Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DEPARTMENT OF STATE ET AL. *v.* MUÑOZ ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23–334. Argued April 23, 2024—Decided June 21, 2024

Respondent Sandra Muñoz is an American citizen. In 2010, she married Luis Asencio-Cordero, a citizen of El Salvador. The couple eventually sought to obtain an immigrant visa for Asencio-Cordero so that they could live together in the United States. Muñoz filed a petition with U. S. Citizenship and Immigration Services to have Asencio-Cordero classified as an immediate relative. See 8 U. S. C. §§1151(b)(2)(A)(i), 1154(a)(1)(A). USCIS granted Muñoz's petition, and Asencio-Cordero traveled to the consulate in San Salvador to apply for a visa. See §§1154(b), 1202. After conducting several interviews with Asencio-Cordero, a consular officer denied his application, citing §1182(a)(3)(A)(ii), a provision that renders inadmissible a noncitizen whom the officer "knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in" certain specified offenses or "any other unlawful activity."

Asencio-Cordero guessed that he was denied a visa based on a finding that he was a member of MS–13, a transnational criminal gang. So he disavowed any gang membership, and he and Muñoz pressed the consulate to reconsider the officer's finding. When the consulate refused, they appealed to the Department of State, which agreed with the consulate's determination. Asencio-Cordero and Muñoz then sued the Department of State and others (collectively, State Department), claiming that it had abridged Muñoz's constitutional liberty interest in her husband's visa application by failing to give a sufficient reason why Asencio-Cordero is inadmissible under the "unlawful activity" bar. The District Court granted summary judgment to the State Department, but the Ninth Circuit vacated the judgment, holding that Muñoz had a constitutionally protected liberty interest in her husband's visa application. Because of that interest, the court said, the

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Due Process Clause required the State Department to give Muñoz a reason for denying her husband's visa. The court further held that by declining to give Muñoz more information earlier in the process, the State Department had forfeited its entitlement to insulate its decision from judicial review under the doctrine of consular nonreviewability.

Held: A citizen does not have a fundamental liberty interest in her noncitizen spouse being admitted to the country. Pp. 5–18.

(a) Under the doctrine of consular nonreviewability, an executive officer's decision "to admit or to exclude an alien" "is final and conclusive," *United States ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537, 547, and not subject to judicial review in federal court. This Court has assumed a narrow exception in cases "when the denial of a visa allegedly burdens the constitutional rights of a U. S. citizen." *Trump* v. *Hawaii*, 585 U. S. 667, 703. In that event, the Court has considered whether the executive official gave a "facially legitimate and bona fide reason" for denying the visa. *Kerry* v. *Din*, 576 U. S. 86, 103–104.

Asencio-Cordero cannot invoke the exception himself, thus Muñoz must assert that the denial of her husband's visa violated *her* constitutional rights, thereby enabling judicial review. She argues that the State Department abridged her fundamental right to live with her spouse in her country of citizenship without affording her due process. Pp. 5–8.

(b) Among other things, the Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington* v. *Glucksberg*, 521 U. S. 702, 720. When a fundamental right is at stake, the government can act only by narrowly tailored means that serve a compelling state interest. To identify an unenumerated right, the Court follows the two-step inquiry in *Glucksberg*. That inquiry first insists on a "careful description of the asserted fundamental liberty interest." *Id.,* at 721 (internal quotation marks omitted). Second, the inquiry stresses that "the Due Process Clause specially protects" only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Id.,* at 720–721 (same).

Here, Muñoz invokes the "fundamental right to marriage," but she actually claims something more distinct: the right to *reside with her noncitizen spouse in the United States*. That involves more than marriage and more than spousal cohabitation—it includes the right to have her noncitizen husband enter (and remain in) the United States. As Muñoz asserts it, she claims "a marital right . . . sufficiently important that it cannot be unduly burdened without procedural due process as to an inadmissibility finding that would block her from residing with her spouse in her country of citizenship." Brief for Respondent 19, n. 10. So described, the asserted right is fundamental enough to

be implicit in "liberty;" but, unlike other implied fundamental rights, its deprivation does not trigger strict scrutiny.

Because Muñoz cannot clear the second step of *Glucksberg*, the Court need not decide whether such a category of implied rights protected by the Due Process Clause exists. *Glucksberg* requires a demonstration that the asserted right be "deeply rooted in this Nation's history and tradition." 521 U. S., at 721. This Nation's history and tradition recognizes the Government's sovereign authority to set the terms governing the admission and exclusion of noncitizens, and Muñoz points to no subsidiary tradition that curbs this authority in the case of noncitizen spouses.

From this Nation's beginnings, the admission of noncitizens into the country was characterized as "of favor [and] not of right." J. Madison, Report of 1800. And when Congress began to restrict immigration in the late 19th century, the laws it enacted provided no exceptions for citizens' spouses. See, *e.g.,* Page Act of 1875, 18 Stat. 477–478; Immigration Act of 1882, 22 Stat. 214; Immigration Act of 1891, 26 Stat. 1084. And while Congress has, on occasion, extended special immigration treatment to marriage, see, *e.g.,* War Brides Act of 1945, 59 Stat. 659, it has never made spousal immigration a matter of *right*.

This Court has not interfered with such policy choices, despite their interference with the spousal relationship. Thus in *United States ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537, the Court reaffirmed, in the case of a noncitizen spouse who was denied admission for confidential security reasons, the longstanding principle "that the United States can, as a matter of public policy . . . forbid aliens or classes of aliens from coming within [its] borders," and "[n]o limits can be put by the courts upon" that power. *Wong Wing* v. *United States*, 163 U. S. 228, 237. Pp. 8–15.

(c) Muñoz's claim to a procedural due process right in *someone else*'s legal proceeding would have unsettling collateral consequences. Her position would usher in a new strain of constitutional law—one that prevents the government from taking actions that "indirectly or incidentally" burden a citizen's legal rights. *Castle Rock* v. *Gonzales*, 545 U. S. 748, 767. See, *e.g., O'Bannon* v. *Town Court Nursing Center*, 447 U. S. 773, 788. To be sure, Muñoz has suffered harm from the denial of Asencio-Cordero's visa application, but that harm does not give her a constitutional right to participate in his consular proceeding. Pp. 15–18.

