brady Dr
Irving, TX 75061
Date: 28 Mar 2024
Location: Irving, Texas

/s *Buakhao Von Kramer*

Buakhao Von Kramer
105 - 3 M 5 T YANGNERNG
SARAPEE, CHIANG MAI 50140 THAILAND
Date: 28 Mar 2024
Location: Irving, Texas

CERTIFICATE OF SERVICE

On the recorded date of submission, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I also hereby certify that on this same date no copies were served via U.S. mail as all parties in this matter were enrolled in the court's electronic case filing (and service) system.

/s *Brian P. Carr*

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

CERTIFICATION OF ELECTRONIC SIGNATURES

In accordance with TXND LR 11.1(d), on the recorded date I received permission from Mrs. Carr and Mrs. Von Kramer to sign this document electronically on their behalf after having provided them with the relevant sections of the document in English and translated into Thai (relying on Google Translate). We then discussed the documents in English (as Google Translate does always provide meaningful translations) and the only concerns about accuracy was Mrs. Von Kramer's concern that the document specifies precise dates and times for the various visa interviews and she really does not remember that level of detail about those events (several years ago).

I assured Mrs. Von Kramer that the dates and times were established from the electronic records of the appointment (e.g. the official appointment document to allow applicant entry into the consulate) which I had retained. I explained that her signature does not indicate she remembers the interviews being on that date at that time but rather that she has no knowledge or recollection to the contrary. She does remember interviews of that nature in that time frame.

In turn, I must qualify that almost none of the details in this now sworn statement (no longer allegations) were based on my recollection but rather careful review of electronic records which I have retained and maintained and which I believe to be accurate.

/s *Brian P. Carr*

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Date: 28 Mar 2024
Location: Irving, Texas