On Fri, Apr 26, 2024 at 7:13 PM Brian Carr <carrbp@gmail.com> wrote:

Hi George, Emily,

I was disappointed in this morning's meeting that we weren't able to resolve any issues, but we did Confer as required by local rules. I would like to get the record straight for future certificates. Might even convert this email thread to a document to submit as an exhibit to each coming Certificate (and it sounds like there will be a few).

1) The government is aware of the imminent Motion for Sanctions and it is OPPOSED,

2) The government is aware that I object to any false or misleading pleadings by the government and reserves the right to restate or rephrase my pleadings without supporting references even if the result is false or misleading. This is based on Mr. Padis's experience that everybody does it so it must be OK and that restating and rephrasing has not been penalized by traditional sanctions (perhaps those two observations are related). The government is OPPOSED to all such Motions for Sanctions.

3) The government reserves the right for making its own 'Motion for Sanctions' for Plaintiff's Motions for Sanctions. For the record, Plaintiffs are OPPOSED to all such motions (no need for further conferences, parties can just cite these emails).

4) The government is OPPOSED to Plaintiff's anticipated Motion for Reconsideration of the recent court order in this matter.

5) The government is not interested in the opportunity to depose the Plaintiff's next week because the government has not familiarized itself with the Complaint (either version) or the certified documents in the record sufficiently in order to know what affirmed statements or certified documents need further clarification.

6) Mr. Padis's email on 1 Mar 2023 stating:

> the U.S. Attorney's Office has no record of having been served in this case. See Fed. R. Civ. P. 4(i)(1)(A) (requiring that among other things a party must deliver a copy of the summons and the complaint to the United States attorney).
> If you reply with a summons and a copy of the complaint, I will email you a letter confirming that I am accepting service on behalf of the U.S. Attorney.

was incorrect in that USATXN actually had a record of being served (on 9 Jan 2023 presumably) but the record indicated that it was served by Mr. Carr. After Mr. Padis confirmed that it was actually Mr. Joubert who served the papers Mr. Padis considered whether Mr. Carr's presence at the actual service event may have invalidated the proof of service. Mr. Padis decided that he could likely challenge the service as improper, but concluded that it wasn't worthwhile.

At this time I would like to pose a few hypothetical questions to Mr. Padis. If Mr. Carr had declared that he had delivered a copy of the summons and complaint on 9 Jan 2023 (which is exactly what Mr. Padis had misstated as the FRCP 4(i)(1)(A) requirements), would he have sent a letter accepting service on 9 Jan 2023 or the date he received the email? Was the emailed copy of the summons and complaint really useful or was Mr. Padis aware that he could retrieve the documents from ECF himself or that he or another member of USATXN such as caseview.ECF@usdoj.gov may have already retrieved the documents at some earlier date.

Anyway, thanks for taking the time to talk through these issues. Wishing you all the best,

Brian

********** Cross Email 26 Apr 2024 **********

On 4/26/2024 2:51 PM, Padis, George (USATXN) wrote:

> Brian,
>
> Thanks for taking the time today to confer about your contemplated motion for sanctions. I wanted to summarize what I believed to be the bases for your motion for sanctions from our call today:

1. My understanding from our call today is that you believe my characterization of your claims as demanding “criminal investigations” is misleading because you are calling for “investigations of potential crimes.”

> As expressed on the call, to call that misleading or a false statement would be slicing the baloney mighty thin. (I may have used an incorrect expression, like “slicing the bread too thin” but you got the gist.)

1. Then, I understood you found it misleading that we characterized your claims in the motion to dismiss as inferring a conspiracy and fraudulent documents from isolated administrative errors and delays. As I explained, this is well within the boundaries of permissible legal argument and a fair good-faith characterization of plaintiffs’ claims (although we appreciate you disagree).

1. Lastly, I believe you found an email I authored to be misleading because I indicated I believed that service was improper and offered to accept service on behalf of the U.S. Attorney. As discussed, I was under the impression that you had personally served a copy of the summons and the complaint in violation of

FRCP 4(c)(2) (requiring service be made by someone who is “not a party”), and I later learned through our correspondence that you delivered a copy of the summons and the complaint *together* with a process server—presenting an interesting legal question. Ultimately, the government filed a timely response to the complaint under Rule 12(b) rather than litigate this interesting service issue. Although my correspondence was not at all misleading, I do want to note that all of these discussions around service occurred over email and not in a pleading.

