EXHIBIT

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; U.S DEPARTMENT OF JUSTICE; UNITED STATES POSTAL SERVICE; UNITED STATES POSTAL SERVICE OFFICE OF INSPECTOR GENERAL; USPS COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY; USPS BOARD OF GOVERNORS; DEPARTMENT OF STATE, OFFICE OF INSPECTOR GENERAL; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE; DEPARTMENT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL; and SOCIAL SECURITY ADMINISTRATION,

Defendants.

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

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SANCTIONS AND BRIEF IN OPPOSITION

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Introduction and Summary of the Argument

Plaintiffs Brian P. Carr and Rueangrong Carr (husband and wife) together with Mrs. Carr's sister, Buakhao Von Kramer sue Defendants the United States of America and several other federal agencies for allegedly having violated the Due Process Clause of the Fifth Amendment to the U.S. Constitution in relation to their various attempts to obtain immigration benefits. Their complaint included allegations of criminal activity by multiple government agencies and requests court orders mandating that various agencies overhaul their procedures for investigations of crime, adjudication of visa applications, and other government functions. Defendants filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. Despite the motion since becoming moot due to an amended complaint, Plaintiffs have filed a motion for sanctions, claiming the motion to dismiss was based on a falsified factual basis, legally unsound, and filed for the purpose of delay. Plaintiffs also claim prior counsel for Defendants made false statements in the course of litigation.

Plaintiffs' motion for sanctions is entirely without merit. Defendants' prior counsel did not make any false statements in the course of this litigation. The statements of which Plaintiffs complain are accurate assertions and fair summarizations of Plaintiffs' pleadings. Additionally, Defendants' motion to dismiss is well grounded in both law and fact. Plaintiffs fail to support any of their arguments for sanctions (arguing the now-moot motion to dismiss was meritless when filed) with relevant legal authority. In contrast, Defendants' arguments are well supported, and Defendants were justified to assert their

grounds for dismissal. For these reasons, Plaintiffs' motion for sanctions should be denied.

I. Background

Plaintiffs Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer filed this lawsuit arising out of their attempts to gain various immigration benefits on December 29, 2023. Plaintiffs attempted to serve process on the United States Attorney on January 9, 2024. (Doc. 10). In doing so, Al-Vincent Joubert, a nonparty, accompanied by Plaintiff Brian Carr, personally served an appropriately[1] designated employee of the United States Attorney's Office for the Northern District of Texas. *Id*. Mr. Joubert also mailed the summons and complaint to "United States Attorney Northern District of Texas." *Id*.

On March 1, 2024, assistant United States attorney George Padis informed Mr. Carr that the United States Attorney did not have a record of proper service[2] and offered to accept service on the U.S. Attorney's behalf. (Doc. 30-4 at 1-2). Mr. Carr responded asserting service had in fact been proper and stating he would oppose any request for an extension to answer unless Defendants would "join in a motion to get Mrs. Carr her approved green card… and her Certificate of Naturalization…" *Id*. at 3-4. AUSA Padis stated Defendants would file a timely response to Plaintiffs' complaint and requested additional details about the manner of service, including who actually handed the

[1] Rule 4(*i*)(A)(i) authorizes service by personal delivery of a summons and the complaint to an assistant United States attorney or an employee "whom the United States attorney designates in a writing filed with the court clerk."
[2] AUSA Padis was under the impression that Plaintiff Carr had delivered the summons and the complaint himself in violation of Rule 4(c)(2), which prescribes that service must be made by a "person who is . . . not a party." As it turned out, Mr. Carr did deliver the summons and the complaint *together* with a process server, which raises an interesting legal question whether such conduct would run afoul of Rule 4(c)(2)'s proscription against service by a party. But that issue has not been, and is not being, raised by Defendants.

summons and complaint to the designated employee of the U.S. Attorney's Office. *Id*. at 4. Mr. Carr responded with the requested details. *Id*. at 5.

On March 8, 2024, Defendants filed a timely motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), asserting Plaintiffs had not met their burden to identify a waiver of sovereign immunity, the Court lacked jurisdiction under various statutes, Plaintiffs' complaint failed to state a claim, and Plaintiffs' complaint was frivolous. (Doc. 8). Defendants chose not to raise any issues regarding service of process. *Id*.