50 F. 4th 906, reversed and remanded.

BARRETT, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, and KAVANAUGH, JJ., joined. GORSUCH, J.,

filed an opinion concurring in the judgment. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN and JACKSON, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 23–334

DEPARTMENT OF STATE, ET AL., PETITIONERS *v.* SANDRA MUÑOZ, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 21, 2024]

JUSTICE BARRETT delivered the opinion of the Court.

Luis Asencio-Cordero seeks to enter the United States to live with Sandra Muñoz, his wife. To obtain the necessary visa, he submitted an application at the United States consulate in San Salvador. A consular officer denied his application, however, after finding that Asencio-Cordero is affiliated with MS–13, a transnational criminal gang. Because of national security concerns, the consular officer did not disclose the basis for his decision. And because Asencio-Cordero, as a noncitizen, has no constitutional right to enter the United States, he cannot elicit that information or challenge the denial of his visa.

Muñoz, on the other hand, is a citizen, and she filed her own challenge to the consular officer's decision. She reasons as follows: The right to live with her noncitizen spouse in the United States is implicit in the "liberty" protected by the Fifth Amendment; the denial of her husband's visa deprived her of this interest, thereby triggering her right to due process; the consular officer violated her right to due process by declining to disclose the basis for finding Asencio-Cordero inadmissible; and this, in turn, enables judicial review, even though visa denials are

ordinarily unreviewable by courts.

Muñoz's argument fails at the threshold. Her argument is built on the premise that the right to bring her noncitizen spouse to the United States is an unenumerated constitutional right. To establish this premise, she must show that the asserted right is "'deeply rooted in this Nation's history and tradition.'" *Washington* v. *Glucksberg*, 521 U. S. 702, 720–721 (1997). She cannot make that showing. In fact, Congress's longstanding regulation of spousal immigration—including through bars on admissibility—cuts the other way.

I

A

To be admitted to the United States, a noncitizen typically needs a visa. 66 Stat. 181, 8 U. S. C. §1181(a). Visa decisions are made by the political branches. *Trump* v. *Hawaii*, 585 U. S. 667, 702–703 (2018); see also *Oceanic Steam Nav. Co.* v. *Stranahan*, 214 U. S. 320, 339 (1909) (explaining that "over no conceivable subject is the legislative power of Congress more complete"). As a general matter, Congress sets the terms for entry, and the Department of State implements those requirements at United States Embassies and consulates in foreign countries.[1]

Congress has streamlined the visa process for noncitizens with immediate relatives in the United States. The citizen-relative must first file a petition with U. S. Citizenship and Immigration Services (USCIS), an agency housed within the Department of Homeland Security, to have the noncitizen classified as an immediate relative. See *Scialabba* v.

[1] We describe the process for noncitizens who, like Asencio-Cordero, have not yet been lawfully admitted to the United States and must therefore apply from abroad. Compare 8 U. S. C. §1255(a) (adjustment of status to lawful permanent resident for noncitizens already admitted into the United States) with 22 CFR §§42.61, 42.62 (2023) (noncitizens applying for immigrant visa must appear in person before consular officer in consular district of residence).

Cuellar de Osorio, 573 U. S. 41, 46–47 (2014) (plurality opinion); §§1151(b)(2)(A)(i), 1154(a)(1)(A). If USCIS approves the petition, then the noncitizen may apply for a visa. §§1201(a), 1202(a). As part of this process, the noncitizen submits written materials and interviews with a consular officer abroad. §§1201(a)(1), 1202.

Ordinarily, a consular officer who denies a visa application "because the officer determines the alien to be inadmissible" must "provide the alien with a timely written notice that . . . (A) states the determination, and (B) lists the specific provision or provisions of law under which the alien is inadmissible." §1182(b)(1). The statute requires no explanation, however, "to any alien inadmissible" on certain grounds related to crime and national security. §1182(b)(3). This case involves a noncitizen to whom this statutory exception applies.

B

Sandra Muñoz, an American citizen, married Luis Asencio-Cordero, a Salvadoran citizen, in 2010. Several years later, the couple began taking steps to obtain an immigrant visa for Asencio-Cordero. Muñoz filed a petition to classify her husband as an immediate relative, which USCIS granted. §§1151(b)(2)(A)(i), 1154(a)(1)(A). Because Asencio-Cordero had entered the United States unlawfully, he was required to return to El Salvador and submit his visa application at a consulate there. See §§1154(b), 1202; 22 CFR §42. He met with a consular officer in San Salvador and underwent several interviews.

In December 2015, the officer denied Asencio-Cordero's application, citing 8 U. S. C. §1182(a)(3)(A)(ii). That provision renders inadmissible a noncitizen whom the officer "knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in" certain specified offenses or "any other unlawful activity." *Ibid*. The officer provided no additional

details—but, given the reason for the visa denial, even the statutory citation was more information than Asencio-Cordero was entitled to receive. §1182(b)(3).

Asencio-Cordero guessed (as it turns out, accurately) that he was denied a visa based on a finding that he was a member of MS–13, a transnational criminal gang. He also guessed (again, accurately) that this finding was based at least in part on the conclusion that his tattoos signified gang membership. Asencio-Cordero and Muñoz denied that Asencio-Cordero was affiliated with MS–13 or any other gang, and they pressed the consulate to reconsider the officer's finding. When the consulate held firm, they appealed to the Department of State, submitting evidence that the tattoos were innocent. A Department official informed Asencio-Cordero and Muñoz that the Department agreed with the consulate's determination. The next day, the consul in San Salvador notified them that Asencio-Cordero's application had gone through multiple rounds of review—including by the consular officer, consular supervisors, the consul himself, the Bureau of Consular Affairs, and the State Department's Immigration Visa Unit—and none of these reviews had "'revealed any grounds to change the finding of inadmissibilty.'" App. 7.

Asencio-Cordero and Muñoz sued the Department of State, the Secretary of State, and the United States consul in San Salvador. (For simplicity's sake, we will refer to the defendants collectively as the State Department.) They alleged, among other things, that the State Department had abridged Muñoz's constitutional liberty interest in her husband's visa application by failing to give a sufficient reason why Asencio-Cordero is inadmissible under the "unlawful activity" bar.

