

**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 Plaintiffs' Response Opposing Motion to Strike (ECF 37)
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Response Opposing Motion To Strike

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I. Background - Motion for Partial Summary Judgment (MfPSJ) Valid

A. Mrs. Carr's Citizenship Approved, Left as an Apparent 'Illegal'

On 31 Jan 2023 (ECF 10-5, over one year ago) USCIS approved my wife's ten year green card and citizenship.¹ However, USCIS has left my wife in dire straits with no documentation of her legal status² and an apparent 'undocumented alien' (a.k.a. an 'illegal'). She has had 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).

B. Previous MfPSJ Denied Without Full Deliberation, Not on the Merits

On 28 Mar 2024 I submitted a previous MfPSJ (ECF 18) but it was denied on 22 Apr 2024 (ECF 26) based on an improper 56(d) Motion submitted on 17 Apr 24 (ECF 22) but before I could submit my objections to the statutory basis for 56(d) motions as well as other challenges to the Rule 56 Response on 22 Apr 24 (ECF 28)³.

C. Local Rule 56.2(b) Restriction Not Appropriate

As the previous MfPSJ was not denied on the merits. The application of Local Rule 56.2(b) to this motion is not appropriate.

1 USCIS ECF 10-5 states: 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.

2 All previous USCIS documents of lawful permanent resident status had expired, see ECF 24-1, 18-6, 20-2.

3 AUSA Owen called out an interesting discrepancy on the date of filing. It appears that the ECF server date stamps documents based on GMT while most deadlines provided by the court are generally midnight CST or CDT (GMT does not have the confusion of daylight savings time or different time zones). However, as I often submit documents in the evening, they are often date stamped the next day. For ECF 28 it was submitted at 7:55PM CST 22 Apr 2024.

D. Order to Show Cause to Defendants to Address Actual MfPSJ

While normally Motions for Summary Judgment are after discovery, it is also true that select issues can be resolved earlier to simplify the case as well as to provide time critical relief.

Defendants' opposition to this MfPSJ is vague and general and does not meet the statutory or case law standards of specificity. However, default judgments are an anathema to due process so an Order to Show Cause could be appropriate for the Defendants to address their concerns with the details of this specific MfPSJ.

II. Legal Standards

A. Local Rule 56.2(b)

This rule enables courts to "regulate successive motions that are filed after the court has devoted time and effort to deciding an initial motion" and disallows movants from having a "second bite at the apple." [Home Depot U.S.A. v. Natl. Fire Ins. Co. of Hartford, Civil Action No. 3:06-CV-0073-D \(N.D. Tex. Sep. 10, 2007\)](#)

However, there was no 'first bite' as the prior MfPSJ was denied before I had a chance to file the Reply supporting the previous MfPSJ (ECF 28)⁴ and the fact that the court did not address USCIS approving my wife's citizenship but then instead making her an apparent 'illegal alien' in these most troubling times.

Further, as the basis for the MfPSJ is four documents from USCIS already in the record, the lack of specificity in Defendants' [FRCP Rule 56](#) Response Affidavit should be addressed by the court before any decision based on the merits of the

⁴ See Local Rule 7.1 below for an explanation of why it was timely.

MfPSJ itself.

B. Local Rule 7.1, Reply to Previous MfPSJ was Timely

Local Rule 7.1 states: ...

(e) Time for Response and Brief. A response and brief to an opposed motion must be filed within 21 days from the date the motion is filed.

(f) Time for Reply Briefs. Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may file a reply brief within 14 days from the date the response is filed.

As I had 14 days to Reply to the MfPSJ and 21 days to Respond to the improper 56(d) Motion, the filing in 5 days was certainly timely. Further, while it was filed just under ten hours after the Order, I had been working on the document for 5 days and only became aware of the Order minutes before I filed the document. See ECF 32 pages 3 and 4. Truth to tell, I was put into a tizzy by the Order while I still had plenty of time and after I had put together a proper Reply. I filed ECF 28 without too much thought or research.

C. FRCP Rule 12 Motion to Strike

FRCP Rule 12 states:

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act

As this is the 2nd MfPSJ concerning the same subject matter (this MfPSJ is somewhat reduced to focus on a single issue) it could certainly be viewed as redundant but Local Rule 56.2(b) would be a much more appropriate vehicle for denying the MfPSJ.

D. Doctrine of Consular Non Reviewability (DoCNR)

As we intend to expand on existing challenges to the offensive (to us) Doctrine of Consular Non Reviewability (DoCNR) raised by USATXN relying on Kleindienst v. Mandel, 408 U.S. 753, 766 (1972) (citizen rights can bypass DoCNR), Patel v. Reno, 134 F.3d 929, 121 F.3d 1277 (9th Cir. 1997) (APA may override DoCNR), and Sandra Munoz v. State Department (9th Cir. 2022, 21-55365) (spouse of citizen is an exception to DoCNR) it is likely that this case will be appealed to the Fifth Circuit Court and it is plausible that it might be heard by the U.S. Supreme Court.

As most pleadings which I have submitted refer to several other pleadings, to have a pleading stricken would make preparing the record for appeal problematic. The MfPSJ referred to in this Motion to Strike would not necessarily be part of the record and the appellate court could not adequately evaluate this Motion to Strike.

