

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.

Civil Action No. 3:23-CV-02875-S-BT

**DEFENDANTS' RESPONSE TO PLAINTIFF'S SECOND
MOTION FOR LEAVE TO AMEND COMPLAINT**

Plaintiffs Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer seek leave to amend their complaint for the second time, to correct typographical and format errors and add factual allegations regarding various developments since the filing of Plaintiffs' first amended complaint. (*See* Doc. 49.) However, their proposed amendments are futile, as their claims still lack jurisdiction, and the proposed second amended complaint still fails to state a claim. Therefore, Plaintiffs' motion should be denied as they have failed to demonstrate that justice requires allowing them to amend their complaint again.

I. Background

Plaintiffs filed their complaint on December 29, 2023 (Doc. 3), and Defendants, the United States of America and several other federal agencies, filed a motion to dismiss. (Doc. 15.) After responding to that motion (Doc.18), Plaintiffs filed an amended complaint. (Doc. 29.)

Defendants subsequently moved to dismiss all claims in Plaintiffs' first amended complaint. (Doc. 31.) In their motion to dismiss, Defendants explained that Plaintiffs' claims failed because: (1) Plaintiffs fail to identify a waiver of sovereign immunity that could possibly justify the sweeping non-monetary relief they seek for the alleged constitutional violations; (2) the Court lacks jurisdiction over each claim because the USPS retains sovereign immunity from tort claims arising from late-delivered packages, the naturalization statute provides adequate remedies for the naturalization-related claims; (3) the consular nonreviewability doctrine precludes jurisdiction for the visa-related claims; and (4) Plaintiffs fail to state a claim for violation of constitutional due process. (*Id.* at 5–8.)

Plaintiffs disputed those explanations in their response to Defendants' motion to dismiss their amended complaint. (Doc. 34.) After briefing was completed on Defendants' motion to dismiss their amended complaint, and before the Court reached a decision on that motion, Plaintiffs moved for leave to amend their complaint for a second time. (Doc. 49.) They want to correct typographical and format errors and add factual allegations regarding Mrs. Carr's recent receipt of her permanent resident card and newly filed application for naturalization. (*See id.* at 4–6.) Her proposed amended complaint does not address the issues raised in Defendants' motion to dismiss.

II. Legal Standard

A party may automatically amend its pleadings once as a matter of course. *See* Fed. R. Civ. P. 15(a)(1); *see also* *Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194, 203 (7th Cir. 1985) (explaining that a party is only allowed to amend his pleading once

under the Federal Rules, but must seek leave to further amend). Once a party has amended its pleadings, a party may further amend its pleadings “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2).

Further, while permission to amend generally should be freely given, this leave “is not a mechanical absolute.” *Lone Star Motor Import, Inc. v. Citroen Cars Corp.*, 288 F.2d 69, 75 (5th Cir. 1961); *see also Addington v. Farmer’s Elevator Mut. Ins. Co.*, 650 F.2d 663, 666 (5th Cir. 1981) (explaining that granting leave to amend “is by no means automatic”). Instead, the decision whether justice requires allowing an amendment is committed to the district court’s discretion. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330 (1971). A court may deny a request to amend a pleading when there is a “justifying reason,” such as undue delay, bad faith or dilatory motive on the part of the movant, a repeated failure to cure deficiencies through previous amendments, or the futility of the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

III. Argument and Authorities

As Plaintiffs’ proposed amendment would not resolve the reasons why their claims should be dismissed, Plaintiffs should not be allowed to file their second amended complaint. An amendment is deemed futile when “the amended complaint would fail to state a claim upon which relief could be granted.” *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 873 (5th Cir. 2000). As a result, leave to amend does not need to be granted when the amended complaint would not defeat a motion to dismiss. *Id.*; *see also Briggs v. Miss.*, 331 F.3d 499, 508 (5th Cir. 2003) (affirming denial of motion for leave to amend as the proposed amended complaint “could not survive a Fed. R. Civ. P. 12(b)(6)

motion and allowing [the plaintiff] to amend the complaint would be futile”).

Defendants have articulated multiple reasons why dismissal of Plaintiffs’ claims is appropriate. (*See* Doc. 31 (motion to dismiss first amended complaint), Doc. 41 (reply to motion to dismiss first amended complaint).) Plaintiffs’ proposed second amended complaint would not resolve the lack of subject-matter jurisdiction or failure to state a claim. Thus, it would not negate the reasons why dismissal of their claims is appropriate. Indeed, Plaintiffs even note in their motion for leave that “the changes in this amended complaint do not impact any of the claims in the pending Motion to Dismiss.” (Doc. 49, at 3.) Allowing Plaintiffs to amend their complaint would therefore be futile as the proposed amended complaint would not defeat the pending motion to dismiss. Instead, it would result only instead in additional, duplicative briefing under Rule 12(b) and delay in these proceedings.

IV. Conclusion

For these reasons, Plaintiffs’ motion to amend their complaint for the second time should be denied in its entirety.

Dated: December 10, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 10, 2024, 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 hereby 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
Assistant United States Attorney