

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 Plaintiffs' Reply Supporting Motion to Reconsider (ECF 32)</p>
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## Reply Supporting Motion To Reconsider

# Table of Contents

I. Background.....	2
A. Several Motions Considered.....	2
B. AUSA Padis Attempted Delay Through Proof of Service.....	2
C. AUSA Padis Knew of Plight and Dire Circumstances of Mrs. Carr.....	3
D. AUSA Padis' Motion to Dismiss (ECF 15) False and Misleading.....	3
E. Lengthy Response (ECF 18) to MTD (ECF 15).....	4
Included Motion for Partial Summary Judgment (MfPSJ) and.....	4
Motion to Amend Complaint.....	4
F. Dispute Over Whether Motion to Amend Moots All Motions.....	4
G. AUSA Padis Submitted Response Opposing MfPSJ (ECF 22).....	5
56(d) Motion for Continuance (ECF 22).....	5
H. Order Resolved All Pending Motions (ECF 26).....	5
I. Reply (ECF 28) Supporting MfPSJ Submitted 10 Hours After Order.....	5
J. Timely Motion to Reconsider Submitted (ECF 36).....	5
II. Legal Standards.....	6
A. FRCP Rule 56.....	6
B. FRCP Rule 54(b) Motion to Reconsider.....	6
C. Local Rule 7.1, Responses and Replies Within 21 and 14 Days.....	7
D. Local Rule 56.2(b) Limit on Number of MSJ.....	7
E. Doctrine of Consular Non Reviewability (DoCNR).....	7
III. Argument and Authorities.....	8
A. Reply and Response (ECF 28) Was Timely (Sort Of).....	8
B. Summary of Relief Sought Inaccurate, Should be Corrected.....	9
C. Court Has Wide Options Under FRCP Rule 54(b).....	10
IV. Conclusion.....	11
Case, Statute, and Other Index.....	13

## I. Background

### A. Several Motions Considered

<b>ECF</b>	<b>Date</b>	
15	08 Mar 24	Defendants' Motion to Dismiss
18	28 Mar 24	Plaintiffs' Response to ECF 15, Motion to Dismiss Motion For Partial Summary Judgment Motion to Amend Complaint
20	05 Apr 24	Plaintiffs' Certificate of Conference, Motion to Amend UNOPPOSED
21	08 Apr 24	Defendants' Certificate of Conference, Motion to Amend UNOPPOSED
22	17 Apr 24	Defendants' Response to Plaintiffs' to Motion for Partial Summary Judgment (ECF 18), Defendants' 56(d) Motion for Continuance (ECF 18)
23	17 Apr 24	Defendants' 56(d) Affidavit
26	22 Apr 24	Magistrate RR Order Resolving Pending Motions
28	23 Apr 24	Plaintiff First Amended Complaint
29	23 Apr 24	Plaintiff Reply to Motion For Partial Summary Judgment and Response to Defective 56(d) Motion
32	14 May 24	Plaintiffs' Motion to Reconsider
36	04 Jun 24	Defendants' Response Opposing Motion To Reconsider

### B. AUSA Padis Attempted Delay Through Proof of Service

AUSA Padis believed that there was improper service as USATXN records showed (incorrectly) that service had been made by myself, a Plaintiff in this matter. While there had been timely and adequate notice as required by due process, AUSA Padis contacted me via email and offered to accept service if I emailed him a copy of the summons and complaint. He also stated incorrectly that there were no records of service while in fact there were records of improper service (and, hence, timely and adequate notice).

I provided AUSA Padis with the requested summons and complaint as well as the

proof of service which showed service was provided by Mr. Joubert (who is over 18 and not a party to this suit) so AUSA gave up on his scheme to get an almost 60 day delay from an unnecessary letter of accepted service.<sup>1</sup> AUSA made a timely response which he could have done without wasting time over the incorrect USATXN records of improper service.

### **C. AUSA Padis Knew of Plight and Dire Circumstances of Mrs. Carr**

When I provided AUSA Padis with the requested summons and complaint I also told him of my wife's plight and dire circumstances. I provided him with a copy ECF 10-5 where USCIS approved my wife's ten year green card and citizenship over a year ago.<sup>2</sup> However, USCIS has left my wife in dire straits with no citizenship and no documentation of her legal status and an apparent 'undocumented alien' (a.k.a. an 'illegal').<sup>3</sup> 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).