In sum, and as discussed on today’s call, the above three points do not come close (taken separately or together) to meeting the high bar set by Rule 11 for sanctions. I warned you over the phone, and emphasize here again, that an unfounded motion for sanctions may itself be grounds for sanctions, which you acknowledged you understood.

Thanks again for your time on today’s call. Emily will take it from here.

Best,

George

George M. Padis
Assistant U.S. Attorney
(214) 659-8645

**From:** Brian Carr <carrbp@gmail.com>
**Sent:** Thursday, April 25, 2024 12:29 PM
**To:** Padis, George (USATXN) <GPadis@usa.doj.gov>; Owen, Emily (USATXN) <EOwen1@usa.doj.gov>
**Subject:** Re: [EXTERNAL] Re: Carr v. USCIS et al. - Motion for Sanctions FCRP Rule 11(c)(2)

Hi George, Emily,

That would be super. I was also thinking it would be awesome if you guys could depose myself, Air, and Buakhao on Wednesday May 1, perhaps from 9AM to as long as you like (and you don't even need to provide lunch, we can bring our own and share). There is not a lot that we have to share but you could contact USPS,

DoS, USCIS, and SSA to see what they would like to know. I think the video recordings from USCIS and DoS would be more informative, but I am not sure if they exist. SSA could give you input on 'lawful presence' (probably not your specialty) and that might help them decide what position they want to take on them conducting the requested review (my impression is that they would prefer to be out of this matter as quickly as possible).

Wishing you the best,

Brian

P.S. If you want to do the deposition you could arrange to have a Thai interpreter present or available or we could rely on me to interpret as necessary and relying on google voice (if recorded that could serve as a measure of the usefulness of google voice and the need for an interpreter in the future).

P.S.S. We got lots of berries and are off to lunch at King Buffet, one of our favorites, but as it a buffet and we are older we don't go too often.

On 4/25/2024 9:15 AM, Padis, George (USATXN) wrote:

> We can do a call tomorrow at 9 am central. As I've assigned the case to Emily, I will leave it to her to state our position on the motion for reconsideration on tomorrow's call.
>
> Do you want to call my office line then?
>
> George M. Padis
> Assistant U.S. Attorney
> (214) 659-8645

**From:** Brian Carr <carrbp@gmail.com>
**Sent:** Thursday, April 25, 2024 9:05 AM
**To:** Padis, George (USATXN) <GPadis@usa.doj.gov>; Owen, Emily (USATXN) <EOwen1@usa.doj.gov>
**Subject:** Re: [EXTERNAL] Re: Carr v. USCIS et al. - Motion for Sanctions FCRP Rule 11(c)(2)

Hi Emily, George,

We are off to pick wild blackberries this morning as they won't be around for long (they are wild). Also, Buakhao will be heading home soon so we want to fit in all the fun stuff (and lawful presence activities) while we can.

However, I would also like to let you know that I expect to file a Motion for Reconsideration under the normal rule for interlocutory orders. As that is an 'other' motion I am seeking your position on that matter. OPPOSED would not surprise me. ;-)

Of more relevance, there will also be a separate motion for sanctions (of the creative variety, perhaps community service, for Mr. Padis) for your first filing. There will be separate motions for each filing which has not been withdrawn within 21 days and which has restatements of my statements, e.g. 'criminal investigations' which is a phrase that I have carefully avoided as it can be misconstrued or broad pejorative terms without specificity.

I understand your desire to restate my statements to make a point as my statements have a tendency to be verbose and tedious and possibly overly precise and accurate. However, I ask that if you want to claim we are seeking 'criminal investigations' only do so after quoting the original statement in its entirety, e.g. 'expeditiously investigate all plausible allegations of federal crimes' in the context of IG's and their statutory mandate to report all likely federal crimes or 'investigate and track all plausible allegations of federal crimes as necessary to insure that the criminal behavior is not repeated and that injured parties receive appropriate redress'.

I see those as big differences? Do you see the difference?

My problem with your restatement is that it is overly broad and could be misconstrued as requesting prosecution which in every case is NOT requested, but instead the THREAT of prosecution should be used as a tool / cudgel to promote future compliance. This challenges the DoJ classification of civil and criminal, but while DoJ certainly has executive discretion to organize affairs in that fashion, I am not bound by that distinction.

