

**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' Reply in Support of 2 nd Motion to Amend (ECF 49)
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Reply in Support of 2nd Motion For Leave to Amend

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Introduction

FRCP Rule 15(a) states:

... a party may amend its pleading only with ... the court's leave. The court should freely give leave when justice so requires.

However, the only harm cited by the Defendants is a delay in the currently pending motions which have been pending for over six months and if leave is granted by

the court, no additional delay will result. Indeed, in the interest of justice, all parties, including the court, will benefit from the improvements in the Second Amended Complaint, ideally speeding resolution of this admittedly complex matter.

No Delay from Granting Leave to Amend

Defendants argue that the court should not grant leave to file the proposed Second Amended Complaint because there is a second Motion to Dismiss pending before the court and the Second Amended Complaint would introduce further delays while, in fact, the Second Amended Complaint can not delay any of the other pending motions before the court. As of the date of this Reply, the court can grant leave to amend with no delay to any pending motion.

Indeed, the decision on the pending motions can only be sped by the increased clarity and organization of the Second Amended Complaint, e.g. there are nine counts and the addition of a Table of Contents and Table of References aids all parties in dealing with what is a somewhat complex complaint with over 250 affirmed statements (no longer simple allegations) and over 50 specific reliefs sought.

Current Pending Motions

There are a few motions 'briefed' and under consideration by the court at this time,

The three primary pending motions are:

ECF 30, reply on 07 Jun 2024 (ECF 39) Plaintiffs' Motion for Sanctions,
ECF 31, reply on 11 Jun 2024 (ECF 41) Defendants' Motion to Dismiss, and
ECF 32, reply on 13 Jun 2024 (ECF 42) Plaintiffs' Motion to Reconsider

which includes

ECF 18, 28 Mar 2024, Plaintiffs' Mtn For Prtl Summary Jdgmnt (MfPSJ) &
ECF 22, 17 Apr 2024 Defendants' controversial 56(d) Motion

These motions will remain pending before the court (no additional delay) and all parties will benefit from the improved clarity and organization of the Second Amended Complaint.

Amended Complaint Simplifies Tasks of All Parties

Second Motion to Dismiss Lacks Specificity, Court Assisted by Additions

Defendants easily summarize the general defenses raised in the second Motion to Dismiss (MTD2) such as failure to state a claim, lack of standing, sovereign immunity, ... but the MTD2 never specifically mentions any of the nine counts or the causes of action. This lack of specificity while permissible does not really aid the court as the court needs to separately evaluate each count and the different causes of action and decide if there is any merit to any of the defenses.

The addition of a table of contents and table of references helps the court navigate to the relevant sections and the addition of explicit references to other documents in the record make the evaluation of each defense more straight forward.

Appeal to Fifth Circuit Likely, Supreme Court Possible

The Defendants cited the long controversial Doctrine of Consular Non Reviewability (DoCNR), but oddly mischaracterizes the relief sought from the Department of State (DoS) as immigration benefits while the actual complaint concerns the improper denial of Non Immigration Visas by DoS (the opposite of immigration benefits with respect to the DoS Bureau of Consular Affairs (BCA)).

The Defendants later cited the recent unusually divided Supreme Court decision in [Department of State v. Munoz \(S. Ct. 2024\)](#) (ECF 44-2). This decision, however, dealt exclusively with DoS BCA immigrant visa processing which has almost nothing in common with DoS BCA non immigrant visa processing other than, perhaps, the controversial DoCNR.

One of the reasons the MTD2 should be denied is that there are several novel challenges to the DoCNR which are raised by the Plaintiffs. It is premature to dismiss a novel challenge before the court has decided the relevant facts (like were the Plaintiffs seeking non immigrant visas or were they seeking immigration benefits).

Indeed, it is possible that the court has delayed its decision in these matters to insure that the resulting decision is complete and correct because of the likelihood that any decision it makes will be appealed to the 5th Circuit Court and it is possible that the Supreme Court could use this case as an opportunity to more clearly define the limits of the DoCNR.

Issue Under Consideration is Validity of 56(d) Motions vs 56(d) Responses

[FRCP Rule 56](#) governs Motions for Summary Judgment with (d) stating:

... the court may: (1) defer considering the motion

It is clear from the statute that Defendants may request a delay based on the criteria established in the prior paragraphs, but there is no mechanism specified for this request. In the 5th Circuit, Defendants have routinely made 56(d) Motions with the intrinsic delay and multiplication of motion practice. In the 3rd Circuit, Defendants

have instead made such requests as part of the normal 56(d) Response. Both appear to work adequately though the Plaintiffs prefer 56(d) Responses as they lead to more timely resolution and less motion practice. However, the primary concern is the confusion of different motion practice in different Circuits.

In this context, the Defendants use of a 56(d) Motion to delay (common in the 5th Circuit) rather than the 56(d) Response (common in the 3rd Circuit) could provide the Supreme Court with the opportunity to resolve the correct interpretation of FRCP Rule 56 and eliminate the needless confusion between the different circuit courts.

Additional Tables and References Aids All Parties

All parties benefit from the correcting of typographical and clerical errors (e.g. two Count 8's but no Count 9) as well as the addition of table of contents and table of references. As Appellate Briefs will likely be required, these additions along with direct references to the ECF documents now incorporated in the record aid all parties.

Long Delayed Ten Year Green Card Provided

Provided Days Before MTD2 Finalized

Just days before the pending motions were 'briefed', USCIS without explanation provided Mrs. Carr with a ten year Green Card after delaying this statutorily mandated documentation for over three and a half years. This illegal delay had left Mrs. Carr stranded in Thailand, unable to return to the United States and later, for many months while this suit was languishing, an apparent undocumented alien (a.k.a. an illegal) during a period when there were calls to deport millions of 'illegals' on day one.

A careful review of ECF 18-6 reveals that Mrs. Carr application for a ten year Green Card (I-751 Application to remove the two year conditions) was accepted on 24 Aug 2020. As such, in accordance with 8 CFR Section 216.4(b)(1)¹, by 22 Nov 2020 she should have either received her ten year Green Card or USCIS should have commenced deportation proceedings.

Indeed her apparent illegal alien status was one of the primary justifications for the MfPSJ which is pending before the court. As USCIS has provided Mrs. Carr with the long delayed ten year Green Card, the court no longer needs to order this relief and updating the Complaint with the Supplemental Facts simplifies the task of the court.

Of course the issue is not moot as Mrs. Carr suffered damages when she was stranded in Thailand and separate relief is sought for that cause of action. In addition, there are many thousands of other I-751 applications which are illegally waiting for adjudication with many also apparent illegals so USCIS needs to provide similar relief to other applicants.

Further, the credence of the pending MTD2 is decreased as clearly none of the general non specific defenses are applicable to the clearly statutorily mandated relief (ten year Green Card) which raises the question of whether any of the

¹ INA 216.4(b) is [8 USC Section 1186b](#) which in (d)(3) states:
Waiver

The Secretary of Homeland Security, in the Secretary's discretion, may waive the deadline for an interview under subsection (c)(1)(B) or the requirement for such an interview according to criteria developed by U.S. Citizenship and Immigration Services ...

[8 CFR Section 216.4\(b\)\(1\)](#) states:
... The [USCIS] director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

defenses raised apply to any of the actual counts or causes of actions. The Plaintiffs have argued in great detail that, in fact, none of the defenses raised apply to anything at all and the MTD2 should be dismissed in its entirety.

Conclusion

This court is asked to grant leave to file the Second Amended Complaint so that the court and parties can proceed with working toward a just resolution of the issues in dispute in this matter.

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: 15. Dec. 2024

Location: Chiang Rai, Thailand

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

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