The District Court agreed and ordered discovery. In a sworn declaration, an attorney adviser from the State Department explained that Asencio-Cordero was deemed inadmissible because he belonged to MS–13. The finding

was "based on the in-person interview, a criminal review of . . . Asencio[-]Cordero, and a review of [his] tattoos." App. to Pet. for Cert. 124a. In addition to the affidavit, the State Department provided the District Court with confidential law enforcement information, which it reviewed *in camera*, identifying Ascencio-Cordero as a member of MS–13. Satisfied, the District Court granted summary judgment to the State Department.

The Ninth Circuit vacated the judgment and remanded the case. Consistent with circuit precedent, it held that Muñoz, as a citizen, had a constitutionally protected liberty interest in her husband's visa application. Because of that interest, the Ninth Circuit said, the Due Process Clause required the State Department to give Muñoz a "'facially legitimate and bona fide reason'" for denying her husband's visa. 50 F. 4th 906, 916 (2022) (quoting *Kleindienst* v. *Mandel*, 408 U. S. 753, 766–770 (1972)). The initial statutory citation did not qualify, 50 F. 4th, at 917–918, and the later affidavit was untimely, *id.*, at 921–922. Delay carried a serious consequence for the State Department. Visa denials are insulated from judicial review by the doctrine of consular nonreviewability. But the Ninth Circuit held that by declining to give Muñoz more information earlier in the process, the State Department had forfeited its entitlement "to shield its visa decision from judicial review." *Id.*, at 924. The panel remanded for the District Court to consider the merits of Muñoz's suit, which include a request for a declaration invalidating the finding that Asencio-Cordero is inadmissible and an order demanding that the State Department readjudicate Asencio-Cordero's application.[2]

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[2] At oral argument in this Court, Muñoz suggested that she is asserting a constitutional entitlement only to information—a "facially legitimate and bona fide reason" why the consular officer deemed her husband inadmissible under the "unlawful activity" bar. Tr. of Oral Arg. 59–64. Elsewhere, though, she suggests that the Due Process Clause entitles

The Ninth Circuit denied en banc review over the dissent of 10 judges, and we granted the State Department's petition for certiorari. 601 U. S. ___ (2024).[3]

II

"For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'" *Trump*, 585 U. S., at 702 (quoting *Fiallo* v. *Bell*, 430 U. S. 787, 792 (1977)). Congress may delegate to executive officials the discretionary authority to admit noncitizens "immune from judicial inquiry or interference." *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–591 (1952). When it does so, the action of an executive officer "to admit or to exclude an alien" "is final and conclusive." *United States ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537, 543 (1950); see also *Dept. of Homeland Security* v. *Thuraissigiam*, 591 U. S. 103, 138–139 (2020); *Mandel*, 408 U. S., at 765–766; *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 659–660 (1892). The Judicial Branch has no role

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her to both the information and "a meaningful opportunity to respond." Brief for Respondents 11. If appeal is no longer available under State Department regulations (and the Ninth Circuit said it was not), Muñoz presumably seeks what she sought below: judicial review of the inadmissibility finding and a court order requiring the State Department to reconsider Asencio-Cordero's visa application. 50 F. 4th, at 912, n. 14. This level of judicial involvement in the visa process would be a significant extension of our precedent. The dissent, however, would remand to the Ninth Circuit for consideration of this relief. *Post*, at 10, n. 2 (opinion of SOTOMAYOR, J.).

[3] Inexplicably, the dissent claims that the Court is reaching out improperly to settle this issue. *Post*, at 2. We granted certiorari on this very question to resolve a longstanding circuit split. 601 U. S. ___ (2024). And we did so at the request of the Solicitor General, who emphasized both the Government's need for uniformity in the administration of immigration law and the importance of this issue to national security. Pet. for Cert. 27–28, 31–33.

to play "unless expressly authorized by law." *Knauff*, 338 U. S., at 543. The Immigration and Nationality Act (INA) does not authorize judicial review of a consular officer's denial of a visa; thus, as a rule, the federal courts cannot review those decisions.[4] This principle is known as the doctrine of consular nonreviewability.

We have assumed that a narrow exception to this bar exists "when the denial of a visa allegedly burdens the constitutional rights of a U. S. citizen." *Trump*, 585 U. S., at 703. In that event, the Court has considered whether the Executive gave a "'facially legitimate and bona fide reason'" for denying the visa. *Kerry* v. *Din*, 576 U. S. 86, 103–104 (2015) (Kennedy, J., concurring in judgment) (quoting *Mandel*, 408 U. S., at 770). If so, the inquiry is at an end—the Court has disclaimed the authority to "'look behind the exercise of that discretion,'" much less to balance the reason given against the asserted constitutional right. *Din*, 576 U. S., at 104.

Asencio-Cordero cannot invoke the exception himself, because he has no "constitutional right of entry to this country as a nonimmigrant or otherwise." *Mandel*, 408 U. S., at 762. Thus, so far as Asencio-Cordero is concerned, the doctrine of consular nonreviewability applies. Muñoz, however, is an American citizen, and she asserts that the denial of her husband's visa violated *her* constitutional rights, thereby enabling judicial review. Specifically, she argues that the State Department abridged her fundamental right to live with her spouse in her country of citizenship—and that it did so without affording her the fair

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[4] In *Trump* v. *Hawaii*, the plaintiffs argued that a proclamation excluding certain classes of noncitizens from entering the United States exceeded the President's authority under the Immigration and Nationality Act. 585 U. S. 667, 681–682 (2018). The Court explained that the doctrine of consular nonreviewability is not jurisdictional and "assume[d] without deciding that [the] plaintiffs' statutory claims [were] reviewable." *Id.*, at 682–683.

procedure guaranteed by the Fifth Amendment.