On March 28, 2024, Plaintiffs filed a document entitled "Response to Defendants' Motion to Dismiss" which included a response to the motion to dismiss, a motion to amend the complaint, and a motion for partial summary judgment. (Doc. 18 at 1, 51-52). Counsel for Defendants later conferred with Mr. Carr, informing him Defendants were unopposed to the request to file an amended complaint and such filing would render the Defendants' then-pending motion to dismiss moot. (Doc. 21).

In response to Plaintiffs' motion for partial summary judgment, Defendants filed a motion to deny Plaintiffs' motion for partial summary judgment as premature under Federal Rule of Civil Procedure 56(d). (Doc. 22). On April 22, 2024, the Court entered an order denying Plaintiffs' motion for partial summary judgment as premature, denying Defendants' motion to dismiss as moot, and issuing a schedule for the filing of Plaintiffs' amended complaint and responsive pleadings. (Doc. 26). The parties have since followed the deadlines set out in that order. (*See* Docs. 29 and 31).

On May 9, 2024, Plaintiffs filed a Motion for Sanctions against AUSA Padis, citing Federal Rule of Civil Procedure 11, 28 U.S.C. § 1972, 18 U.S.C. § 1001, 18 U.S.C. § 1621, Local Rule 83.8(b), and Texas Disciplinary Rule of Professional Conduct 4.01. Plaintiffs generally claim he made false statements for the purpose of creating delay and filed a frivolous motion to dismiss.

II. Legal Standards

A. Rule 11 Sanctions

Federal Rule of Civil Procedure 11 allows courts to impose sanctions for frivolous or improper pleadings or motions. Fed. R. Civ. P. 11. The primary determination under Rule 11 is whether the signing individual conducted an inquiry into the factual and legal basis of the challenged document that was objectively reasonable under the circumstances. *See Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc.*, 498 U.S. 533, 548-51 (1991). "[A] trial court should not impose Rule 11 sanctions for advocacy of a plausible legal theory, particularly where . . . the law is arguably unclear." *See Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 528 (5th Cir. 2016) (alteration in original) (quoting *CJC Holdings, Inc. v. Wright & Lato, Inc.*, 989 F.2d 791, 793 (5th Cir. 1993)).

B. Statutory Authority for Sanctions[3]

Under 28 U.S.C. § 1972, a court may sanction an attorney who multiplies the proceedings in a case unreasonably and vexatiously. 28. U.S.C. § 1972. Section 1972

[3] Plaintiffs cited, 28 U.S.C. § 1972, 18 U.S.C. § 1621, and 18 U.S.C. § 1001 as bases for sanctions. However, 18 U.S.C. §§ 1001 and 1621 are criminal statutes prohibiting false statements made in matters within the jurisdiction of the United States and perjury respectively. These statutes provide no independent authority for a court to issue sanctions in civil matters, and their adjudication is subject to a host of protections and procedural rules afforded to

authorizes courts to require an offending person to pay the excess costs, expenses, and attorneys' fees reasonably incurred due to the sanctionable conduct. An award under this section requires "evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court." *Lawyers Title Ins. Corp. v. Doubletree Partners, L.P.*, 739 F.3d 848, 871 (5th Cir. 2014) (quoting *Cambridge Toxicology Grp.*, *Inc. v. Exnicios*, 495 F.3d 169, 180 (5th Cir. 2007)). These sanctions are "punitive in nature and require clear and convincing evidence that sanctions are justified." *Id.* at 872 (quoting *Bryant v. Military Dep't of Miss.*, 597 F.3d 678, 694 (5th Cir. 2010)). Section 1927 "should be employed 'only in instances evidencing a serious and standard disregard for the orderly process of justice,' lest 'the legitimate zeal of an attorney in representing [a] client [be] dampened.'" *Id*. (quoting *FDIC v. Conner*, 20 F.3d 1376, 1384 (5th Cir. 1991)).

C. Local Rules

A court in the Northern District of Texas may sanction an attorney under Local Rule 83.8(b)(3) for unethical behavior. U.S. Dist. Ct. Rules N.D.T.X., Civil Rule 83.8(b)(3). Unethical behavior is defined as conduct that violates the Texas Disciplinary Rules of Professional Conduct. U.S. Dist. Ct. Rules N.D.T.X., Civil Rule 83.3(e).

