

**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  Affirmation Supporting Count 7 and 8  Against USCIS and DHS OIG</p>
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**Affirmation Supporting Count 7 and 8**

**Against USCIS and DHS OIG**

**USCIS Count 7**

**Mrs. Carr Unlawfully Stranded In Thailand**

In 2020, USCIS unlawfully refused to adjudicate Mrs. Carr's I-751 application for 10 a ten year 'green card' within 90 days as required in 8 CFR 216.4(b)(1)<sup>1</sup> (see ECF 29, para 147). Further, in 2022 USCIS allowed the unlawful 2 year extension of her 2 year 'green card' to expire and left Mrs. Carr stranded in Thailand even though 8 CFR 216.4 requires USCIS to automatically extend her current 'green card' until the I-751 has been adjudicated.<sup>2</sup> See ECF 29 para 151 to 153.

<sup>1</sup> 8 CFR 216.4(b)(1) states:

... The [USCIS] director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

<sup>2</sup> 8 CFR 216.4 states

... Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director [of USCIS] has adjudicated the petition.,

As a result Mrs. Carr had to apply for a second time for a non immigration visa from DoS on an emergency basis. Half of the cost of this application is attributed to USCIS. However, instead of seeking any payment, Mrs. Carr is seeking a credit for \$80 for future services with USCIS. This is a paltry sum considering the distress of being stranded in Thailand and having to make emergency visa interviews and travel reservations.

However, the primary relief is corrections in USCIS procedures requiring them to actually follow the statutes and provide Due Process in all their dealings with applicants. Good governance is of immeasurable value in and of itself.

#### Sovereign Immunity and Executive Discretion Do Not Apply

USATXN makes broad claims of sovereign immunity but as the relief sought is a credit for future services the relief sought is authorized in Marbury v. Madison (1803) and APA 5 USC § 702. The restrictions on 'sovereign immunity' are discussed at length in my Response of 18 Mar 2024 (ECF 18) pages 1 to 4 and won't be repeated here.

USATXN also makes broad claims of executive discretion without associating it with any specific Count. However, it is clear that violating the constitutional rights of individuals is never within executive discretion and so does not apply to this claim. Executive Discretion is discussed at length in my Response of 18 Mar 2024 (ECF 18) pages 4 to 6.

#### Mrs. Carr is in Dire Circumstances

Mrs. Carr is an Apparent Undocumented Alien (a.k.a. an 'illegal')

### Mrs. Carr Unlawfully Denied the Privileges of Citizenship

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<sup>3</sup>) 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. an 'illegal').

All USCIS documents of her lawful permanent resident status have expired (ECF 24-1, 18-6, 20-2), and, contrary to law<sup>4</sup>, 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 (on day one to deport millions of illegals who are poisoning the blood of our nation).

In addition, for over a year Mrs. Carr has been deprived of the rights of citizenship which were authorized in the USCIS decision of 31 Jan 2023 (ECF 10-5) which includes the right to vote but also to assist her eldest son in seeking better employment (Thailand is still suffering from the effects of Covid restrictions).

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<sup>3</sup> ECF 10-5 is a scanned image of a somewhat dog eared original and the text is fine print that can be hard to read. The USCIS decision of 30 Jan 2023 in ECF 10-5 stated:

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.

<sup>4</sup> INA 264 is [8 USC § 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...

## USATXN Attempts Delays, Never Mentions This USCIS Decision

I raised this issue in ECF 33, Plaintiff's Motion for Partial Summary Judgment where the merits of this claim are discussed in detail, but it is important to call out that on 1 Mar 2024 Mr. Padis apparently attempted to trick the Plaintiffs into giving Defendants almost 60 days extension by lying about there being no records of service and pretending that he had no access to the Complaint and Summons (see email thread in ECF 28-1), but Mr. Carr saw through that ruse and on 3 Mar 2023, Mr. Carr informed Mr. Padis of the plight of Mrs. Carr and provided Mr. Padis with a copy of the critical USCIS decision of 31 Jan 2023 (ECF 10-5).

Instead of providing some expeditious relief to Mrs. Carr, Mr. Padis instead filed the meritless Motion to Dismiss on 8 Mar 2024 (ECF 15) which served no effect other than 66 days of delay. It is also important to note that while Mr. Carr has constantly reminded Defendants and the Court of the critical USCIS decision of 31 Jan 2023 (ECF 10-5), at no time have the Defendants mentioned that decision in any of their pleadings. While omitting critical facts may make it easier to claim that a cause of action has no standing, it does not actually make it true. Such blatantly false and misleading pleadings should warrant sanctions for the Defendants' recent Motion to Dismiss (ECF 31).<sup>5</sup>

### Relief Sought

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' or an 'illegal'.

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<sup>5</sup> [FRCP Rule 11](#) (c)(3) states:

On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

Mrs. Carr also seeks her Certificate of Naturalization as soon as possible in accordance with [INA 337\(a\)<sup>6</sup>](#) and [8 CFR 337.2<sup>7</sup>](#).

In addition to the nominal credit for future services, we are seeking credit for the time my wife was denied her privileges of citizenship for my wife's family members, but doubled as their applications were delayed (direct compensation) and in compensation for loss of citizenship privileges for my wife (as the right to vote otherwise has no compensation). See ECF 29, Relief 19 to 22.