The Ninth Circuit is the only Court of Appeals to have embraced this asserted right—every other Circuit to consider the issue has rejected it.[5] See *Colindres* v. *U. S. Dept. of State*, 71 F. 4th 1018, 1021 (CADC 2023); *Baaghil* v. *Miller*, 1 F. 4th 427, 433 (CA6 2021); *Bakran* v. *Secretary, U. S. Dept. of Homeland Security*, 894 F. 3d 557, 564 (CA3 2018); *Bright* v. *Parra*, 919 F. 2d 31, 34 (CA5 1990) (*per curiam*); *Burrafato* v. *U. S. Dept. of State*, 523 F. 2d 554, 554–557 (CA2 1975); *Silverman* v. *Rogers*, 437 F. 2d 102, 107 (CA1 1970). In *Din*, this Court considered but did not resolve the question. A plurality concluded that a citizen does not have a fundamental right to bring her noncitizen spouse to the United States. 576 U. S., at 96. Two Justices chose not to reach the issue, explaining that even if the right existed, the statutory citation provided by the Executive qualified as a facially legitimate and bona fide reason. *Id.,* at 105 (opinion of Kennedy, J.). Since *Din*, the existence of the right has continued to divide the Circuits.

Today, we resolve the open question. Like the *Din* plurality, we hold that a citizen does not have a fundamental liberty interest in her noncitizen spouse being admitted to the country.

III

The Due Process Clause of the Fifth Amendment requires the Government to provide due process of law before it deprives someone of "life, liberty, or property." Under our precedent, the Clause promises more than fair process: It also "provides heightened protection against government interference with certain fundamental rights and liberty

[5] The dissent characterizes our decision today as extreme, *post*, at 14, but it is the dissent who embraces the outlier position: Our opinion is in line with the vast majority of Circuits that have decided this question. The dissent aligns itself with the lone Circuit going the other way.

interests." *Glucksberg*, 521 U. S., at 720. When a fundamental right is at stake, the Government can act only by narrowly tailored means that serve a compelling state interest. *Id.*, at 721. Identifying unenumerated rights carries a serious risk of judicial overreach, so this Court "exercise[s] the utmost care whenever we are asked to break new ground in this field." *Id.*, at 720 (internal quotation marks omitted). To that end, *Glucksberg*'s two-step inquiry disciplines the substantive due process analysis. First, it insists on a "careful description of the asserted fundamental liberty interest." *Id.*, at 721 (internal quotation marks omitted). Second, it stresses that "the Due Process Clause specially protects" only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Id.*, at 720–721 (internal quotation marks omitted).

We start with a "careful description of the asserted fundamental liberty interest." *Id.*, at 721 (internal quotation marks omitted). Muñoz invokes the "fundamental right of marriage," but the State Department does not deny that Muñoz (who is already married) has a fundamental right to marriage. Muñoz claims something distinct: the right to *reside with her noncitizen spouse in the United States*. That involves more than marriage and more than spousal cohabitation—it includes the right to have her noncitizen husband enter (and remain in) the United States.

It is difficult to pin down the nature of the right Muñoz claims. The logic of her position suggests an entitlement to bring Asencio-Cordero to the United States—how else could Muñoz enjoy the asserted right to live with her noncitizen husband in her country of citizenship? See also Brief for Petitioners 23, n. 8 (characterizing Muñoz's claim as an "entitle[ment] to the visa itself"). Yet Muñoz disclaims that characterization, insisting that "[she] does not advance a substantive right to immigrate one's spouse." Brief for

Respondents 19, n. 10. This concession is wise, because such a claim would ordinarily trigger strict scrutiny—and it would be remarkable to put the Government to the most demanding test in constitutional law in the field of immigration, an area unsuited to rigorous judicial oversight. *Fiallo*, 430 U. S., at 792 ("Our cases 'have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control'").

Though understandable, Muñoz's concession makes characterizing the asserted right a conceptually harder task. Here is her formulation: a "marital right . . . sufficiently important that it cannot be unduly burdened without procedural due process as to an inadmissibility finding that would block her from residing with her spouse in her country of citizenship." Brief for Respondents 19, n. 10. So described, the asserted right is neither fish nor fowl. It is fundamental enough to be implicit in "liberty;" but, unlike other implied fundamental rights, its deprivation does not trigger strict scrutiny. See *Din*, 576 U. S., at 99 (plurality opinion) (observing that this argument posits "two categories of implied rights protected by the Due Process Clause: really fundamental rights, which cannot be taken away at all absent a compelling state interest; and not-so-fundamental rights, which can be taken away so long as procedural due process is observed"). This right would be in a category of one: a substantive due process right that gets only procedural due process protection. *Ibid.*

We need not decide whether such a category exists, because Muñoz cannot clear the second step of *Glucksberg*'s test: demonstrating that the right to bring a noncitizen spouse to the United States is "'deeply rooted in this Nation's history and tradition.'" 521 U. S., at 721. On the contrary, the through line of history is recognition of the Government's sovereign authority to set the terms

governing the admission and exclusion of noncitizens. And Muñoz points to no subsidiary tradition that curbs this authority in the case of noncitizen spouses.

From the beginning, the admission of noncitizens into the country was characterized as "of favor [and] *not of right*." J. Madison, Report of 1800 (Jan. 7, 1800), in 17 Papers of James Madison 319 (D. Mattern, J. Stagg, J. Cross, & S. Perdue eds. 1991) (emphasis added); see also 2 Records of the Federal Convention of 1787, p. 238 (M. Farrand ed. 1911) (recounting Gouverneur Morris's observation that "every Society from a great nation down to a club ha[s] the right of declaring the conditions on which new members should be admitted"); Debate on Virginia Resolutions, in The Virginia Report of 1799–1800, p. 31 (1850) ("[B]y the law of nations, it is left in the power of all states to take such measures about the admission of strangers as they think convenient"). Consistent with this view, the 1798 Act Concerning Aliens gave the President complete discretion to remove "all such aliens as he shall judge dangerous to the peace and safety of the United States." 1 Stat. 571 (emphasis deleted). The Act made no exception for spouses—or, for that matter, other family members.

The United States had relatively open borders until the late 19th century. But once Congress began to restrict immigration, "it enacted a complicated web of regulations that erected serious impediments to a person's ability to bring a spouse into the United States." *Din*, 576 U. S., at 96 (plurality opinion). One of the first federal immigration statutes, the Immigration Act of 1882, required executive officials to "examine" noncitizens and deny "permi[ssion] to land" to "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge." 22 Stat. 214. The Act provided no exception for citizens' spouses. And when Congress drafted a successor statute that expanded the grounds of inadmissibility, it again gave no special treatment to the marital relationship.