### **D. AUSA Padis' Motion to Dismiss (ECF 15) False and Misleading**

AUSA Padis Motion to Dismiss was shoddy making broad challenges lacking specificity and that were spurious and specious. The most egregious example might be claiming a failure to state a claim but then completely omitting my wife's plight. At no time has USATXN admitted the existence of ECF 10-5.

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<sup>1</sup> This apparent attempt to delay is discussed at length in ECF 30, 9 May 2024, my Motion for Sanctions which is pending at this time.

<sup>2</sup> 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.

<sup>3</sup> All previous USCIS documents of lawful permanent resident status had expired, see ECF 24-1, 18-6, 20-2.

In Argument E AUSA Padis claimed the entire suit was frivolous based on allegations that the Plaintiffs 'infer conspiracy and false documents from administrative delays' which on later discussions with USATXN does not apply to anything in the complaint. There are no occurrences of 'conspir' (any of that family of words) in the complaint and while there are numerous complaints of false documents in no case are they inferred from administrative delays. However, to counter such broad claims is challenging and the response was rather lengthy as a result.

#### **E. Lengthy Response (ECF 18) to MTD (ECF 15)**

Included Motion for Partial Summary Judgment (MfPSJ) and

Motion to Amend Complaint

I apologize to the court that ECF 18 was long and did not have a Table of Contents or Index of Cases and Statutes. However, the shoddy MTD required a lengthy response explaining three primary causes of action and nine counts. It also included the explanation of my wife's dire situation and seeking relief (MfPSJ).

There was also a very minor Motion to Amend the Complaint with correcting typographical and clerical errors and adjusting some of the allegations to conform to the evidence (based on redacted affirmations which had not been prepared previously).

#### **F. Dispute Over Whether Motion to Amend Moots All Motions**

AUSA Padis told me that USATXN not opposing the Motion to Amend would moot all pending motions which was not my understanding of the law or local rules. Dual Certificates of Conference were submitted ECF 20 and ECF 21. The mooting of pending motions was contrary to my understanding of this court's prior

decisions on this matter as in ROUNTREE v. DYSON (2018, 5th Circuit 17-40443) and Chief Judge Fitzgerald in Davis v. Dallas County, Tex., 541 F. Supp. 2d 844 (N.D. Tex. 2008) as cited in the above 2nd Circuit decision.

#### **G. AUSA Padis Submitted Response Opposing MfPSJ (ECF 22)**

##### **56(d) Motion for Continuance (ECF 22)**

AUSA Padis' challenges to the MfPSJ did not address my wife's dire situation as an apparent 'illegal alien' but only talked about it being earlier than normal and only raised general complaints about not being prepared to challenge the MfPSJ. At no time did he mention the four 4 USCIS documents that were the basis of the claim or the relief sought.

In a footnote AUSA Padis explained that he did not Reply supporting the MTD as he had agreed to the Amended Complaint and would resubmit the MTD for the Amended Complaint.

#### **H. Order Resolved All Pending Motions (ECF 26)**

The Order specified that I should submit the Proposed Amended Complaint and declared the MTD moot / denied and denied the MfPSJ.

#### **I. Reply (ECF 28) Supporting MfPSJ Submitted 10 Hours After Order**

As I had just finished the Reply supporting the MfPSJ and Response Opposing the 56(d) Motion for Continuance, I noticed that an Order had been issued resolving the pending motions, but based only on AUSA Padis' Response. I submitted the Reply anticipating a Motion to Reconsider

#### **J. Timely Motion to Reconsider Submitted (ECF 36)**

As the Reply (ECF 28) was timely according to Local Rule 7.1 and had several

arguments of merit but was not reviewed by the court, the Motion to Reconsider was submitted so that, in particular, the court can rule on the statutory basis of 56d Motions which I contend are actually Rule 56 Responses.

## **II. Legal Standards**

### **A. FRCP Rule 56**

FRCP Rule 56 is the statute controlling Motions for Summary Judgment (MSJ) to include motions to resolve only a portion of the pending issues through a Motion for Partial Summary Judgment (MfPSJ). There is also FRCP Rule 56(d) paragraph which authorizes the court to defer decisions on the MSJ based on a mandatory affidavit of the respondent. However, there is no statutory 56(d) Motion for delay or continuance. Such motions are, in fact, the norm in this court and 5th Circuit Court, but in Third District Court there are only FRCP Rule 56(d) Responses which do not multiply the number of motions pending and delay resolution of the matters under consideration.

