

**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 <sup>1</sup> Brief of Mr. Carr Supporting Count 3, 4 and 5 Against DoS and DoS OIG
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**Brief of Mr. Carr Supporting Count 3, 4 and 5  
Against DoS and DoS OIG**

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<sup>1</sup> The Verification of this document is at the end of this document.

## **Introduction**

### **Standard Challenges and Defenses Discussed**

This verified affirmation will present the legal arguments which demonstrate that both Count 3, Count 4 and Count 5 have valid claims to be considered by the court. The basic form of a claim is to demonstrate that the defendants had a duty to perform certain acts, that they did not perform the required acts, that the plaintiffs were damaged by their failure to act, and that the court can remedy the problem through valid orders. Each element of the above will be discussed for each count to address the standard challenge of ‘failure to state a claim’ which means that one or more of the above elements is not alleged (the traditional form) or affirmed in this case as this is a verified complaint and brief.

As all of the defendants are government agencies, another standard challenge which will be addressed is sovereign immunity which really means that government agencies can only be ordered to perform actions which are authorized by Congress with special focus on the disbursement of government funds (the power of the purse) which the constitution specifically reserves for Congress.

There is also the extension of sovereign immunity which is executive discretion which says that when Congress gives conflicting or ambiguous statutes then it is up to the senior executive to decide what is the best course and the courts shouldn’t micro-manage decisions in areas where the executives are assumed to have the best knowledge and experience (that is what they were hired for).

### **DoS Challenges All Addressed**

The statutes and case law for sovereign immunity and executive discretion are

discussed in ECF 67-3, a verified brief on that topic. The court on its own initiative also attempted to improperly remove my wife and her sister from this matter (ECF 61) citing issues of representation. The right to representation is discussed in depth in ECF 75-5. This particular error is discussed in depth in our motion to reverse and recuse (ECF 73).

DoS raised the defense of the Doctrine of Consular Non Reviewability (DoCNR) which is challenged here as well as in ECF 75-5 (representation issues with DoCNR), and ECF 75-6 which challenges DoCNR as a false doctrine created by the courts based on a false premise that aliens (foreign nationals) are not people or human beings. ECF 75-6 also discusses the various decisions which have defined DoCNR as well as recent challenges to DoCNR. This brief will summarize some of these issues.

### **DoS OIG Failed to Intervene**

For DoS OIG, the problems with DoS were reported to DoS OIG as malfeasance (failure to implement clear and specific statutes by DoS), violation of individual Constitutional rights, and federal crimes.

DoS OIG has clear statutory mandates to work with DoS to resolve these problems and to report federal crimes to DoJ none of which were performed.

We were harmed by the delays in addressing these problems with duplicate visa application fees as well as delays in our ability to travel together and in receipt of Buakhao's Social Security widow's benefits.

## **DoS Count 3 and 4**

### **Non Immigrant Visas Denied Without Due Process**

In 2018 and 2019 my wife and later her sister were denied non-immigration visas under INA 214(b) which is [8 USC § 1184\(b\)](#) but the written decision was flawed as it listed the statute for the denial but had no references to the evidence considered. Further, my wife and her sister were not permitted to present evidence and they were not allowed representation. In addition, the verbal explanation for the denial was different from the written denial letter and the verbal explanation was contrary to law and the evidence available. These are clear violations of due process (not a fair hearing) and we were damaged by the unwarranted restrictions in our freedom to travel.

As non-immigration visas are issued and denied according to clear and specific statutes (not discretionary) and visa applications are processed on a fee for service basis, the primary relief we seek is credits for future services with DoS.

There is ancillary relief of a declaration of the court that my wife's sister, Buakhao, was improperly denied the ability to visit the United States in 2019, 2020 and 2021 in order to establish her Social Security 'lawful presence' to receive Social Security Surviving Spouse.

There is also ancillary relief to correct the defects in non-immigration visa processing to insure that it complies with constitutional requirements such as due process as well as relief for similar applicants.

### **Credit for Future Services Not Protected By Sovereign Immunity**

In this case, the court is asked to order DoS to provide a credit for future services. This is, apparently, a novel legal theory, which I would like to develop fully. There are, in fact, substantial differences between a cash payment (which infringes on Congressional control of the purse) and a credit for future services (which is dependent on Congressional authorization of the services). Indeed there is a separate brief discussing this novel legal theory as ECF 67-3.