Immigration Act of 1891, ch. 551, 26 Stat. 1084.

There are other examples. The Page Act of 1875, which functioned as a restriction on Chinese female immigration, contained no exception for wives. 18 Stat. 477–478; see *Colindres*, 71 F. 4th, at 1023. Or consider the Emergency Quota Act of 1921, which capped the number of immigrants permitted to enter the country each year. 42 Stat. 5–6. Although the Act gave preferential treatment to citizens' wives, "once all the quota spots were filled for the year, the spouse was barred without exception." *Din*, 576 U. S., at 97 (plurality opinion).[6] See also C. Bredbenner, A Nationality of Her Own: Women, Marriage, and the Law of Citizenship 115 (1998) ("[C]itizens' wives were still quota immigrants, and immigration officials could regulate their entry closely if economic or other circumstances prompted a general tightening of admission"). In 1924, Congress, showing favor to men rather than marriage, lifted the quotas for male citizens with noncitizen wives, but did not similarly clear the way for female citizens with noncitizen husbands. Abrams 12. This gender disparity did not change until 1952. *Id.*, at 13–14.

That is not to say that Congress has not extended special treatment to marriage—it has. For instance, the War Brides Act of 1945 provided that the noncitizen spouses of World War II veterans would be exempt from certain admissibility bars and documentary requirements. Ch. 591, 59 Stat. 659. Closer to home, Asencio-Cordero's visa

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[6] Given the then-existing law of coverture, the Act was only relevant to noncitizen wives—a citizen wife with a noncitizen husband was forced to assume her husband's nationality. K. Abrams, What Makes the Family Special? 80 U. Chi. L. Rev. 7, 11 (2013) (Abrams). ("Giving wives the opportunity to sponsor their husbands would have been nonsensical; under the Expatriation Act of 1907, a wife automatically *lost* her US citizenship upon marrying a foreigner, so there could be no such thing as a US citizen wife with an immigrant husband" (footnotes omitted)). This changed in 1922, when the Cable Act "largely undid derivative citizenship for married women." *Ibid.*

application rested on his marriage to Muñoz, which made him eligible for immigrant status. §1154. But while Congress has made it easier for spouses to immigrate, it has never made spousal immigration a matter of right. On the contrary, qualifications and restrictions have long been the norm. See, *e.g.*, Act of Aug. 9, 1946, ch. 945, 60 Stat. 975 (granting nonquota status to Chinese wives of American citizens, but only for those with longstanding marriages).

Of particular relevance to Muñoz, Congress has not exempted spouses from inadmissibility restrictions like the INA's unlawful-activity bar. Precusors to that bar have existed since the early 20th century. For example, the Immigration Act of 1917 provided for the exclusion of "persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude." Ch. 29, 39 Stat. 875. Consular officers applied this bar to spouses, and courts refused to review those visa denials, citing the doctrine of consular nonreviewability. See, *e.g.*, *United States ex rel. Ulrich* v. *Kellogg*, 30 F. 2d 984, 985–986 (CADC 1929).

United States ex rel. Knauff v. *Shaughnessy* is a striking example from this Court. In *Knauff*, a United States citizen (and World War II veteran) found himself similarly situated to Muñoz: His noncitizen wife was denied admission for security reasons, based on "information of a confidential nature, the disclosure of which would be prejudicial to the public interest." 338 U. S., at 541, 544. We held that the War Brides Act did not supersede the statute on which the Attorney General had relied. *Id.*, at 546–547 ("There is nothing in the War Brides Act . . . to indicate that it was the purpose of Congress, by partially suspending compliance with certain requirements and quota provisions of the immigration laws, to relax the security provisions of the immigration laws"). So, "[a]s all other aliens, petitioner had to stand the test of security." *Id.*, at 547. Nor was she entitled to a hearing, because "[w]hatever the procedure

authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Id.*, at 544. The Attorney General's decision was "final and conclusive," and he did not have to divulge the reason for it. *Id.*, at 543.[7]

Knauff thus reaffirmed the longstanding principle "that the United States can, as a matter of public policy . . . forbid aliens or classes of aliens from coming within their borders," and "[n]o limits can be put by the courts upon" that power. *Wong Wing* v. *United States*, 163 U. S. 228, 237 (1896). Congress's authority to "formulat[e] . . . policies" concerning the entry of noncitizens "has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government," representing "not merely 'a page of history,' but a whole volume." *Galvan* v. *Press*, 347 U. S. 522, 531 (1954) (citation omitted). "[T]he Court's general reaffirmations of this principle have been legion." *Mandel*, 408 U. S., at 765–766; see also *id.*, at 765 ("[T]he power to exclude aliens is 'inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers—a power to be exercised exclusively by the political branches of government'").[8] While "families of

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[7] The dissent criticizes *Knauff* because the Attorney General, under pressure from Congress, ultimately revisited his decision and admitted Knauff as a lawful permanent resident. *Post*, at 19. But the history of the case does not establish that the Court was wrong to decline to review the Attorney General's decision. It reflects a decision that was made by the political branches and reversed through the political process. Moreover, *Knauff* remains good law that we have repeatedly reaffirmed. *Dept. of Homeland Security* v. *Thuraissigiam*, 591 U. S. 103, 138–139 (2020).

[8] The dissent barely acknowledges that any of this precedent exists. In fact, rather than recognizing the prerogatives of the political branches in this area, the dissent criticizes the United States' immigration policy, *post*, at 4–5, as well as the competence of the Executive Branch officials who make difficult, high-stakes decisions about which noncitizens seeking entry to the United States pose a threat to national security, *post*, at 6–7. Perhaps our dissenting colleagues are well-equipped to set immigration policy and manage border security, but the Constitution entrusts

putative immigrants certainly have an interest in their admission," it is a "fallacy" to leap from that premise to the conclusion that United States citizens have a "'fundamental right'" that can limit how Congress exercises "the Nation's sovereign power to admit or exclude foreigners." *Fiallo*, 430 U. S., at 795, n. 6.