The court is asked that Judge Scholer make the decision so that with the likely appeal all the decisions appealed will be from the same Judge (a matter of preference rather than right).

III. Argument and Authorities

A. Defendants Did Not Meet FRCP 56(d) Requirements

1. Cited Case Does Not Support FRCP 56(d) Delay Herein

In the widely cited Areizaga v. ADW Corp., No. 3:14-cv-2899-B (N.D. Tex. Jun. 28, 2016) this court found:

FRCP Rule 56(d) is "designed to safeguard against a premature or improvident grant of summary judgment." Washington v. Allstate Ins. Co., 901 F.2d 1281, 1285 (5th Cir. 1990). To justify a continuance, the Rule

56(d) motion must demonstrate (1) why the movant needs additional discovery and (2) how the additional discovery will likely create a genuine issue of material fact. See Stearns Airport Equip. Co. v. FMC Corp., 170 F.3d 518, 534-35 (5th Cir. 1999) ...

The nonmovant, however, must "present specific facts explaining his inability to make a substantive response ... and specifically demonstrating how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact" and defeat summary judgment. Washington, 901 F.2d at 1285 ... (construing former FED. R. CIV. P. 56(f)). The nonmovant "may not simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts." Raby, 600 F.3d [552] at 561 (quoting SEC v. Spence & Green Chem. Co., 612 F.2d 896, 901 (5th Cir. 1980)). "Rather, a request to stay summary judgment under [Rule 56(d)] must 'set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist and indicate how the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion.'" Id. (quoting C.B. Trucking, Inc. v. Waste Management Inc., 137 F.3d 41, 44 (1st Cir. 1998)). The party requesting the additional discovery or extension also must show that relevant discovery has been diligently pursued. See Wichita Falls Office Assocs. v. Banc One Corp., 978 F.2d 915, 919 (5th Cir. 1992). "If it appears that further discovery will not provide evidence creating a genuine issue of material fact, the district court may grant summary judgment." Raby, 600 F.3d at 561 (quoting Access Telecom, Inc. v. MCI Telecomm. Corp., 197 F.3d 694, 720 (5th Cir. 1999)).

2. Required Rule 56(d) Response Affidavit is Inadequate

However, a review of the required FRCP Rule 56(d) Response Affidavit (ECF 38) reveals nothing specific to this Complaint with only:

4. ... Defendants intend to seek discovery to respond to the allegations in the complaint (or the contemplated amended complaint)⁵, including serving written discovery on each Plaintiff and taking the depositions of each Plaintiff. Defendants may need to rely upon an administrative record, which has not yet been assembled or filed in this case.
5. Completing the above-mentioned discovery is necessary to fully respond to the assertions that Plaintiffs rely upon in their motion.
6. Defendants cannot at this time present facts essential to justify its opposition to Plaintiffs' motion.

From [Areizaga](#) above:

The party requesting the additional discovery or extension also must show that relevant discovery has been diligently pursued. See [Wichita Falls Office Assocs. v. Banc One Corp.](#), 978 F.2d 915, 919 (5th Cir. 1992). "If it appears that further discovery will not provide evidence creating a genuine issue of material fact, the district court may grant summary judgment." Raby, 600 F.3d at 561 (quoting [Access Telecom, Inc. v. MCI Telecomm. Corp.](#), 197 F.3d 694, 720 (5th Cir. 1999)).

It is important to note that when the current MfPSJ was filed, Defendants had had over 120 days to prepare their response and over 70 days since I explicitly told AUSA Padis of my wife's plight and provided him with the critical ECF 10-5 which USATXN has scrupulously ignored in all pleadings. My wife had her citizenship approved by USCIS well over a year ago but then was left as an apparent 'illegal alien' for over 4 months while USATXN ignored the documents provided and her plight.

3. Plaintiffs Offered Opportunity for Deposition, Declined by Defendants

In ECF 30-1, an email thread, there is an email from myself at 'April 25, 2024

⁵ At this time I don't anticipate any Amended Complaints until after Defendants are working on an actual Answer. The only changes expected at this time are typographical or clerical, e.g. two Count 8's but no Count 9. If Defendants are amenable, this Amended Complaint could be worked on as a shared document in parallel with the Answer as I imagine it is easier to Answer a Complaint that is free of typographical and clerical errors.

12:29 PM', where we offered to give both USATXN representatives the opportunity to depose all three of us and we would bring lunch and share (not intended as any form of bribe, but just friendly courtesy). At that time there was no interest in any insights we could provide around those four documents or my wife's plight.

IV. Conclusion

While it certainly is unusual to request relief via a MfPSJ before discovery, my wife's plight justifies some consideration especially as the evidence and relief are so simple. The evidence on which this relief is sought is just four documents provided by USCIS and which are in the record with certified copies.

If after reviewing the context for these documents via the relevant affirmed statements from the now Verified Amended Complaint, the court is not comfortable granting the relief sought (as default judgments are always questionable), we request that the court issue an Order to Show Cause to Defendants to produce contrary arguments or specific inquiries they require before the requested relief is provided.

Respectfully submitted,

Verification of Reply

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 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

Brian P. Carr
1201 Brady Dr
Irving, TX 75061
Date: 9. Jun. 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

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