It should also be noted that it appears that it is not 'uncommon' for USCIS to put applicants in such dire circumstances (see ECF 29 para 186) and there could well be dozens or even thousands of other USCIS applicants who require prompt assistance. On 12 Dec 2023, I submitted FOIA requests to USCIS for cumulative N-400 data (ECF 16-6) and cumulative I-751 data (ECF 16-7) which should indicate if there are dozens or even thousands of similar applicants. In ECF 13-4 the statuses of these FOIA requests are in process (being worked on) as of 10 Feb 2024.<sup>8</sup> If the court was interested in the number of USCIS applicants in similar circumstances, the court could order on its own initiative for these now delayed

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6 INA 337 which is [8 USC § 1448](#) states:

(d) Rules and regulations

The Attorney General shall prescribe rules and procedures to ensure that the ceremonies conducted by the Attorney General for the administration of oaths of allegiance under this section are public, conducted frequently and at regular intervals, and are in keeping with the dignity of the occasion.

7 [8 CFR 337](#) states:

337.2 Oath administered by USCIS or EOIR.

(a) Public ceremony. An applicant for naturalization ... must appear in person in a public ceremony.... Such ceremony will be held at a time and place designated by USCIS.... Naturalization ceremonies will be conducted at regular intervals as frequently as necessary to ensure timely naturalization, but in all events at least once monthly where it is required to minimize unreasonable delays.

8 From my over ten years experience as a data analyst (and DB administrator) these are actually quite straightforward queries and shouldn't take more than 8 hours for a competent analyst familiar with the DB tables and indices.

FOIA requests to be fulfilled within thirty days.<sup>9</sup>

Because of the extensive violations of Due Process in USCIS procedures, there are also several suggestions for measures which could provide redress for past and future harmed USCIS applicants, but the actual implementation of this remediation should be left to DoJ and DHS OIG coordinating with USCIS.

#### Sovereign Immunity and Executive Discretion Do Not Apply

USATXN makes broad claims of sovereign immunity but as the relief sought is simply Orders directing USCIS to fulfill its statutorily mandated duties, the relief sought is authorized in [Marbury v. Madison \(1803\)](#) and APA [5 USC § section 702](#). The restrictions on 'sovereign immunity' are discussed at length in my Response of 18 Mar 2024 (ECF 18) pages 1 to 4 and won't be repeated here.

USATXN also makes broad claims of executive discretion without associating it with any specific Count. However, it is clear that violating the constitutional rights of individuals and that ignoring unambiguous statutory mandates is never within executive discretion and so does not apply to this claim. Executive Discretion is discussed at length in my Response of 18 Mar 2024 (ECF 18) pages 4 to 6.

#### Conclusion

We should be granted the relief sought from USCIS as it is clear that USCIS has failed to fulfill statutorily mandated requirements as well as violating Due Process in numerous ways.

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<sup>9</sup> [5 USC § 552](#) (C) describes the options available to the court with delayed FOIA requests such as these.

We are also seeking ancillary relief of USCIS revising its I-751 and N-400 procedures to insure it complies with existing statutes and Due Process as required by the Fifth Amendment. As my wife has close family members who are expected to apply to USCIS for immigration visas and, potentially citizenship, the corrected procedures are of great importance, more than the nominal credit for future services.

### **Count 8 DHS OIG Fails to Report and Correct Crimes and Due Process Violations**

Ancillary relief is sought from DHS OIG for the damages we suffered as a result of USCIS inaction. DHS OIG is required to monitor USCIS and insure that USCIS does not commit federal crimes or infringe on individual constitutional rights, 5a USC IG Act 1978. We made complaints to DHS OIG as seen in ECF 29 paragraphs 141, 156, 190, 192. 193, and 217. While it is possible that the announcement of the new 48 month extension letter on 23 Jan 2023 was a result of the prior complaint to DHS OIG, the response was too little and too late. No such letter was ever provided to my wife with the result that she is now an apparent undocumented alien (a.k.a. an illegal).

Had DHS OIG insured that USCIS fulfilled the requirements of 8 CFR 216.4(b) (1), INA 337 which is 8 USC § 1448, INA 264 which is 8 USC § 1304 and Fifth Amendment Due Process, my wife would not have been stranded in Thailand and would have been a citizen for over two years and her close family members would have been well into the queue for their own immigration visas.

### Sovereign Immunity and Executive Discretion Do Not Apply

The relief sought is orders to DHS OIG that they take those actions to prevent such damages in the future, particularly [5a USC IG Act 1978](#) section 4 (reporting of federal crimes) as it relates to [18 U.S. Code Section 1001](#), the federal crime of falsification of government records. Obviously Sovereign Immunity does not apply to these orders to obey statutes as in [Marbury v. Madison \(1803\)](#) and [APA 5 USC § section 702](#). The limitations on 'sovereign immunity' are discussed at length in my Response of 18 Mar 2024 (ECF 18) pages 1 to 4.

Further, contrary to the broad claims of executive discretion by USATXN, it is not applicable as committing federal crimes and violating the constitution are never within executive discretion as discussed in my Response of 18 Mar 2024 (ECF 18) pages 4 to 6.

### Conclusion

Of primary concern is that my wife get her ten year 'green card' as promptly as possible. In addition, she should be allowed to take the 'Oath of Allegiance' and given her Certificate of Naturalization.

The claims against USCIS and DHS OIG are well founded and the court is asked to direct DoJ, DHS OIG and USCIS to coordinate the corrections to provide Due Process in processing all USCIS applications.

We should also be given a credit for future services as requested though, admittedly, we are actually more interested in good governance than in the credits

for future services.

Mr. Carr hereby affirms under penalty of perjury in both the United States and Thailand that as an individual:

1. I have reviewed the above affirmation 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 or other redactable information (as cited in the redaction) 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

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Brian P. Carr  
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Date: 21 May 2024

Location: Irving, Texas