To be sure, Congress can use its authority over immigration to prioritize the unity of the immigrant family. *Din*, 576 U. S., at 97 (plurality opinion). See, *e.g.*, §1151(b)(2)(A)(i) (exempting "immediate relatives" from certain numerical quotas). It has frequently done just that. But the Constitution does not *require* this result; moreover, Congress's generosity with respect to spousal immigration has always been subject to restrictions, including bars on admissibility. This is an area in which more than family unity is at play: Other issues, including national security and foreign policy, matter too. Thus, while Congress may show special solicitude to noncitizen spouses, such solicitude is "a matter of legislative grace rather than fundamental right." *Din*, 576 U. S., at 97 (plurality opinion). Muñoz has pointed to no evidence suggesting otherwise.[9]

IV

As the State Department observes, Muñoz's claim to a procedural due process right in *someone else's* legal

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those tasks to the political branches.

[9]The dissent never addresses the actual issue in this case, which is whether the Judiciary has any authority to review visa determinations made by the State Department. Instead, the dissent chooses the rhetorically easier path of charging the Court with endangering the fundamental right to marriage. See *post*, at 11–14. To be clear: Today's decision does not remotely call into question any precedent of this Court, including those protecting marriage as a fundamental right. By contrast, the dissent would upend more than a century's worth of this Court's precedent regarding the doctrine of consular nonreviewability, not to mention equally longstanding congressional and Executive Branch practice. *Ibid.*

proceeding would have unsettling collateral consequences. Consider where her logic leads: Could a wife challenge her husband's "assignment to a remote prison or to an overseas military deployment, even though prisoners and service members themselves cannot bring such challenges"? Reply Brief 13. Could a citizen assert procedural rights in the removal proceeding of her spouse? Brief for Petitioners 30. Muñoz's position would usher in a new strain of constitutional law, for the Constitution does not ordinarily prevent the government from taking actions that "indirectly or incidentally" burden a citizen's legal rights. *Castle Rock* v. *Gonzales*, 545 U. S. 748, 767 (2005) (quoting *O'Bannon* v. *Town Court Nursing Center*, 447 U. S. 773, 788 (1980)).

Our decision in *O'Bannon* is illustrative. There, a group of nursing-home residents alleged that the government had violated their liberty interests when it decertified their nursing home without providing them a hearing. 447 U. S., at 777–781, 784. We acknowledged that the residents would suffer harm from the government's decision. *Id.*, at 784, and n. 16. But we held that absent a "direct restraint on [their liberty]," the decision did not implicate their due process rights. *Id.*, at 788. The decertification decision imposed only an *indirect* harm. We explained that the residents were akin to "members of a family who have been dependent on an errant father." *Ibid.* Although "they may suffer serious trauma if he is deprived of his liberty or property as a consequence of criminal proceedings," such family members "surely . . . have no constitutional right to participate in his trial or sentencing procedures." *Ibid.* The same principle governs here. Muñoz has suffered harm from the denial of Asencio-Cordero's visa application, but that harm does not give her a constitutional right to participate in his consular process.

Lest there be any doubt, *Mandel* does *not* hold that citizens have procedural due process rights in the visa

proceedings of others. The Ninth Circuit seems to have read *Mandel* that way, but that is a misreading.

In *Mandel,* the Attorney General refused to waive inadmissibility and grant Ernest Mandel, a self-described "'revolutionary Marxist,'" a temporary visa to attend academic conferences in the United States. 408 U. S., at 756. A group of professors sued on the ground that the Executive's discretion to grant a waiver was limited by their First Amendment right to hear Mandel speak; they insisted that "the First Amendment claim should prevail, at least where no justification is advanced for denial of a waiver." *Id.*, at 769. In response, the Attorney General asserted that "Congress has delegated the waiver decision to the Executive in its sole and unfettered discretion, and any reason or no reason may be given." *Ibid.*

But because "the Attorney General *did* inform Mandel's counsel of the reason for refusing him a waiver," the Court chose not to resolve this statutory argument. *Ibid.* (emphasis added). Instead, it said that so long as the Executive gives a "facially legitimate and bona fide reason" for denying a waiver under §212(a)(28) of the INA—the statutory provision at issue—"the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant." *Id.*, at 770. The Court expressly declined to address whether a constitutional challenge would "be available for attacking [an] exercise of discretion for which no justification whatsoever is advanced." *Ibid.*

Thus, the "facially legitimate and bona fide reason" in *Mandel* was the justification for avoiding a difficult question of statutory interpretation; it had nothing to do with procedural due process. Indeed, a procedural due process claim was not even before the Court. The professors argued that the denial of Mandel's visa directly deprived them of their First Amendment rights, *not* that their First

Amendment rights entitled them to procedural protections in Mandel's visa application process. *Id.*, at 754. To make an argument logically analogous to that of the professors, Muñoz would have to claim that the denial of Asencio-Cordero's visa violated her substantive due process right to bring her noncitizen spouse to the United States—thereby triggering the State Department's obligation to demonstrate why denying him the visa is the least restrictive means of serving the Government's interest in national security. But, as we have explained, Muñoz has disavowed that argument, which cannot succeed in any event because the asserted right is not a longstanding and "'deeply rooted'" tradition in this country. *Glucksberg*, 521 U. S., at 721.

The bottom line is that procedural due process is an odd vehicle for Muñoz's argument, and *Mandel* does not support it. Whatever else it may stand for, *Mandel* does not hold that a citizen's independent constitutional right (say, a free speech claim) gives that citizen a procedural due process right to a "facially legitimate and bona fide reason" for why someone else's visa was denied. And Muñoz is not constitutionally entitled to one here.

* * *

The judgment of the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 23–334

DEPARTMENT OF STATE, ET AL., PETITIONERS *v.* SANDRA MUÑOZ, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 21, 2024]

JUSTICE GORSUCH, concurring in the judgment.