Further if you want to use such pejorative terms as 'frivolous' I ask that in every case you quote the applicable statement / claim in its entirety (putting the text in a footnote is OK, but the footnote itself will likely take up a substantial amount of space. I do not believe you will find anything that could be accurately described as 'fantastical' or 'delusional'.

Anyway, also please be advised that I intend to file a separate Motion for Sanctions about 21 days after each filing you make (Emily I guess) if there are any unfounded mis-statements or unsupported pejorative terms.

My suspicion is that after careful review that will be a substantial majority of every filing George has made to date. Emily, it will be interesting to see how well you can be conscientious in this regard. Neither of you have had the advantage of training by Professor Ira Goldstein of the MIT AI Lab (the best and finest prototypical paper mill) or 50 years of writing (typing to be precise and accurate) in a field that places a premium on accuracy.

How about 9AM tomorrow (Friday) morning?

Wishing you all the best,

Brian

On 4/24/2024 10:08 PM, Brian Carr wrote:

Hi Emily, George,

Sorry we were out running errands today. Tomorrow is errands again. Maybe Friday.

Brian

On 4/24/2024 11:18 AM, Padis, George (USATXN) wrote:

Hi Brian,

Do you have time for a call today with me and Emily to discuss your contemplated motion for sanctions?

Thanks,

George

George M. Padis|
Assistant U.S. Attorney
(214) 659-8645

**From:** Brian Carr <carrbp@gmail.com>
**Sent:** Tuesday, April 23, 2024 9:26 PM
**To:** Owen, Emily (USATXN) <EOwen1@usa.doj.gov>
**Cc:** Padis, George (USATXN) <GPadis@usa.doj.gov>
**Subject:** Fwd: Re: [EXTERNAL] Re: Carr v. USCIS et al. - Motion for Sanctions FCRP Rule 11(c)(2)

Dear Ms. Owen,

Welcome aboard. I am confused as to what '**Substitution of Counsel by AUSA. Emily Owen-DOJ added as AUSA. (Owen-DOJ, Emily)**' Does that mean you will be lead counsel for this matter? Are you in DC (DOJ)? Will you be mostly representing DoJ in this matter? Can you give me a response as to the DoJ position about a Motion for Sanctions (presumably against Mr. Padis) if it is filed after USATXN files an Answer? OPPOSED would be a fine answer (and is the expected answer).

Thanks for your response,

Brian

-------- Forwarded Message --------

**Subject:** Re: [EXTERNAL] Re: Carr v. USCIS et al. - Motion for Sanctions FCRP Rule 11(c)(2)

**Date:** Mon, 22 Apr 2024 20:05:39 -0500

**From:** Brian Carr <carrbp@gmail.com>

**To:** Padis, George (USATXN) <George.Padis@usdoj.gov>

Thanks so much for your prompt and clear response.

As mentioned previously, I intend to continue suggesting sanctions for any delays in getting an Answer from the Defendants but mostly through requests under the courts initiative (no delay in asking for such sanctions).

However, if you ever provide a proper Answer in this matter I expect to make a distinct Motion for Sanctions though with novel alternatives to the normal costs (which clearly don't apply in this matter). I presume that you will OPPOSE any such motion, but it would be good to have a record that I gave notice of the intention (adequate notice) and conferred with you well in advance (adequate notice).

I really don't understand how motions under 11(c)(2) work (served but not filed with court), but I am objecting to the entirety of your Motion to Dismiss and Motion for Continuance under Rule 56(d) (a 5th Circuit construct it seems which I am also contesting).

Please respond with your position on such a Motion for Sanctions.

Thanks again,

Brian

On 4/22/2024 11:11 AM, Padis, George (USATXN) wrote:

> Unopposed
>
> George M. Padis
> Assistant U.S. Attorney
> (214) 659-8645
>
> ---
>
> **From:** Brian Carr <carrbp@gmail.com>
> **Sent:** Monday, April 22, 2024 9:17:38 AM
> **To:** Padis, George (USATXN) <GPadis@usa.doj.gov>
> **Subject:** [EXTERNAL] Re: Carr v. USCIS et al. - Motion under Rule 56(d)
>
> Dear Mr. Padis,
>
> As I am sure you are aware, on Friday I submitted a Motion to Correct Typographical or Clerical Errors as Doc 24 asking that the court seal document

20-2 which is an improperly redacted copy of Mrs. Carr's 'green card' and instead rely on Doc 24-1 which, hopefully, is a properly redacted version of the same document.