Texas Disciplinary Rule of Professional Conduct 4.01 prohibits a lawyer from knowingly making a false statement of material fact or law to a third person. Tex. Disciplinary R. Prof'l Conduct 4.01. Statements of opinion or conjecture do not constitute "material facts" under this Rule. Tex. Disciplinary R. Prof'l Conduct 4.01, cmt. 1. Further,

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criminal defendants and inapplicable to civil litigation. Additionally, as discussed herein, no false statements were made by counsel for Defendants. For that reason, among many others, no criminal statute has been violated, and these statutes are inapplicable.

an attorney only violates this rule if the lawyer knows the statements at issue are false and intends thereby to mislead. Tex. Disciplinary R. Prof'l Conduct 4.01, cmt. 2.

III. Argument and Authorities

Plaintiffs claim counsel for Defendants made multiple false statements and filed a meritless motion to dismiss for the purpose of delay, warranting sanctions. However, AUSA Padis has not made any false statements in the course of this litigation. Additionally, Defendants' motion to dismiss made proper arguments well-grounded in both fact and law. Plaintiffs' legally unsupported arguments that Defendants' various grounds for dismissal were sanctionable are wholly without merit. Therefore, Plaintiffs' motion for sanctions should be denied.

A. Counsel for Defendants never made any false statements in the course of this litigation.

Plaintiffs claim AUSA Padis made multiple "false statements" prior to Defendants appearing in this lawsuit regarding service of process for the purpose of delaying these proceedings. But the statements of which Plaintiffs complain were true. In reality, Plaintiffs have misunderstood legally significant terms and decided the use of those terms must therefore be false.

As an initial matter, neither Rule 11 nor Section 1927 apply to Plaintiffs' complaints of these allegedly false statements. Section 1927 only authorizes courts to award the excess costs, expenses, and attorneys' fees reasonably incurred due to the sanctionable conduct. 28 U.S.C. § 1927. Here, Plaintiffs are expressly not seeking such an award. (Doc. 30 at 2). Instead, Plaintiffs request "creative sanctions" of community

service and early filing requirements. *Id.* This is unavailable under Section 1927. 28 U.S.C. § 1927.

Rule 11 applies only to pleadings, written motions, or other papers presented to a court. *See* Fed. R. Civ. P. 11(b) and (c). Plaintiffs' allegations of false statements occurring in email correspondence between the parties do not fall into this category, and Rule 11 therefore does not apply. *See id.*

Regardless, under any basis for sanctions cited by Plaintiffs, counsel for Defendants never made any sanctionable statement. Plaintiffs claim AUSA Padis made a false statement when he informed Mr. Carr that the U.S. Attorney's Office had no record of being served in the case pursuant to Federal Rule of Civil Procedure 4(i)(1)(A). "Service" is a legal term carrying a particular meaning in a lawsuit, and it has not occurred absent specific procedures being followed. Service may not be achieved by a party to the lawsuit at issue. Fed. R. Civ. P. 4(c)(2). And pursuant to Rule 4(i)(1)(A), to serve the United States and its agencies, a plaintiff must either "deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought" or "send a copy… by registered or certified mail to the civil-process clerk at the United States attorney's office." Fed. R. Civ. P. 4(i)(1)(A). Plaintiffs attempted both methods of service. The attempt to achieve service by mail was ineffective because it was not directed to the correct individual. The summons and complaint were mailed to the United States Attorney for the Northern District of Texas, not to the civil-process clerk as required. (Doc. 10); *See* Fed. R. Civ. P 4(i)(1)(A). Therefore, service was not effectuated by that mailing. *See Jackson v. Ray*, 4:21-cv-

00811-O 2021 WL 4848898, at *3 (N.D. Tex. Sept 23, 2021) (citing *Sun v. U.S.*, 342 F. Supp. 2d 1120, 1124 (N.D. Ga. 2004)) (holding service by mail addressed to United States Attorney ineffective).

Further, the attempt to personally serve was questionable. At the time of sending the initial email complained of, AUSA Padis was under the belief that Plaintiff Brian Carr had personally served process, which would make it ineffective under Rule 4(c). (Doc. 30-4 at 6). Mr. Carr later informed AUSA Padis he was present with a non-party process server at the time of attempted service, and the non-party process server was the person to hand the summons and complaint to an individual in the United States Attorney's Office. *Id.* at 5.

Despite Plaintiffs' assertions to the contrary, AUSA Padis sought to reasonably reduce delay at each turn. When he initially believed all attempts at service were indisputably improper, AUSA Padis offered to accept service on behalf of the United States Attorney for the Northern District of Texas rather than require Plaintiffs to spend additional time and expense achieving service. (Doc. 30-4 at 2). After receiving additional information from Mr. Carr, AUSA Padis again took the path of least delay. Whether a plaintiff being physically present with an appropriate process server at the time of service causes that service to be ineffective presents an interesting legal question—one which Defendants chose not to litigate. Instead, Defendants filed a motion to dismiss within the time allowed assuming service had been effective. (Doc. 15).