A consular officer denied Sandra Muñoz's husband a visa to come to and live lawfully in the United States. 526 F. Supp. 3d 709, 713–714 (CD Cal. 2021). In doing so, the officer simply cited 8 U. S. C. §1182(a)(3)(A)(ii), a provision of the Immigration and Nationality Act that makes inadmissible any person a consular officer "has reasonable ground to believe . . . seeks to enter the United States to engage . . . in . . . any other unlawful activity." Eventually, Ms. Muñoz sued for further explanation of that decision. See App. 2, 8–9. The government, she claimed, needed to identify for her not just the statute on which it based its decision, but also the "'discrete factual predicates'" on which it relied. *Id.*, at 8, ¶36.

Over the course of this litigation, the United States has given Ms. Muñoz what she requested. As the Ninth Circuit recognized, the United States has now revealed the factual basis for its decision to deny her husband a visa. 50 F. 4th 906, 919–920 (2022); see App. to Pet. for Cert. 124a; App. 76. In this Court, too, the government has assured Ms. Muñoz that she has a chance to use and respond to that information. She can again seek her husband's admission to this country, the government says—and this time she will be armed with an understanding of why the government denied the last application. Tr. of Oral Arg. 45, 104.

Those developments should end this case. With no more information to uncover and no bar to trying for admission again, nothing is left for a court to address through this litigation. In particular, the constitutional questions presented by the government no longer have any practical relevance here. Whether or not Ms. Muñoz had a constitutional right to the information she wanted, the government gave it to her. I therefore would reverse the Ninth Circuit's decision without reaching the government's constitutional arguments. See *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U. S. 283, 294–295 (1982). At the same time, I do not cast aspersions on the motives of my colleagues who do reach the government's arguments. They may see the case differently than I do, but their decision and rationales are essentially those the Solicitor General and the Department of State urged this Court to adopt.

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[June 21, 2024]

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN and JUSTICE JACKSON join, dissenting.

"The right to marry is fundamental as a matter of history and tradition." *Obergefell* v. *Hodges*, 576 U. S. 644, 671 (2015). After U. S. citizen Sandra Muñoz and her Salvadoran husband spent five years of married life in the United States, the Government told her that he could no longer reenter the country. If she wanted to live together with him and their child again, she would have to move to El Salvador. The reason? A consular officer's bare assertion that her husband, who has no criminal record in the United States or El Salvador, planned to engage in "unlawful activity." 8 U. S. C. §1182(a)(3)(A)(ii). Muñoz argues that the Government, having burdened her fundamental right to marriage, owes her one thing: the factual basis for excluding her husband.

The majority could have resolved this case on narrow grounds under longstanding precedent. This Court has already recognized that excluding a noncitizen from the country can burden the constitutional rights of citizens who seek his presence. See *Kleindienst* v. *Mandel*, 408 U. S. 753, 765–770 (1972). Acknowledging the Government's power over admission and exclusion, the *Mandel* Court held that "a facially legitimate and bona fide reason" for the exclusion sufficed to justify that burden. *Id.*, at 770. In this case,

after protracted litigation, the Government finally explained that it denied Muñoz's husband a visa because of its belief that he had connections to the gang MS–13. Regardless of the validity of that belief, it is a "facially legitimate and bona fide reason." *Ibid.*; see also *ante,* at 1 (GORSUCH, J., concurring in judgment). Under this Court's precedent, that is enough.

Instead, the majority today chooses a broad holding on marriage over a narrow one on procedure.[1] It holds that Muñoz's right to marry, live with, and raise children alongside her husband entitles her to nothing when the Government excludes him from the country. Despite the majority's assurance two Terms ago that its eradication of the right to abortion "does not undermine . . . in any way" other entrenched substantive due process rights such as "the right to marry," "the right to reside with relatives," and "the right to make decisions about the education of one's children," the Court fails at the first pass. *Dobbs* v. *Jackson Women's*

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[1] The Government asked this Court to review three questions:

> "1. Whether a consular officer's refusal of a visa to a U. S. citizen's noncitizen spouse impinges upon a constitutionally protected interest of the citizen.
>
> "2. Whether, assuming that such a constitutional interest exists, notifying a visa applicant that he was deemed inadmissible under 8 U. S. C. 1182(a)(3)(A)(ii) suffices to provide any process that is due.
>
> "3. Whether, assuming that such a constitutional interest exists and that citing Section 1182(a)(3)(A)(ii) is insufficient standing alone, due process requires the government to provide a further factual basis for the visa denial 'within a reasonable time,' or else forfeit the ability to invoke consular nonreviewability in court." Pet. for Cert. I.

This Court granted certiorari limited to the first and second questions. 601 U. S. ___ (2024). The majority chooses to decide this case on the first question presented rather than "assuming that such a constitutional interest exists" and determining what "process . . . is due" (the second question presented). Pet. for Cert. I.

Health Organization, 597 U. S. 215, 256–257 (2022). Because, to me, there is no question that excluding a citizen's spouse burdens her right to marriage, and that burden requires the Government to provide at least a factual basis for its decision, I respectfully dissent.

I

A

Marriage is not an automatic ticket to a green card. A married citizen-noncitizen couple must jump through a series of administrative hoops to apply for the lawful permanent residency that marriage can confer. Noncitizen spouses coming from abroad must apply for a visa to enter the United States. In certain cases, however, the law requires even couples who meet and marry in the United States to send the noncitizen spouse back to his country of origin to do the same thing. In doing so, the couple must take an enormous risk to pursue the stability of lawful immigration status: the risk that when the noncitizen spouse tries to reenter the United States, he will face unexpected exile.

In technical immigration terms, a noncitizen spouse applying for a green card seeks to "[a]djus[t]" his immigration "status" from "nonimmigrant to that of [a] person admitted for permanent residence." 8 U. S. C. §1255. To do so, the citizen spouse must petition the Government on the noncitizen's behalf. The citizen spouse first sends United States Citizenship and Immigration Services (USCIS) a petition to classify the noncitizen spouse as an "immediate relative." §§1151(b)(2)(A)(i), 1154(a)(1)(A). Once USCIS approves the petition, a noncitizen spouse who is already in the United States can then apply to adjust his status to lawful permanent resident without leaving the country. See §1255(a). For a noncitizen spouse living outside of the United States, however, USCIS first approves the immediate-relative petition, but then sends it to the consulate of the country where

the noncitizen spouse lives for processing. See §1154(b); 22 CFR §§42.42, 42.61 (2023). A consular officer interviews the noncitizen spouse and makes the final admission decision. See 8 U. S. C. §§1201, 1202(f).