### **Doctrine of Consular Non Reviewability (DoCNR) Challenged**

We intend to challenge DoCNR as it is offensive (to us) and fundamentally flawed. We have novel and untested challenges to existing law.

### **Mandel Test of Citizen Spouse Right to Live Together**

The Complaint has two claims against DoS for failure to provide due process in their 4 visa denials to my wife (2018) and her sister (2019). USATXN claims immunity from DoCNR citing [Kleindienst v. Mandel, 408 U.S. 753 \(1972\)](#) an older case which USATXN misreads as, while [Mandel](#) did indeed uphold DoCNR with respect to freedom of the press for citizens who want to hear a foreign national, it also opened DoCNR to challenges from other citizen rights.

There was just such a challenge to DoCNR with [Sandra Munoz v. State Department \(case no. 21-55365\) \(9th Cir. 2022\)](#) where the citizen spouse of a foreign national met the exception described in [Kleindienst](#). In [Munoz 2022](#), the 9<sup>th</sup> Circuit Court required DoS to provide notice and the ability to present evidence to the citizen wife, but even so DoS continued to deny an immigration visa for her husband because the DoS tribunal still found that her husband was a criminal (the key contested fact).

Having had due process and demonstrated DoCNR was no longer applicable, the 9<sup>th</sup> Circuit Court, oddly enough and in error, went on to order DoS to provide an immigration visa to the foreign national husband due to the long delay in providing notice to the citizen wife. The 9<sup>th</sup> Circuit Court also questioned the validity of the DoS confidential evidence that the foreign national husband was a criminal but instead of ordering a new hearing which used corrected rules of evidence (following due process thoroughly), the 9<sup>th</sup> Circuit Court ordered DoS to issue the visa due to administrative delays.

DoS appealed this order to the Supreme Court in [Department of State v. Munoz \(S. Ct. 2024\)](#) claiming that it was an overreach of the 9<sup>th</sup> Circuit Court to insist that DoS issue an immigrant visa to a ‘known’ criminal.<sup>2</sup> The Supreme Court overturned [Munoz 2022](#) but for even stranger reasons. They affirmed DoCNR and DoS denial of an immigration visa to a ‘known’ criminal as there was no way for DoS to provide due process to citizen spouses even though DoS had already provided for notice and the ability to present evidence to the citizen wife. The only thing that was really overturned was the 9<sup>th</sup> Circuit Court order to DoS to issue the visa without any court ever having access to the evidence that the foreign national husband was a criminal.

A better solution would have been for the 9<sup>th</sup> Circuit Court to order DoS to hold a new hearing where both husband and wife were provided access to the evidence against the husband and where both were permitted to present evidence that he was not a criminal. Once DoS was forced to decide whether to disclose the evidence

<sup>2</sup> This is a good example of sovereign immunity as the relevant statutes specifically prohibit the issuance of immigration visas to known criminals. The court could not overturn the finding of a known criminal because of administrative errors.

that the husband was a criminal, the court could then review that decision and if the denial really was not supported by the evidence, then overturn the denial based on lack of supporting evidence rather administrative delays.

As such, we are seeking an exception to DoCNR for my wife as I am her citizen spouse who clearly desires to travel with her and, hence, should have been given due process in administrative decisions impacting my ability to travel with her.

### **Challenge to DoCNR Based on APA**

For my wife's sister, Buakhao, in [Patel v. Reno, 134 F.3d 929, 121 F.3d 1277 \(9th Cir. 1997\)](#) the APA is cited as a potential source of judicial review. As Nikolaus Von Kramer (Buakhao's deceased husband) was a pre-1968 U.S. Army veteran, Congress has made special provisions preserving Buakhao's Social Security Surviving Spouse benefits and she is an ideal candidate to challenge DoCNR with respect to the APA as suggested in [Patel](#).

[Patel](#) states:

judicial review exists when the government has denied a visa if the government did not act "on the basis of a facially legitimate and bona fide reason." [Kleindienst v. Mandel, 408 U.S. 753 \(1972\)](#). In addition, ... judicial review may also exist under certain circumstances pursuant to the Administrative Procedure Act.