These circumstances do not demonstrate "serious and standard disregard for the orderly process of justice" or a lack of reasonable inquiry into the facts at issue. *Cf.*

Lawyers Title Ins. Corp., 739 F.3d at 871; *see also Bus. Guides, Inc.*, 498 U.S. at 548-51. They instead show a reasonable inquiry into the completion of procedural prerequisites and appropriate discretion in determining which legal defenses to pursue. This conduct is therefore not sanctionable.

B. Defendants' motion to dismiss was well-supported by the facts and the law.

Plaintiffs also argue they are entitled to sanctions because, in their view, Defendants' motion to dismiss is without merit. Initially, sanctions are unavailable under either Rule 11 or Section 1927. Additionally, each of Defendants' arguments in their motion to dismiss was legally and factually supported, and Defendants were legally justified to pursue such grounds for dismissal.

1. Rule 11 and Section 1927 sanctions are unavailable.

Plaintiffs' arguments under Rule 11 fail as Plaintiffs have not complied with the safe-harbor provision of that rule. A motion seeking sanctions under Rule 11 must be served on a party at least 21 days prior to be filed with the court. Fed. R. Civ. P. 11(c)(2); *Elliott v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995). Prior service of the motion is mandatory, and sanctions cannot be granted where a moving party has not complied. *Id*. Further, because the safe harbor is dependent on the ability to withdraw or amend the challenged filing, "a party cannot delay serving its Rule 11 motion until conclusion of the case (or judicial rejection of the offending contention)." Fed. R. Civ. P. 11(c) advisory committee's note to 1993 amendment. Here, although the Mr. Carr, AUSA Padis, and the assigned AUSA conferred over the phone for about an hour to discuss Plaintiffs' then-contemplated motion for sanctions in an effort to avoid unnecessary motion practice,

Plaintiffs did not serve the motion for sanctions on Defendants prior to filing.[4] Further, it was not filed until after the Court entered an order dismissing Defendants' motion to dismiss as moot. (*See* Doc. 26). Plaintiffs' request for sanctions under Rule 11 should therefore be denied.

Additionally, Section 1927 is inapplicable to Plaintiffs' request for sanctions with respect to Defendants' motion to dismiss. As discussed in greater detail above, Section 1927 does not authorize the "creative sanctions" Plaintiffs request and is therefore inapplicable. *See supra* p. 6. Nonetheless, under any standard, Defendants' motion to dismiss is not sanctionable for the reasons discussed below.

2. Defendants' citations to unpublished opinions were appropriate and permissible.

Plaintiffs assert that citing cases not designated for publication constitutes "[d]e [f]acto negligence" warranting sanctions. (Doc. 30 at 3). They cite to no authority supporting their position. In fact, the Fifth Circuit specifically allows parties to cite to unpublished opinions. 5th Cir. R. 47.5.4. Although "[a]n unpublished opinion… is not controlling precedent," it "may be persuasive authority." *Butler v. S. Porter*, 999 F.3d 287, 296 n.4 (5th Cir. 2021). Defendants therefore acted appropriately in citing to two unpublished opinions, and sanctions would be improper.

[4] As part of these discussions, Mr. Carr was warned that an unfounded motion for sanctions may itself be grounds for sanctions: "Threats of Rule 11 sanctions are improper where the other side's position is plausible (even if it is incorrect). Seeking sanctions under such circumstances is itself sanctionable conduct." Karen L. Stevenson & James E. Fitzgerald, *Federal Civil procedure Before Trial: National Edition* § 17:71 (2024) (citing *Gaiardo v. Ethyl Corp*., 835 F2d 479, 485 (3rd Cir. 1987)).

