

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

<p>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</p>	<p>Civil No. 3-23CV2875 - S Motion to Reconsider Certificate of Conference - OPPOSED</p>
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Rule 54b Motion to Reconsider

Summary

On 23 Apr 2024 in the morning this court (Magistrate RR) filed an Order (ECF 26) resolving all pending motions. Shortly thereafter the Defendants filed a Substitution of Counsel Notice replacing Mr. Padis with Ms. Owens (ECF 27). That evening Mr. Carr filed ECF 28, his Reply supporting Plaintiffs' Motion for Partial Summary Judgment (MfPSJ) and Response Opposing Defendants' [56\(d\)](#) Motion.

This motion is submitted in accordance with [FRCP 54\(b\)](#). In this motion, Plaintiffs raise several concerns about the propriety of the Order and ask that the record in this matter include a review by the court of ECF 28 and, based on that review, that the court resolve the issue of whether Defendants' [56\(d\)](#) Motion was incorrectly filed as [FRCP Rule 56\(d\)](#) does not support separate Motions but rather relies on Affidavits attached to [Rule 56](#) Responses, i.e. the Defendants should have filed the

pleadings and affidavit as a Rule 56 Response rather than a Rule 56(d) Motion.

The court is also asked to correct the summary of the complaint where it stated 'various attempts by Ms. Carr and Ms. Von Kramer to obtain immigration benefits. See Compl. (ECF No. 3)' which is both false (in part) and misleading (in part).

Motion to Reconsider Proper

FRCP Rule 54(b) states:

any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

No Certificate of Conference for 56(d) Motion

In Defendants' 56(d) Motion (ECF 22), Defendants oddly enough complains that there is no Certificate of Conference for the MfPSJ (even though Local Civil Rule LR 7.1 clearly excludes Motions for Summary Judgment from conferences for obvious reasons) but then does not attach any certificate for the 56(d) Motion. As there is no listing in Local Civil Rule LR 7.1 for 56(d) Motions, it must be considered 'Other' which do require a certificate.

It is also true that Mr. Padis did send an email to Mr. Carr asking if Mr. Carr OPPOSED the 56(d) Motion, but it was a few hours before filing the motion (ECF 22). Mr. Carr responded later that evening that he OPPOSED the motion, but Mr. Padis did not ever file any Certificate of Conference for ECF 22. As such, the

56(d) Motion should be considered OPPOSED and the Plaintiffs must be given an opportunity to respond.

Order Premature

Plaintiffs are contesting the propriety of the Order denying their MfPSJ and granting Defendants' 56(d) Motion while the Plaintiffs still had time to file opposition pleadings.

In that regard, Plaintiffs' pleadings submitted just after the Order were timely as the Plaintiffs had 7 days to submit their Reply supporting the MfPSJ, i.e. 24 Apr 2024 is 7 days after 17 Apr 2024. If the Defendants 56(d) Motion were correctly categorized as a Rule 56 Response, then the same 24 Apr 2024 would be applicable. As a 56(d) Motion, the Plaintiffs had until 8 May 2024 for their Response.

Mr. Carr had spent five days preparing the pleadings and did not notice the court's Order or Defendants' Notice until he was ready to submit the Reply (ECF 28) and only revised the submitted document to correct the internal reference to the attached exhibit (ECF 28-1).

There are serious Due Process concerns for any decision which is made before a party is given the opportunity to respond.

Further, as the Defendants Notice of Substitution of Counsel came just hours after the Order there is some indication that the Defendants had conferred with the court about how to manage the transition between counsel. It would not be fair for Ms.

Owen to pick up in the middle without some resolution of pending matters, especially considering the anticipated Motion for Sanctions for the delays attributed to Mr. Padis.

Mr. Carr understands the challenges the court must have in dealing with contentious parties (much like herding cats) and trying to expeditiously and justly resolve matters. Even so, in the future Mr. Carr would like to be included in any conferences to expeditiously move things forward.