### **B. FRCP Rule 54(b) Motion to Reconsider**

FRCP Rule 54(b) is the statute which gives the court broad powers to revise interlocutory decisions and is the statutory basis for Motions to Reconsider. In many courts it is often held that under normal circumstances a 54(b) Motion to Reconsider should be within 28 days which is the standard from FRCP Rule 59(e), though, obviously, extenuating circumstances can justify a longer time.<sup>4</sup>

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

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<sup>4</sup> See widely cited Cook v. Flight Servs. & Sys., Inc., CIVIL ACTION NO: 16-15759 SECTION: "H" (E.D. La. Apr. 11, 2019).

MfPSJ itself.

### **C. Local Rule 7.1, Responses and Replies Within 21 and 14 Days**

Local Rule 7.1 specifies the mechanics of motion practice within the court and provides 21 days for a normal response opposing a motion and 14 days for a reply supporting the motion.<sup>5</sup>

### **D. Local Rule 56.2(b) Limit on Number of MSJ**

Local Rule 56.2(b) limits the number of MSJ a party may file to one but gives the court wide latitude to grant leave for additional MSJ's.<sup>6</sup>

### **E. 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. The discrepancy concerning 56(d) Motions and 56(d) Responses between different circuit courts could be resolved by the Supreme Court.

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5 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.

6 LR 56.2 Limits on Time for Filing and Number of Motions.

(a) Time for Filing. Unless otherwise directed by the presiding judge, no motion for summary judgment may be filed within 90 days of the trial setting.  
(b) Number. Unless otherwise directed by the presiding judge, or permitted by law, a party may file no more than one motion for summary judgment.

### **III. Argument and Authorities**

#### **A. Reply and Response (ECF 28) Was Timely (Sort Of)**

As I had 14 days to Reply Supporting the MfPSJ (ECF 18) and 21 days to Respond to the improper 56(d) Motion, the submission in 5 days was timely according to Local Rule 7.1. However, as the submission was after the motions had been denied / granted, the court would not necessarily ever consider the matter and it would not necessarily be part of the record on appeal.

The Motion to Reconsider was also timely as it was submitted in 22 days after the Order (within 28 days which is normal guideline for such motions). The delay was primarily to insure that the Motion to Reconsider did not conflict with the court's Order that Defendants resubmit their Defendants' Motion to Dismiss (ECF 31 on 14 May 24).

In resolving the Motion to Reconsider, the court is asked to consider the 'timely' Reply and Response (ECF 28) allowing it to become part of the record in the event of any appeal.

A formal ruling on the statutory basis of 56(d) motions would be appreciated but is not essential as the improper 56(d) was granted without correction as a Rule 56(d) Response. I understand that within the scope of this court and 5th Circuit Court, 56(d) Motions are the norm, but within the 3rd Circuit Court, Rule 56(d) Responses are the norm and there is not the additional motion practice and inherent delays created by multiple motions.

As mentioned above it is likely that this matter will be appealed to 5th Circuit

Court concerning the applicability of DoCNR to citizen spouses as well as foreign nationals in general (are foreign nationals vermin not entitled to the rights of a person in the Fifth Amendment)<sup>7</sup> and the issue of 56(d) motions could potentially be referred to the Supreme Court for resolution between circuit courts as well.

### **B. Summary of Relief Sought Inaccurate, Should be Corrected**

In AUSA Owen's Response (ECF 36) she argues that the correction to the language in the order is unwarranted. Of course I had explained the justification of the revised summary in my motion papers (ECF 32), but my concern was that the previous summary was outright false and was taken from AUSA Padis papers which were full of false and misleading statements. Indeed there is a separate Motion for Sanctions (ECF 30) pending against AUSA Padis over this complaint.

Further, in the previous decision (ECF 26) it appears that the court only really reviewed the first page of my Response and motions (ECF 18) which was an admittedly lengthy document (a hefty 59 pages with no table of contents or index). To rectify this error the court is asked to review:

- ECF 10-5 the USCIS Decision and Notice on 31 Jan **2023** (over one year ago) which approved my wife's ten year green card and citizenship.<sup>8</sup>
- The three USCIS documents which demonstrate that USCIS has left my in dire straits with no documentation of her legal status (see ECF 24-1, 18-6, 20-2) and an apparent 'undocumented alien' (a.k.a. an 'illegal').

