

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

BRIAN P. CARR, et al., §  
Plaintiffs, §  
v. § Case No. 3:23-cv-02875-S-BT  
UNITED STATES OF AMERICA, et §  
al., §  
Defendants. §

**ORDER**

Before the Court is Defendants' Motion under Rule 56(d) (ECF No. 22), in which Defendants move the Court to either (1) defer consideration of or deny Plaintiffs' Motion for Partial Summary Judgment (ECF No. 18) as premature or (2) in the alternative, extend the deadline for Defendants to respond to the Motion for Summary Judgment until after the Court's decision on Defendants' currently pending Motion to Dismiss.

This case arises out of *pro se* Plaintiffs Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer's allegations that the United States of America, along with several other federal agencies, have violated their constitutional rights throughout various attempts by Ms. Carr and Ms. Von Kramer to obtain immigration benefits. *See* Compl. (ECF No. 3). Defendants filed a Motion to Dismiss on March 8, 2024, seeking to dismiss Plaintiffs' Complaint for lack of jurisdiction, failure to state a claim, and failure to identify an applicable waiver of

sovereign immunity. Mot. Dismiss (ECF No. 15). In response, and within the 21-day deadline, Plaintiffs filed a 59-page document that included a response to Defendants' Motion to Dismiss, a Motion for Partial Summary Judgment, and a Motion for Leave to Amend. *See* Mot. P. Summ. J. (ECF No. 18). Plaintiffs then filed a "Certificate of Conference" with the subheading "Apology for Delay in Conference," explaining that the proposed Amended Complaint (ECF No. 18-1) contains only minor changes and that Defendants are not opposed to the amendment. *See* Cert. 1–2. (ECF No. 20). Plaintiffs also noted, correctly, that the amendment was timely under Federal Rule of Civil Procedure 15(a)(1)(A). *See id.* at 2. Defendants have indicated that they plan to file a Motion to Dismiss Plaintiffs' Amended Complaint, when the Amended Complaint is filed. *See* Defs.' Cert. (ECF No. 21); 56(d) Mot. 10 (ECF No. 22). The Amended Complaint, though attached as an appendix to Plaintiffs' Motion for Partial Summary Judgment, has not yet been filed as a separate entry on the docket.

Having considered the instant Motion, Defendants' brief, and the supporting affidavit explaining that Defendants cannot respond to the assertions in Plaintiffs' Motion for Partial Summary Judgment without the benefit of discovery, the Court concludes that there is good cause to **GRANT** Defendants' Motion under Rule 56(d) (ECF No. 22) and **DENY** Plaintiffs' Motion for Partial Summary Judgment (ECF No. 18) as premature. *See* App'x (ECF No. 23). The Court further **DENIES** as moot Plaintiff's Motion to Amend their Motion for Partial Summary Judgment (ECF No. 20) and their Motion to Correct

Typographical Errors (ECF No. 24). In light of Plaintiffs' stated intent to amend their complaint, the Court also **DENIES** as moot Defendants' Motion to Dismiss (ECF No. 15).

To further aid the efficient resolution of the case, the Court **ORDERS** as follows:

1. Plaintiffs must file their Amended Complaint on the docket<sup>1</sup> by **April 30, 2024**.
2. Defendants must file an Answer to Plaintiffs' Amended Complaint or a Rule 12 Motion to Dismiss the Amended Complaint within **21 days after Plaintiffs file their Amended Complaint**.
3. Plaintiffs may file a response to Defendants' anticipated Motion to Dismiss their Amended Complaint within **21 days after Defendants file their Motion**. N.D. Tex. L. Civ. R. 7.1(e). Defendants may file a reply within **14 days after Plaintiffs file their response**. N.D. Tex. L. Civ. R. 7.1(f).
4. The Court will postpone the entry of a Rule 16(b) Scheduling Order until after the disposition of Defendants' anticipated Motion to Dismiss. *See* Fed. R. Civ. P. 16(b)(2).

**SO ORDERED.**

April 22, 2024



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REBECCA RUTHERFORD  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> Plaintiffs included their proposed Amended Complaint as an appendix to their combined Motion for Partial Summary Judgment and Response to Defendants' Motion to Dismiss. Plaintiffs should file this same proposed Amended Complaint as a separate docket entry titled "Amended Complaint."