3. Defendants' motion to dismiss did not contain any false statements.

Plaintiffs claim Defendants' motion to dismiss contained "false statements" and omissions of "key facts." But the statements and omissions complained of were proper characterizations and summarizations of Plaintiffs' complaint. Plaintiffs filed a 309-paragraph complaint. (Doc. 3). In discussing their arguments for dismissal, Defendants' counsel summarized the relevant allegations in Plaintiffs' complaint—rather than including a word-for-word recitation of every allegation contained therein—and included accurate citations to the referenced portions. For example, the motion to dismiss noted Plaintiffs sought a court order "mandating that various federal agencies including the U.S. Department of Criminal Justice initiate criminal investigations" (Docs. MTD, 30 at 4). This was a characterization of Plaintiffs' request for court orders "[d]irecting USPS OIG, DoS OIG, and DHS OIG to expeditiously investigate all plausible allegations of federal crimes" and "[d]irecting the DoJ to investigate and track all plausible allegations of federal crimes." (Doc. 3 at 45 ¶ 5, 54 ¶ 54). Plaintiffs claim the characterization of these statements as "initiate criminal investigations" amounts to a "false statement." (Doc. 30 at 4).

Defendants and their counsel are unaware of any authority prohibiting attorneys from summarizing an opposing parties' allegations in their own words in a responsive motion. Indeed, to require parties to directly quote opponents' filings in their entirety—no matter how lengthy and inartful—instead of summarizing the portions relevant to an argument would place a strain on judicial resources and unnecessarily duplicate any pleading to which parties filed a response.

Further, Plaintiffs have failed to provide a cognizable argument as to how Plaintiffs' preferred characterizations or the undiscussed "key facts" should result in a different outcome than dismissal. They give detailed explanations of how they feel their claims should have been characterized (*see* Doc. 30, at 4-9), but they provide no legal authority demonstrating how these explanations would overcome Defendants' arguments for dismissal. They certainly have not demonstrated the motion to dismiss was legally or factually frivolous, demonstrated serious and standard disregard for the orderly process of justice, or otherwise constituted unethical behavior.

4. Defendants' jurisdictional arguments were not frivolous.

Defendants' various arguments for lack of subject matter jurisdiction were appropriate and non-frivolous. Plaintiffs claim Defendants' assertion of sovereign immunity is a "false" argument based on *Marbury v. Madison*[5] (5 U.S. 137 (1803)) and the Administrative Procedure Act (APA). (Doc. 30, at 13). Rather than explaining why Defendants' sovereign immunity arguments rise to the level of sanctionable, Plaintiffs refer to their response to Defendants' motion to dismiss. In that response, Plaintiffs provide a narrative history of sovereign immunity, with no citations or support, and claim the APA provides a waiver for their claims. In citing the APA, Plaintiffs appear to argue it provides a sweeping waiver for sovereign immunity in all circumstances where a plaintiff takes issue with agency action and seeks relief other than money damages. (Doc. 18 at 4). But in reality, the limited waiver applies only to "actions against federal

[5] Plaintiffs never explain how this landmark case establishing judicial review gives rise to an unequivocal waiver of sovereign immunity by Congress.

government agencies, seeking nonmonetary relief, if the agency conduct is otherwise subject to judicial review." *Alabama-Coushatta Tribe of Tex. v. United States*, 757 F.3d 484, 488 (5th Cir. 2014). This limited waiver is subject to significant exceptions. These include, but are not limited to, actions committed to agency discretion or where there is another adequate remedy available to the complaining party. 5 U.S.C. §§ 701(a)(2), 704. And it is a plaintiff's burden to adequately identify an "unequivocal waiver of sovereign immunity. *Freeman v. United States*, 556 F.3d 326, 334 (5th Cir. 2009). As briefed in Defendants' motion to dismiss, Plaintiffs have not met that burden, and the court lacks jurisdiction over their claims under a variety of applicable statutes. (Doc. 15, at 5-6). Their misapplied reliance on the Administrative Procedure Act does not make Defendants' arguments sanctionable.

5. Defendants did not make an "exhaustion of remedies" argument as claimed by Plaintiffs.

Plaintiffs argue Defendants have "misapplied" arguments related to failure to exhaust. Particularly, citing to no authority for this legal assertion, Plaintiffs state "the Exhaustion of Remedies Doctrine" is not "an absolute authority but in fact it is one of many factors to consider." (Doc. 30 at 16). But Defendants never raised any arguments related failure to exhaust. As such, Defendants certainly have not made a frivolous argument in this regard.

6. Defendants appropriately raised Plaintiffs' failure to identify a constitutionally protected liberty or property interest to support their Due Process claims.