When I discovered my error I was in a tizzy about how to promptly correct the error and submitted the motion after calling the local ECF help desk without due consideration. I presume that USATXN does not oppose this benign motion (the relief sought is actually exclusively an ECF process) but ask that you clearly state your position so that I can file a Certificate of Conference and, hopefully, have PACER corrected directly without unnecessary further delay.

My apologies for my oversights (both redaction and motion practice) and appreciate your response.

Brian

On Wed, Apr 17, 2024 at 5:49 PM Brian Carr <carrbp@gmail.com> wrote:

Dear Mr. Padis,

You are correct in your expectation that plaintiffs oppose the request. Thanks,

Brian

On 4/17/2024 11:36 AM, Padis, George (USATXN) wrote:

Dear Mr. Carr:

I plan to move under Federal of Civil Procedure 56(d) for dismissal of plaintiffs' motion for a partial summary judgment as premature or, in the alternative, to extend Defendants deadline to respond until 60 days after a decision on Defendants' motion to dismiss (which remains pending until you file an amended complaint). Would you please reply to confirm that plaintiffs oppose the request? Below is the caselaw, which is well-established on this point.

Technically, the Federal Rules of Civil Procedure allow a party to file a motion for summary judgment before an answer has been filed. *See* Fed. R. Civ. P. 56(a); *see also HS Res., Inc. v. Wingate*, 327 F.3d 432, 440 (5th Cir. 2003) (explaining that "an answer is not a prerequisite to the consideration of a motion for summary judgment"). "However, courts have approached such motions with extreme caution." *Matini v. Reliance Standard Life Ins. Co.*, No. 1:05-CV-944-JCC, 2005 WL 2739030, at *2 (E.D. Va. Oct. 24, 2005); *see also Rogers*, 2022 WL 17418978, at *3 (collecting cases where courts denied plaintiffs' summary judgment motions when they were filed before the defendant had answered or the court was still conducting preliminary screening).

"Federal courts . . . are permitted to dismiss a motion for summary judgment without prejudice if it is filed before any party answers." *Dowl v. Prince*, No. 11-CV-0417, 2011 WL 2457684, at *1 (E.D. La. June 20, 2011). In fact, a court should *not* grant a summary-judgment motion filed before an answer "unless in the situation presented, it appears to a certainty that no answer which the adverse party might properly serve could present a genuine issue of fact." *Stuart Inv. Co. v. Westinghouse Elec. Corp.*, 11 F.R.D. 277, 280 (D. Neb. 1951). As a result, courts both in this district and across this circuit have often denied plaintiffs' summary judgment motions as premature when filed before an answer. *See, e.g.*, *Rogers*, 2022 WL 17418978, at *3; *Watkins v. Monroe*, No. 6:18-CV-347, 2019 WL 1869864, at *1 (E.D. Tex. Mar. 27, 2019) (report and recommendation), *adopted*, 2019 WL 18581000 (E.D. Tex. Apr. 25, 2019); *Kuperman v. ICF Int'l*, No. Civ. A. 08-565, 2008 WL 647557, at *1 (E.D. La. Mar. 5, 2008); *Wartsila v. Duke Cap. LLC*, No. Civ. A. H-06-3908, 2007 WL 2274403, at *5 (S.D. Tex. Aug. 8, 2007); *see also Gabarick v. Laurin Mar. (Am.), Inc.*, 406 F. App'x 883, 889–90 (5th Cir. 2010) (remanding case because the grant of summary judgment was premature as the pleadings were "in their infancy" and "very little discovery [had] taken place").

Adjudicating a plaintiff's summary-judgment motion before the defendants "have yet to file answers to the complaint or oppositions of a substantive nature to the motions for summary judgment" could result in a decision that "overlook[s] material issues of fact which might have been raised." *First Am. Bank, N.A. v. United Equity Corp.*, 89 F.R.D. 81, 87 (D.D.C. 1981).

Thanks,

George

**George M. Padis**
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