### **DoCNR Repealed When Originating Statutes Repealed**

We also intend to challenge the DoCNR as it was an outgrowth of the [Chinese Exclusion Act of 1882](#) which has been repealed and replaced with the INA which has no such exclusion of judicial review. The only restriction on consular visa

review is in INA, [8 USC § 1104\(a\)](#) - Powers and duties of Secretary of State which only restricts the Secretary of State and makes no mention of the courts or judicial review so it appears that Congress has repealed the DoCNR.

### **DoCNR is Based on False Premise**

Finally, we intend to challenge DoCNR directly based on the fact that the DoCNR is based on a false premise. While Congress can certainly deprive citizens, permanent residents, and 'aliens' from life, liberty, and property, it can only do so through due process. Congress never had any 'plenary power to exclude aliens' because the authors of the Fifth Amendment declared 'No person ...' and Buakhao is a person. They could well have said 'No citizen ...' which was used elsewhere in the constitution but they chose 'person' for the protections of the Fifth Amendment and so Mrs. Von Kramer must be provided with due process.

### **Discard DoCNR and Its Discrimination Against People of Color**

Just as [Plessy v. Ferguson, 163 U.S. 537 \(1896\)](#) was based on a false creation of the Supreme Court, 'Separate But Equal', which was corrected with [Brown v. Board of Education of Topeka, 347 U.S. 483 \(1954\)](#), the 'Doctrine of Consular Non Reviewability' (DoCNR) is based on a false premise that aliens are not people but rather some sort of vermin who are not entitled to due process. DoCNR needs to be overturned and relegated to the trash bin of history.

### **FOIA Requested Records Not Provided**

In order to properly document the violations of due process, I had submitted FOIA requests to DoS and DoS IG as described in the anticipated amended complaint section 'DoS Refuses FOIA Requests' and the following section.

The court has authority to order DoS to produce those records and we are seeking



such relief, see 5 USC § 552(a)(4)(B) which states:

(B) On complaint, the district court of the United States ... has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

The records sought will clarify and substantiate the violations to due process as well as aid in determining the number of other individuals so impacted and whether this count is a good candidate for becoming a class action suit.

### **Relief Sought Is Proper**

We are seeking access to the records to determine the magnitude of the problem via existing FOIA requests that court can order the agency to provide. This will allow us to determine how widespread the problem is and whether it is appropriate to expand this action into a class action suit.

From DoS we are seeking credits for future visa services for ourselves, our friends, and our family. We are also seeking ancillary relief of correcting the visa application process so that these future application will be processed fairly.

We are also seeking similar declaratory relief for other visa applicants who were denied social security survivor's benefits because of improper visa denials.

### **DoS IG Failed to Defend the Constitution, Report Federal Crimes**

After my wife's tourist visa was denied in 2018 without due process (no representation, evidence not considered and false verbal justification given in video recordings), I notified DoS IG of the problems and the relief we sought (new visa interview at no cost as the original interview was improper.

DoS IG responded on 9 Oct 2018 (ECF 34-6) and admitted that verbal explanation for the denial was not supported by statute but declined to provide any relief.

There were falsified government records, i.e. the written denial cited the statute but did not mention any evidence considered and the verbal justification for the denial was contrary to law. However, DoS IG did not report these federal crimes to the DoJ as required by statute. The duties of the DoS IG are described in depth in ECF 75-7, my brief concerning the general duties of all IG's. We are seeking ancillary relief of the court ordering DoS IG to assist DoS and DoJ in correcting the visa application process so that all applicants receive a fair hearing with all the elements of due process to include representation, the ability to review any evidence against them, the ability to present evidence on their own behalf, a written decision which is well founded on both the statute and evidence, and the right of appeal.

As discussed in ECF 75-7, these are normal duties of the DoS IG according to statute and the relief sought will help other visa applicants as well as our friends and family members who we would like to host.

### **Conclusion**

We should be granted the relief sought from DoS as DoS had a duty to provide facially correct decisions (listing the evidence considered as well as the statute) in its visa denials and it did not. Sovereign Immunity does not apply. The offensive (to us) DoCNR does not apply to my wife or her sister and we have several plausible challenges to DoCNR which we intend to pursue.

We are also seeking ancillary relief of DoS working with DoS IG and DoJ to revise the visa application process to insure it complies with due process as required by the Fifth Amendment. This is actually greater importance to us than the nominal

credit for future services as we have a strong belief in good governance.

I 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*

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Brian P. Carr  
1201 Brady Dr  
Irving, TX 75061

Date: 28. Jul. 2025  
Location: Irving, Texas

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