Plaintiffs assert Defendants made "completely baseless" challenges to Plaintiffs' Fifth Amendment Due Process claims by treating "the DoS visa denial claims as if they were discretionary." (Doc. 30 at 16). In explanation as to why this challenge is "baseless," Plaintiffs cite to their response to Defendants' motion to dismiss. (Doc. 30 at 16). In that response, Plaintiffs claim the decision to deny a non-immigrant visa is non-discretionary because "Congress has published several statutes governing non-immigrant visas granting DoS authority to issue such visas and, in fact, requiring DoS to issue or deny such visas on a fee for service basis with the criteria for denial specified by statute." (Doc. 18 at 13). However, Plaintiffs fail to identify the statutory scheme to which they refer.[6] In contrast, Defendants cited to a variety of cases demonstrating courts have rejected similar constitutional claims. (*See* Doc. 15 at 7). Plaintiffs have failed to show how this well-supported argument was in any way frivolous, made for some improper purpose, or otherwise sanctionable.

[6] Plaintiffs do cite to a singular statute, 8 U.S.C. § 1184(b), without explaining how this statute creates any form of non-discretionary duty to which they have a Fifth Amendment interest sufficient to support their constitutional claim. Indeed, that statute establishes a presumption of an alien's immigrant status "until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status." It does not demonstrate any constitutionally protected property or liberty interest.

7. Plaintiffs' desire to challenge the well-established doctrine of consular non-reviewability does not make Defendants' motion to dismiss sanctionable.

In seeking sanctions in response to Defendants raising the doctrine of consular non-reviewability, Plaintiffs confuse the standard for a motion to dismiss with the standard for Rule 11 sanctions. They argue they intend to challenge the doctrine of consular non-reviewability, and therefore it was not proper to raise that doctrine in Defendants' motion to dismiss. (Doc. 30 at 17). But whether Plaintiffs make a good faith argument for the reversal of existing law goes to whether they have made a frivolous argument under Rule 11. *See Smith v. Our Lady of the Lake Hosp., Inc.*, 960 F.2d 439, 444-45 (5th Cir. 1992). In a motion to dismiss for lack of subject matter jurisdiction, a defendant need only raise the challenge, and the plaintiff then bears the burden of establishing that the court has jurisdiction over the dispute. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Menchaca v. Chrysler Credit Corp*., 613 F.2d 507, 511 (5th Cir. 1980). And the case law makes clear Defendants had a valid basis for raising lack of subject matter jurisdiction pursuant to the doctrine of consular non-reviewability. *See Centeno v. Shultz*, 817 F.2d 1212, 1213 (5th Cir. 1987) ("the denial of visas to aliens is not subject to review by the federal courts"). As such, this well-supported assertion was not for any improper purpose or otherwise sanctionable.

8. Defendants' assertions of frivolousness were appropriate.

Plaintiffs assert Defendants' argument that Plaintiffs' complaint appears frivolous was sanctionable because it included a citation to an opinion not designated for publication and was based on allegations not in Plaintiffs' complaint. For the reasons

already set forth above, the citing of an unpublished opinion is not sanctionable. Further, Defendants' argument was based on a fair reading of Plaintiffs' complaint. In their motion to dismiss, Defendants argued the "lengthy complaint appears to infer conspiracy and false documents from administrative delays without identifying a legal basis for the requested relief." (Doc. 15, at 8). Plaintiffs deny any conspiracy can be inferred and conclude this argument of frivolousness is therefore sanctionable. But review of Plaintiffs' complaint indeed supports Defendants' argument. For example, in a sub-heading Plaintiffs allege "USCIS Denies Citizenship Application Based on Falsified Documentation." (Doc. 3 at 3 ¶ 6). In support of this conclusion, Plaintiffs allege Mrs. Carr's N-400 interview was delayed and ultimately denied based on "falsified records" leading to her interview being missed. *Id*. at 3 ¶ 6-8. They go on to allege these events were a result of "'whistleblower' retaliation for [Mr. Carr's] previous reports of federal crime and malfeasance by USCIS." *Id*. at ¶ 8. Defendants fairly characterized such allegations as inferring conspiracy based on agency delay. And Defendants explained throughout their motion to dismiss why Plaintiffs' claims of entitlement to relief are not legally sound. Defendants' arguments were appropriately based upon the law and on Plaintiffs' allegations, and Plaintiffs have failed to demonstrate how they are sanctionable.

IV. Conclusion

AUSA Padis never made any false statements during the course of this litigation, and all of the arguments in Defendants' motion to dismiss about which Plaintiffs complain were well grounded in both law and fact. Additionally, Defendants were

legally justified to make the arguments in their motion to dismiss, and it was not filed for delay or any other improper purpose. Therefor, Plaintiffs' motion for sanctions should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On May 29, 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