

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRIAN P. CARR, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et
al.,

Defendants.

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Case No. 3:23-cv-02875-S-BT

ORDER

Before the Court is Defendants' Motion to Strike, Deny, or Defer Consideration of Plaintiffs' Motion for Partial Summary Judgment and Brief in Support (ECF No. 37). Defendants ask the Court to deny Plaintiffs' Second Motion for Partial Summary Judgment (ECF No. 33) as premature or, in the alternative, to extend Defendants' response deadline until 60 days after a decision on Defendants' pending Motion to Dismiss. Mot. Strike 2.

Pro se Plaintiffs Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer bring this civil action against the United States of America and several federal agencies. Plaintiffs allege that Defendants have violated Plaintiffs' constitutional rights by thwarting various attempts by Ms. Carr and Ms. Von Kramer to obtain immigration benefits. *See* Am. Compl. (ECF No. 29). Before Defendants filed an answer or either party took any discovery, Plaintiffs previously filed a Motion for Summary Judgment (ECF No. 18), which Defendants moved to deny as moot.

Mot. Continue (ECF No. 22). The Court granted Defendants' motion and denied Plaintiffs' first Motion for Summary Judgment as premature, allowing Plaintiffs to amend their Complaint and Defendants to file an amended Motion to Dismiss. *See* Order (ECF No. 24). Plaintiffs filed their Amended Complaint within the deadline set by the Court, and Defendants then filed a Motion to Dismiss the Amended Complaint (ECF No. 31), which is currently pending before the Court. But shortly after, and despite the Court's previous Order explaining that Plaintiffs' first Motion for Summary Judgment was premature under the Federal Rules of Civil Procedure, Plaintiffs filed a Second Motion for Partial Summary Judgment (ECF No. 33). Now, Defendants again ask the Court to strike or deny Plaintiffs' Second Motion for Summary Judgment as premature and therefore moot. *See* Mot. Strike.

Federal Rule of Civil Procedure 56 governs motions for summary judgment, stating that "the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. But Rule 56(d) allows a court to "defer considering the motion [for summary judgment] or deny it" when "a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition." Fed. R. Civ. P. 56(d)(1). Here, Defendants' counsel has attached a declaration stating that because Defendants have not yet sought discovery, "Defendants cannot at this time

present facts essential to justify its opposition to Plaintiffs' motion." *See* App'x 4 (ECF No. 38).

The Court reminds Plaintiffs that a motion for summary judgment may be proper in the future if the case progresses to discovery and Defendants, as the nonmovants, have access to facts essential to justify their opposition to such a motion. *See* Fed. R. Civ. P. 56(d). But a party is not permitted to seek discovery from any source before the parties have conferred as required by Rule 26(f). Fed. R. Civ. P. 26(d)(1). And Plaintiffs' status as *pro se* litigants does not exempt them from compliance with relevant rules of procedural and substantive law. *Clemons v. United States*, 2024 WL 2033304, at *1 (N.D. Tex. Apr. 22, 2024) (Rutherford, J.), *adopted by* 2024 WL 2032935 (N.D. Tex. May 7, 2024) (quoting *Wright v. LBA Hosp.*, 754 F. App'x 298, 300 (5th Cir. 2019) (per curiam)).

Given that the parties have not yet engaged in any discovery, Defendants have not yet served an answer, and Defendants' Motion to Dismiss is still pending, the Court again finds good cause to **GRANT** Defendants' Motion under Rule 56(d) and **DENY** Plaintiffs' Second Motion for Partial Summary Judgment as premature.

SO ORDERED.

June 14, 2024



REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE