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 Verified[1] Brief of Mr. Carr The Right to Representation is a Fundamental Due Process Right

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1 The Verification of this document is at the end of this document.

The Right to Representation is a Fundamental Due Process Right

Introduction

This brief relies on the premise that due process is fundamental inalienable right of individuals in our legal system based on the principle of a fair hearing (as established in ECF 71-8 concerning pro se self representation). This brief establishes that the right to representation and the assistance of others (as an extension of self representation) is a fundamental facet of due process which can not be infringed upon by the government to include Congress, the courts, and individual agencies. Examples of such infringement will be discussed for this court, USCIS and DoS.

This Court Erred in Removing Plaintiffs From the Matter

Iannaccone was ground breaking in clarifying that each person can only represent their own interests and not the interests of another.

Pro Se Parties Can Join Together In a Single Complaint

This does not mean that Pro Se parties can not join together to produce a single

complaint as long as each party is allowed to advocate for their own interests. Indeed, in Monroe that court removed Monroe's spouse from the proceeding solely because she did not choose to join the matter.

In contrast, this court removed my wife and her sister through a misleading reading of the complaint ignoring the clear declaration that they were appearing pro se (ECF 29, para 12 and 13) as described in our opposition (ECF 73) in the section titled 'The Court Ignores Clear Qualifiers in the Complaint'. This court also misapplied FRCP Rule 11(a)[2] to remove parties from the suit even though the remedy specified in the rule is to strike the unsigned document after notice (which was not provided). It does not under any circumstances authorize the selective removal of parties who have already joined the matter.

It is Tedious to have Multiple Complaints In an Action

While it is certainly possible for several pro se parties to join together in a single suit with numerous separate complaints this is tedious for all parties. The court would need to insure that each separate complaint was answered by each relevant defendant cited and, then, presumably, require that each complaint and answer be amended as the court sorted through and resolved different allegations (or affirmations) dismissing those portions of each complaint or answer as appropriate according to the law.

It is also possible for several Pro Se parties to join together in a single Complaint which includes the consolidated allegations (or affirmed statements in this case) and consolidated legal arguments and relief. Such a consolidation benefits all

2 FRCP Rule 11(a) requires at least one party to sign each pleading which is now virtually automatic with the submission of a paper via ECF from the account of a single party.

parties, plaintiffs, defendants, and the court, by reducing the confusion which would result from multiple conflicting complaints. It supports the possibility of a single consolidated Answer and greatly reduces the work of the court.

However, in consolidating the various separate complaints into a single complaint, each party can (and must) share their legal expertise, recollections, records, opinions and desires with the other parties. Indeed, among several pro se parties it is likely that one or more plaintiff(s) could advise and assist the others in preparing papers and responses. This is not a problem as long as no party:

- Falsely claims to be an attorney or
- Accepts remuneration for legal services or advice

While this could become a problem with 'friends' representing the interests of others, it is unlikely to present a problem within family and certainly not spouses under the umbrella of multiple pro se parties conferring and consolidating their claim.

Marriage is Legal Union Which Permits Representation with Consent

The court and government in general can not restrict spousal representation with consent. When the constitution was written and even in 'Separate but Equal' times of Plessy v. Ferguson, 163 U.S. 537 (1896) and the DoCNR, men had an absolute right to represent their wife who was in a nebulous legal status, part person and part chattel or livestock. Women were counted in the census in the number of potential voters, but not actually allowed to vote, similar to slaves. Women could not represent themselves in court so that self representation really meant representation by their husband if they were married and by their father if they were unmarried.

However, over time women's rights were expanded so that women were considered as proper persons with all the rights that entails. There were numerous decisions by Congress and state legislatures, the courts and the people (via elections) to provide equal rights for all persons such as such as Brown v. Board of Education of Topeka, 347 U.S. 483 (1954) and the 19th Amendment.

The question is with all these separate actions to improve equality what, if any, were the intended changes to rights intrinsic to the legal union of marriage. Were marital rights reduced or eliminated or were they adjusted and enhanced in these transitions. Due to the diversity of the parties who altered U.S. law to provide equal rights for all persons, it is impossible to conclusively state what their intent was.

I argue that individual rights were enhanced while strengthening the institution of marriage. The previously inalienable right of a husband to represent his wife is now enhanced and reciprocated so that both spouses have an inalienable due process right each to represent the other with the consent of the other.[3]

Close Family Members Can Represent Each Other With Consent

There are similar arguments that the traditional absolute right of a father to represent his unmarried adult daughters has been enhanced so that each can represent the other with the consent of the other. Further, in the event of the death of the father, this right was normally conferred on the eldest son (often the sibling of the unmarried daughter). In Thailand it is also the case that sibling relationships

3 The Amended Complaint (ECF 29) seeks relief allowing a husband to represent his wife with both DoS, relief 10, and USCIS, relief 49 and 50. Relief 10 sought general rights to representation for DoS visa applications which would include immediate family members as with my sister in law.

are extended through marriage (making families very large and complex) as it was in historical America. If Buakhao, a widow whose father has passed, chooses to consider me as her eldest brother and seeks my representation, then I have a right to represent her.

As these rights of representation were founded in the Firth Amendment due process clause, Congress has no right to restrict them. While the original rights were vested only in adult white male Christian property owners, we as a nation have progressed by extending these rights to all people. As such any immediate family member can represent other family members (even family members extended through marriage) with their consent.

Representation Is Required for a Fair Hearing

The Government Has Limited Control Over the Selection of Counsel

Due process was developed in English law from 1300's to 1700's and beyond. Due process is the fundamental right of a fair hearing before loss of life, liberty or property and restricts the government from requiring individuals to perform actions which require prescience (determine estimated income taxes for income which is not yet known), omniscience (obey laws which are incomprehensible to the individual or defend against charges or evidence which are unknown), or omnipotence (pay taxes on income which has not been received yet). See ECF 71-8. There must be a fair hearing and all parts of the government must insure that it is possible for each individual to obey the law.

Iannaccone Has Valuable History of Due Process and Representation

Even the Poor and Uneducated Must Have a Fair Hearing

In the Findings of the court (ECF 61), the court incorrectly cited Monroe v. Smith,

2011 WL 2670094 (S.D. Tex. July 6, 2011) (a case where that court found that spousal representation would be permitted with consent but this court read that spousal representation was never permitted) which incorrectly cited Martin v. City of Alexandria, 198 Fed. Appx. 344, 346 (5th Cir. 2006) a not precedent case but the verbatim quote was from Iannaccone v. Law, 142 F.3d 553 (2d Cir. 1998) which is precedent and is widely cited. Iannaccone has broad discussions about due process, pro se or self representation, and representation through counsel.

Iannaccone includes a history of representation through counsel with:

> Thomas Paine, arguing in 1777 for a Pennsylvania Declaration of Rights, who said that to plead one's cause was "a natural right," pleading through counsel was merely an "appendage" to the natural right of self-representation. See [Faretta v. California, 422 U.S. 806 (1975)]

Iannaccone goes on to cite 28 USC § 1654 which states:

> Appearance personally or by counsel
> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

Iannaccone notes the similarity with the original statute of September 24, 1789 in section 35 which stated:

> That in all the Courts of the United States the Parties may plead and manage their own causes personally or by the assistance of such Counsel or Attornies at law as by the rules of the said Courts respectively shall be permitted to manage and conduct causes therein.

It is important to remember that to be ‘Counsel’ at that time when there was no requirement of attendance at law school (which were just being established) or passing a bar exam (there weren’t any), only the rules of the court. President Lincoln was a famous attorney but he became an attorney only with the approval

of a court.

While it is clear that each court can establish it own rules for ‘Counsel’, these rules are constrained by the requirement that every individual be given a fair hearing whether they are rich or poor and whether they are highly educated or uneducated. Our government must provide a fair hearing for even the poor and uneducated.

Practice of Law Can Be Restricted, Not the Selection of Counsel

Of course the government has an interest and a right to regulate the legal profession and to criminalize ‘practicing law without a license’. However, the critical elements of this crime are:

- Falsely claiming to be an attorney or
- Accepting remuneration for legal services or advice

The poor and uneducated must be given a fair hearing (justice is not reserved for the rich) which means that all persons must be able to seek advice and representation from whomever is available to them. When the government and various bar associations make the barriers to being a lawyer so expensive that only the select few (the rich) can afford their services then the court must relax the requirements for counsel so that all individuals can have counsel and representation.

Courts Can Require Reputable Individuals

Of course the courts and government tribunals can insist that selected counsel or representatives are reputable individuals. It would not be conducive to prompt and fair justice for persons convicted of fraud or perjury to serve as counsel. However, close family members and friends who have a good reputation, have an existing

relationship with the party, and are not receiving remuneration for their advice or services must be permitted to act as a representative for the party.

Barriers to Become an Attorney Requires Alternative Counsel

While the courts, government tribunals, and government agencies have an obligation to find the legal basis (if any) to support the claims of a pro se party, this has been proven to be inadequate in these times of arcane 'veritable maze of writs and confusing procedures' which have grown up with the increasing demands in order to become an attorney.

In this court, the court itself invented false legal theories to discard valid claims. In USCIS, the tribunal gave every indication of retaliating against my wife for my complaints to the IG, USCIS director, and Congress. With DoS the tribunals made no effort to ground their decision in either the law or the evidence; both were ignored for the expedience of the tribunal, in extreme cases only two minutes average throughput for consideration of each visa application, see dissent in Department of State v. Munoz (S. Ct. 2024).

Apparent Retaliation Justifies Need for Alternative Counsel

In this suit it is apparent that USCIS simply ignored statutory requirements for prompt resolution of applications for 10 year green cards (within 90 days from application to extend a 2 year green card) leaving many thousands of legal permanent residents as apparent illegal aliens and my wife being stranded in Thailand, unable to come home.

The question to consider is how could hundreds of immigration attorneys not call out USCIS on these egregious violations of their statute mandated duties. The

apparent answer is retaliation. Any immigration attorney who speaks out against these injustices would face retaliation against all their clients (a huge injustice) eliminating their ability to get clients and make a living. The increasing costs of becoming a proper attorney makes the dangers of agency retaliation against diligent attorneys ever more likely especially when the individuals are poor and uneducated (such as new immigrants who applied properly and have no right to vote). To insure that government agencies (and the courts) abide by the law, alternatives to normal attorneys must be provided so that the poor and uneducated can get justice through non standard Counsel.

USCIS Ignores Own Rules to Deny Representation to Poor and Uneducated

USCIS Has Authority to Regulate Representation

Congress has given broad authority to DoJ (Attorney General) and DHS to regulate representation under the INA statutes. 8 USC § 1103 states:

> Duties and powers of Secretary of Homeland Security
> (1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter …
> (2) He shall have control, direction, and supervision of all employees and of all the files and records of the Service.
> (3) He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter.

The Attorney General has similar broad powers for removal proceedings with 8 USC § 1362 which states:

> In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal

> proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.

USCIS Published Rules for Representation

Under these two statutes, USCIS has adopted published rules in 8 CFR Part 1292.1 which states:

> Representation of others.
> (a) A person entitled to representation may be represented by any of the following: …
> (1) Attorneys …
> (2) Law students and law graduates not yet admitted to the bar ...
> (3) Reputable individuals. Any reputable individual of good moral character, provided that:
> (i) He is appearing on an individual case basis, at the request of the person entitled to representation;
> (ii) He is appearing without direct or indirect remuneration and files a written declaration to that effect;
> (iii) He has a pre-existing relationship or connection with the person entitled to representation (e.g., as a relative, neighbor, clergyman, business associate or personal friend), provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and
> (iv) His appearance is permitted by the official before whom he wished to appear (namely, a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself out to the public as qualified to do so.

USCIS Ignores Rules for Reputable Individual Representation

While the above administrative rule of reputable individual representation is

completely reasonable, the reality is that USCIS actually prevents a fair hearing through violations of this and other rules. In the Amended Complaint section 'Request that Mr. Carr be Mrs. Carr's Authorized Representative' (ECF 29, page 35, para 196) there is a description of how I properly submitted the correct form G-28 (ECF 30-5) on 15 Sep 2023 with an anticipated 30 day processing time but I have not received any response to date even after multiple inquiries. In recent inquiries over the phone it appears that USCIS simply does not allow reputable individuals to become representatives.

Contradictory Statements About G-28 Procedures Are a Crime

Since there is a widely published rule supporting reputable individuals as representatives, any verbal or written statement to the contrary is a prima facie federal crime of 18 USC § 1001 which states:

> (a) ... whoever ... knowingly and willfully ...
> (3) **makes or uses any false writing or document knowing the same to contain any materially false**, fictitious, or fraudulent **statement** or entry;
> …
> shall be fined under this title, imprisoned not more than 5 years or, …[4]

When two or more government records (published rules, internal policies, etc.) contradict each other, one or more of the records must be false. This places the government employee in a bind as there is no way to know which record is correct. The only legal action is to correct the false record (not possible under normal circumstances) or report the problem to management or the IG for correction.

Due Process Requires Reputable Individual Representative

Given the widespread lawless actions by USCIS ignoring the constitution, statutes

4 Bold added by Plaintiffs.

and rules, it is apparent that lawyers and law students specializing in immigration law can only really deal with USCIS and attending law school is a substantial expense. The law students are closely supervised by lawyers or businesses and are soon educated that they must not call out serious crimes by USCIS for fear of retaliation against their other clients (for the lawyer or business). Instead they collude with USCIS on navigating the arcane 'veritable maze of writs and confusing procedures' rather than diligently representing the rights of their clients.

As soon as significant hurdles were required to become a lawyer, due process requires that alternative representation (e.g reputable individuals) is required in order for their to be a fair hearing for everyone including the poor and uneducated.

DoS Failings Resolved By Representation and Rules of Evidence

DoCNR Introduced with Case Law

With DoS the primary defense raised was the Doctrine of Consular Non Reviewability (DoCNR) which will be discussed extensively in this matter. The governing law includes Kleindienst v. Mandel, 408 U.S. 753 (1972), Sandra Munoz v. State Department (9th Cir. 2022, 21-55365) and Department of State v. Munoz (S. Ct. 2024).

DoCNR says that federal courts can't review decisions made at consulates (e.g. visas). It was not based on anything in the constitution but rather was a creation of the circuit courts in the 1890's as a response to the The Chinese Exclusion Act of 1882. DoCNR was based on the inability of the courts to review actions taken in distant consulates where the evidence and witnesses were not accessible to the court. It literally took weeks to travel to the consulates so judicial review was

infeasible. The circuit courts recognized that if Congress had wanted judicial review of these new travel documents (not yet called ‘visas’) then Congress would have to create part time judges or magistrates at each consulate to conduct the review. As these travel documents at the country of origin were such a novel idea, Congress had not made any such provisions; it is worthy of note that during this period there was significant concern about Chinese laborers and their impact on our economy and culture. In the 1890’s there was a distinct lack of concern about the rights of people of color (e.g. ‘coolies’ and ‘greasers’).

However, instead of the circuit courts explaining that Congress needed to create courts which could physically perform judicial review, they created legalese about Congress’s 'plenary power to exclude aliens'; there was no such absolute power in the constitution or anywhere else until the circuit courts used it to justify their disregard for ‘aliens’ (and people of color in general).

Over the next hundred years American culture adapted so that ‘aliens’ were no longer considered to be vermin to exploited for profit or eliminated if profit was not possible. Instead they have come to be recognized as people entitled to respect and dignity and, according to the Fifth Amendment, due process with respect to life, liberty, and property.

Also, by about the year 2000, there were sufficient fiber optic cables connecting the continents of significance so that the courts could actually review the evidence (electronic documents) and interview witnesses (video conferences) all with ‘instant’ access.

Judicial Review Recognized As Feasible

In Munoz (9th Cir. 2022) the 9th Circuit Court found that the citizen wife, Sandra, was entitled to due process for her foreign national husband's immigration visa application in accordance with Mandel (1972). The 9th Circuit ordered a new hearing and Sandra was able to present new evidence. However, DoS persisted in their conclusion that her husband was a known criminal based on undisclosed evidence and refused an immigration visa (as known criminals are precluded from immigration visas by statute).

At this point, 9th Circuit could have ordered a new hearing where DoS was required to disclose any evidence that Sandra's husband was a criminal[5]. Instead the 9th Circuit ordered that DoS provide an immigration visa to Sandra's alien husband due to a 2 year delay in notice for Sandra.

This was an error as the court could not review the DoS evidence that Sandra's husband was a criminal. DoS appealed and won in Munoz (S. Ct. 2024) with the conclusion the government does have the right to exclude criminals from immigrating and this takes precedence over any right of the couple to live together.

In Munoz (S. Ct. 2024) the Supreme Court went on to needlessly uphold DoCNR even though the case had demonstrated that judicial review and due process was no longer impossible for foreign nationals at foreign consulates. Sandra was able to represent her husband (a foreign national and possible criminal) and present evidence. The key missing element was her ability to review the evidence against

5 In Kiareldeen v. Reno 71 F.Supp.2d 402, the court ruled in favor of an immigrant applicant facing deportation. On appeal, the court ruled that the reliance on secret evidence violated his due process rights because (1) it deprived him of meaningful notice and an opportunity to confront the evidence against him, and (2) exclusively hearsay evidence could not be tested for reliability.

her husband.

DoCNR No Longer Applicable, Remote Judicial Review Possible

It is clear that Congress does not have any 'plenary power to exclude aliens' (though they do have the power to exclude criminals after a due process hearing subject to appeal and judicial review) and, in fact, Congress has provided sufficient communications with embassies and consulates so that judicial review is possible for denied visa applications.

DoS Tourist Visas Ignore Statutes and Constitution, Commit Crimes

The DoS visa interviewers (or tribunals) made no effort to ground their decisions in either the law or the evidence; both were ignored for the speedy processing of the application, in extreme cases only two minutes average for each visa application, see dissent in Department of State v. Munoz (S. Ct. 2024). which states:

> The State Department's Office of the Inspector General has documented numerous deficiencies in consular processing across several continents. See, e.g., ISP–I–19–14, Inspection of Embassy Bogota, Colombia, p. 16 (Apr. 2019) (finding consular managers in Bogota required visa adjudicators to maintain an average of 30 in-person interviews per hour).

It is clear that the interviewer does not have time to review the evidence prepared by the applicant but instead must rely on superficial indicators such as dress and speech (are they rich and well educated or poor and uneducated) and not on the proof of sufficient ties to their home country as required by the statute.
Of course this is not a 'fair hearing' as required by due process and the constitution. This court is asked to, among other things, order DoS to allow each visa applicant to be represented by a person of their choice, permitted to review

any evidence against them, and allowed to present evidence which is considered by an impartial tribunal before the tribunal provides a written decision that is based on both the applicable law and the evidence before the tribunal, i.e. due process.

As my wife and her sister have each received tourist visas, they do not require a new hearing at this time, but will need future visas for themselves or others. The credit for future services will ameliorate their damages.

Summary

The right to representation is fundamental to a fair hearing and constitutionally guaranteed due process. The government has a limited ability to restrict an individual's ability to choose a representative, but must always insure that there are viable options for the poor and uneducated. In addition, spouses have a special right to represent each other with consent. Immediate family members have a similar right to represent each other with consent.

USCIS improperly denied representation by reputable individuals. USCIS must expand reputable individual representation for easy spousal representation (so citizen spouse can assist immigrant spouse) and immediate family members must have a similar easy representation (citizen family member can assist immigrant family member).

For DoS and DoCNR, the governments complaint that it doesn't know how to consider citizen rights to due process from Mandel (1972), the answer is allowing representation to all visa applicants. Of course DoS is also required to provide the other elements of due process to include notice, access to the evidence against the applicant (if any), the ability to submit evidence which is considered by an

impartial tribunal, and a written decision well founded in both the law and the evidence.

Respectfully submitted,

Verification of Document

Mr. Carr hereby affirms under penalty of perjury in both the United States and Thailand that as an individual:

1. I have reviewed the above affirmation 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: 28. Jul. 2025
Location: Irving, Texas

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