Desire for Prompt Resolution

Whenever Mr. Carr has an opportunity he advocates a prompt resolution to Mrs. Carr's plight. Even though USCIS informed Mrs. Carr on 31 Jan **2023** (over a year ago) that her I-751 application (for a ten year green card) and N-400 application (for citizenship) were both approved (ECF 10-5) and she only needed to take the Oath of Allegiance to become a citizen, the reality is that at this time she has not been permitted to take the Oath of Allegiance to become a citizen and is an apparent 'undocumented alien' (a.k.a. 'illegal').

All USCIS documents of her lawful permanent resident status have expired (ECF 24-1, 18-6, 20-2), and, contrary to law¹, with no ten year 'green card' she has realistic fears of being deported at any time by ICE (she doesn't trust U.S. immigration), vigilantes (under Texas SB4), or National Guardsmen (to deport millions of illegals who are poisoning the blood of our nation on day one).

¹ INA 264 is 8 USC section 1304 which in (d) states:

(d) Certificate of alien registration or alien receipt card

Every alien in the United States who has been registered and fingerprinted under the provisions of the Alien Registration Act, 1940, or under the provisions of this chapter shall be issued a certificate of alien registration or an alien registration receipt card...

Statutory Justification for 56(d) Motion Challenged

In Plaintiffs' ECF 28 Response Opposing Defendants 56(d) Motion (ECF 22), the Plaintiffs challenged the statutory justification for 56(d) Motions. As this court and 5th Circuit Court routinely discuss 56(d) Motions it is expected that this court will find that 56(d) Motions have sufficient statutory basis.

However, in the event that this matter is reviewed by the Supreme Court (perhaps to review the Doctrine of Consular Non Reviewability), Mr. Carr would like the record to reflect that 56(d) Motions were contested. There are other Circuit Courts (e.g. 3rd) which insist that such responses be in the form of [Rule 56](#) Responses with supporting Affidavit. The Supreme Court could choose to resolve any confusion concerning 56(d) Motions and [Rule 56](#) Responses.

Correction to Orders Summary

The findings of 23 Apr 2023 (ECF 26) should be corrected insofar as it states 'various attempts by Ms. Carr and Ms. Von Kramer to obtain immigration benefits. See Compl. (ECF No. 3)'.

Plaintiffs believe a more accurate summary would be

Mrs. Von Kramer seeks Declaratory Relief for the three years when she was prevented from visiting the U.S. to establish her 'lawful presence' for SSA benefits (verified Amended Complaint ECF 29, pg 48, relief 15). This is not an immigration benefit. Department of State (DoS) provides non-immigration visas and the Complaint (ECF 29) Count 4, para 85 to 117 describes how DoS prevented Mrs. Von Kramer from the visiting the U.S..

Mrs. Carr seeks her ten year 'green card' in accordance with INA 264(d) as soon as possible so that she will no longer be an apparent 'undocumented

alien'. This is an immigration benefit as authorized by USCIS in its decision of 31 Jan 2023 (ECF 10-5), but it is not discretionary to USCIS at this time (Verified Amended Complaint ECF 29, pg 49, relief 20).

Mrs. Carr also seeks her Certificate of Naturalization (Verified Amended Complaint ECF 29, pg 49, relief 20) as authorized by USCIS in its decision of 31 Jan 2023 (ECF 10-5). By USCIS internal nomenclature, this is a naturalization benefit, not immigration.

Conclusion

This court is asked to review Plaintiffs Reply and Response (ECF 28) and so note in the record.

The court is asked to update its decision concerning the relief sought by Mrs. Carr and Mrs. Von Kramer to conform with the original complaint (ECF 3) and Verified Amended Complaint (ECF 29).

The court is also asked to rule on the legality of 56(d) Motions. While Mr. Carr is formally advocating that such motions be replaced with Rule 56 Responses, the proposed Order will uphold 56(d) Motions out of consideration of 5th Circuit decisions and this courts previous decisions.

Respectfully submitted,

Verification of Motion

The Plaintiff hereby affirms under penalty of perjury in both the United States and Thailand that as an individual:

1. I have reviewed the above motion and believe all of the statements 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: 14 May 2024

Location: Irving, Texas

Certificate of Conference

This Motion for Sanctions is OPPOSED

The conference was held via an email discussion with Ms. Owen's response on 14 May 2024.

/s Brian P. Carr

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

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
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Irving, TX 75061