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

BRIAN P. CARR, RUEANGRONG CARR, and BUAKHAO VON KRAMER, Plaintiffs, v. UNITED STATES OF AMERICA, et al., Defendants.	Civil Action No. 3:23-CV-02875-S-BT

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs have filed this lawsuit which, in part, alleges violations of due process rights arising out of a consular officer's denial of a nonimmigrant visa. (Doc. 29, at ¶¶ 84–117). Defendants filed a motion to dismiss, raising the doctrine of consular nonreviewability as a ground to dismiss those allegations. (Doc. 31, at 7–8). After Defendants filed their reply in support of their motion to dismiss on June 11, 2024, (Doc. 41), the Supreme Court of the United States issued its opinion in *Dep't. of State v. Muñoz*, 602 U.S. ---, No. 23–334, 2024 WL 3074425 (U.S. June 21, 2024). *Muñoz* analyzes the doctrine of consular nonreviewability and whether a citizen has a liberty interest in their noncitizen spouse being admitted to the country sufficient to overcome that doctrine.

Plaintiffs argue Defendants should not be permitted to file a notice of this supplemental authority because (1) there are other motions currently pending, (2) there

are differences between the details surrounding Plaintiffs' attempts to obtain non-immigrant visas and the underlying facts in *Muñoz*, and (3) Plaintiffs believe the doctrine of consular nonreviewability is "based on a false premise."[1] (Doc. 45, at 4, 6, 10). These arguments do not provide any reason for the Court not to consider newly released, binding authority.

A. The pendency of other motions does not prevent this Court from considering a recent Supreme Court decision.

Plaintiffs point out that there are currently three motions pending in addition to the instant motion for leave to file notice of supplemental authority. (Doc. 45, at 4–5). They argue these pending motions will be delayed by the Court's consideration of *Muñoz*. *Id*. But a litigant's desire for expediency does not require a court to ignore binding authority from the Supreme Court on a relevant legal issue.

It is also worth noting that two of the three pending motions were filed by Plaintiffs—a motion for sanctions and a motion to reconsider a partial motion for summary judgment filed prematurely by Plaintiffs. (Docs. 30, 32). After filing the motion to reconsider, Plaintiffs filed a second premature motion for partial summary judgment on the same grounds. (Doc. 33). Plaintiffs' attempt to cast Defendants' motion as "delay" while simultaneously duplicating these proceedings by filing multiple premature summary judgment motions, a motion for reconsideration, a motion for

[1] Plaintiffs also sent an email to this Court's email address for proposed orders asserting Defendants' deadline to file this reply expired at 6:00pm on Sunday, July 21, 2024. However, because the 14-day time period to file a reply under Local Civil Rule 7.1(f) fell on a Sunday, the deadline runs on Monday, July 22, 2024. *See* Fed. R. Civ. P. 6(a)(1)(C). This reply is therefore timely.

sanctions, and opposing a straightforward motion for leave to file a notice of supplemental Supreme Court authority is puzzling at best.

B. Minor differences in the underlying fact pattern do not render a Supreme Court opinion on a jurisdictional doctrine inapplicable to other cases raising the same doctrine.

Plaintiffs point out differences between the facts underlying *Muñoz* and the instant lawsuit, arguing these differences render it completely inapplicable. But a litigant is not limited to citing only authority arising out of a fact pattern completely identical to their action. Indeed, courts regularly rely upon authority with differences in underlying facts. *See e.g.*, *Dargahifadaei v. Kerry*, No. 3-12-cv-01942-K, 2013 WL 1627887, at *3–4 (N.D. Tex. Apr. 15, 2013) (citing *Centeno v. Shultz*, 817 F.2d 1212, 1213–14 (5th Cir. 1987) as authority mandating dismissal under doctrine of consular nonreviewability despite different visa being sought).

Defendants have raised the jurisdictional doctrine of consular nonreviewability for some of Plaintiffs' claims. The Supreme Court's analysis of that doctrine in *Muñoz* is binding on this Court and therefore appropriate to be considered. If Plaintiffs believe the differences in underlying facts are legally significant and make *Muñoz* distinguishable (which Defendants deny), that would be appropriately raised in any response to the notice allowed by the Court. But Plaintiffs' position on that matter is not a reason for the Court to be wholly precluded from considering a recent Supreme Court holding on the doctrine of consular nonreviewability in determining whether the doctrine applies to this case.

C. Plaintiffs' disagreement with the Supreme Court's holding in *Muñoz* does not make it any less binding on this Court.

Plaintiffs finally argue that the doctrine of consular nonreviewability as upheld by

Muñoz is based on a "false premise," and the Court therefore should not even consider *Muñoz*. (Doc. 45, at 10–19). But Plaintiffs' disagreement with *Muñoz* does not change the fact that lower courts are bound by the Supreme Court. *See Hollis v. Lynch*, 827 F.3d 436, 448 (5th Cir. 2016). As with Plaintiffs' arguments to distinguish *Muñoz*, Plaintiffs' arguments for the Court to ignore *Muñoz* could be raised in any response to the notice allowed by the Court. But these arguments do not constitute a reason to deny leave to file a notice of *Muñoz* as supplemental authority.

D. Conclusion

For the foregoing reasons, and those in Defendants' motion for leave to file notice of supplemental authority, Defendants should be granted leave to file their notice of supplemental authority.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 22, 2024, I electronically filed the above response with the clerk of court for the U.S. District Court, Northern District of Texas. I certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Emily H. Owen
Emily H. Owen