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<sup>7</sup> The [Expanded DoJ Mission Statement](#) includes:

In carrying out its mission, the Department is guided by four core values: (1) equal justice under the law; (2) honesty and integrity; (3) commitment to excellence; and (4) **respect for the worth and dignity of each human being.**

<sup>8</sup> 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.

- ECF 18 pages 30 to 32 about my wife's 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).
- ECF 18 pages 53 to 55 to demonstrate that Mrs. Von Kramer is seeking declaratory relief from the court to SSA that Mrs. Von Kramer was improperly prevented from visiting the United States in 2019, 2020 and 2021. She wanted to demonstrate her sincere desire to 'have an enduring and close attachment to the United States for at least 5 years' (a.k.a. SSA 'lawful presence' requirement). See the complaint ECF 29, page 48, relief 15.
- ECF 18 pages 56-57 shows Mrs. Carr is seeking proof of her permanent residence status until she can get the promised Certificate of Naturalization and a proper U.S. passport from DoS.

Having reviewed those documents the court can then reach whatever findings of fact it deems appropriate but I doubt that the court will conclude that the complaint can be summarized with 'attempts by Ms. Carr and Ms. Von Kramer to obtain immigration benefits' which is blatantly false and misleading.

### **C. Court Has Wide Options Under FRCP Rule 54(b)**

FRCP Rule 54(b) gives the court an almost total ability to revise any and all interlocutory decisions and the court is asked to consider the following actions on its own initiative.

#### **1. Include ECF 10-5 in the Findings of the Court**

Given the refusal of USATXN to admit the existence of the crucial USCIS decision of 31 Jan **2023** (over a year ago)<sup>9</sup>, include the text of that USCIS decision

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<sup>9</sup> AUSA Padis has had a copy of that document since 3 Mar 2024 and was made aware of my wife's plight at that time (ECF Doc28-1).

in its findings with a conclusion that USCIS approved my wife's ten year green card and citizenship.

## **2. Grant the Relief Sought in the Pending MfPSJ (ECF 33)**

Given that USCIS has left my wife in dire circumstances, she should be provided her Certificate of Naturalization as well as a ten year green card until she can get a proper U.S. passport from DoS.

## **3. Grant the Additional Relief Sought in the Original MfPSJ (ECF 18)**

Grant Mrs. Von Kramer's declaratory relief that she was improperly denied her ability to demonstrate 'her sincere desire to establish enduring ties to the U.S.' in 2019, 2020 and 2021. See [SSA POM RS 02610.025](#) 5-Year Residency Requirement for Alien Dependents / Survivors.

## **4. Grant Plaintiffs Leave to Submit Additional MfPSJ**

The purpose Local Rule 56.2(b) is to prevent relitigation of the same issues ('two bites of the apple') but is not really applicable to MfPSJs which can simplify complex cases by eliminating issues as they are resolvable.

As such, the court could on its own initiative grant Plaintiffs leave to submit up to eight more MfPSJs (one for each remaining count, once the relief sought of declaratory relief to be provided to SSA is resolved) after an Answer is filed by the Defendants.

## **IV. Conclusion**

This matter is surprisingly complex with many interesting nuances. While the court and AUSAs surely have an overwhelming case load, we seek the patience of the court in resolving these matters with prompt and just resolutions.

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: 13. 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

## **Case, Statute, and Other Index**

Cook v. Flight Servs. & Sys., Inc., CIVIL ACTION NO: 16-15759 SECTION: "H" (E.D. La. Apr. 11, 2019).....	6
Davis v. Dallas County, Tex., 541 F. Supp. 2d 844 (N.D. Tex. 2008).....	5
Doctrine of Consular Non Reviewability.....	7
FRCP Rule 54.....	6, 10
FRCP Rule 56.....	5 f., 8
Kleindienst v. Mandel, 408 U.S. 753, 766 (1972).....	7
Local Rule 56.2(b).....	7, 11
Local Rule 7.1.....	5, 7 f.
Patel v. Reno, 134 F.3d 929, 121 F.3d 1277 (9th Cir. 1997).....	7
ROUNTREE v. DYSON (2018, 5th Circuit 17-40443).....	5
Sandra Munoz v. State Department (9th Cir. 2022, 21-55365).....	7
SSA POM RS 02610.025.....	11