Because of idiosyncrasies in our immigration system, not all noncitizen spouses living in the United States can adjust their status with USCIS. Even when a couple meets, marries, and lives in the United States, the noncitizen spouse may instead have to travel back to his country of origin for consular processing if he was never formally "inspected and admitted or paroled" at the Border. §1255(a). A noncitizen who entered without "inspect[ion]" in this way typically cannot adjust his status from within the United States based on an immediate-relative petition. See *ibid.* Once the citizen spouse submits the petition to USCIS, the noncitizen spouse must return to his country of origin and meet with a consular officer, who will then adjudicate his application. See 22 CFR §§42.42, 42.61, 42.62.

Living in the United States after initially having entered without inspection is not unusual. In fact, the Government endorses the presence of many of these members of our national community. Recipients under the Deferred Action for Childhood Arrivals (DACA) program, for instance, may have been brought across the border by their parents without inspection. Even though DACA status entitles them to work and live in the country without the immediate threat of removal, see 8 CFR §236.21(c), it does not change their initial entry designation. As of the end of 2023, there were roughly 530,000 active DACA recipients in the United States. See Dept. of Homeland Security (DHS), USCIS, Count of Active DACA Recipients by Month of Current DACA Expiration (as of Dec. 31, 2023). The same is true of the approximately 680,000 holders of Temporary Protected Status (TPS), who have been designated temporarily unable to return to their home countries because of war, natural disasters, or other extraordinary circumstances. See

DHS, Citizenship and Immigration Services Ombudsman, Ann. Rep. 45 (June 30, 2023); *Sanchez* v. *Mayorkas*, 593 U. S. 409, 419 (2021) (holding that TPS status did not change an entry without inspection into a lawful admission that would allow adjustment to lawful permanent residency from within the United States). Even when married to a U. S. citizen, DACA recipients and TPS holders are barred from adjusting status within the United States if they entered without inspection. See 8 U. S. C. §1255(a).

Ironically, the longer the noncitizen spouse has lived in the United States, the more difficult and uncertain the process to adjust to lawful status can become. A noncitizen who initially entered without inspection will accrue "unlawful presence," which can bar him from reentering the country if he leaves. §1182(a)(9)(B). If a noncitizen who has lived in the United States between six months and one year leaves and tries to reenter, he will be subject to a 3-year reentry bar. §1182(a)(9)(B)(i)(I). If he has lived in the United States for more than a year and tries to reenter, he faces a 10-year ban. §1182(a)(9)(B)(i)(II).

This scheme places couples who meet and marry in the United States in a difficult position if the noncitizen spouse entered without inspection. The couple can continue to live with one spouse in a precarious immigration status; or, they can seek the stability of permanent residency for the noncitizen spouse but face a potential multiyear exile when he leaves and applies for reentry.

Recognizing this difficult choice, USCIS allows a noncitizen spouse to apply for a waiver of inadmissibility for any accrued unlawful presence before departing the United States for his consular interview. To obtain such a waiver, the noncitizen spouse must show that the citizen spouse will suffer "extreme hardship" if her noncitizen spouse is not admitted. §1182(a)(9)(B)(v). Then, once the noncitizen spouse returns to his country of origin, if a consular officer approves his visa application, he can reenter free from the

inadmissibility bar.

Consular officers fall under the State Department, see §1104(a), not DHS, which oversees USCIS, see 6 U. S. C. §271(a). Even though DHS officers and consular officers make admission determinations under the same substantive laws, see §1182, in reality, a noncitizen seeking admission via consular processing faces a far higher risk of arbitrary denial with far less opportunity for review than a noncitizen seeking admission from DHS.

DHS officers are constrained by a framework of required process that does not apply to consular processing. A noncitizen denied adjustment of status in the United States must receive notice and the reasons for a denial. See 8 CFR §245.2(a)(5)(i); DHS, USCIS, Policy Manual, vol. 7, pt. A, ch. 11—Decision Procedures (June 14, 2024) (requiring that a denial notice either "[e]xplain what eligibility requirements are not met and why they are not met" or "[e]xplain the positive and negative factors considered, the relative weight given to each factor individually and collectively, and why the negative factors outweigh the positive factors"). He can renew his application in removal proceedings before an immigration court, see 8 U. S. C. §1229b(b)(1), where DHS must present any evidence against him in adversarial proceedings, see §§1229(a), 1229a(b)(4)(B), 1229a(c)(3). From those removal proceedings, a noncitizen can petition for review to the Board of Immigration Appeals (BIA), see 8 CFR §1003.1(b), and, ultimately, a federal court of appeals, see 8 U. S. C. §1252(a).

In contrast, a noncitizen denied admission via consular processing is entitled to nothing more than a cite to the statute under which the consular officer decided to exclude him. §1182(b)(1).[2] He has no opportunity for administrative or

[2] As the majority notes, if the consular officer denies admission based on "certain grounds related to crime and national security," a noncitizen is entitled to "no explanation" at all. *Ante,* at 3 (citing 8 U. S. C. §1182(b)(3)).

judicial review, and can only submit more evidence and request reconsideration. 22 CFR §42.81(e). Former consular officers tell this Court that this lack of accountability, coupled with deficient information and inconsistent training, means decisions often "rely on stereotypes or tropes," even "bias or bad faith." Brief for Former Consular Officers as *Amici Curiae* 8. Visa applicants may "experience disparate outcomes based on nothing more than the luck or misfortune of which diplomatic post and consular officer . . . they happen to be assigned." *Id.*, at 8–9. 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). Supervisors are required by the State Department to review a certain percentage of visa denials but often fail to do so. See, *e.g.*, Office of Inspector General, ISP–I–19–17, Inspection of Embassy Santo Domingo, Dominican Republic, p. 12 (July 2019) (finding "managers did not review 284 (23 percent) of the refusals that should have been reviewed between April 1 and June 30, 2018"); Office of Inspector General, ISP–I–16–24A, Inspection of Embassy Ankara, Turkey, p. 20 (Sept. 2016) (finding visa adjudicator failed to review the required 10% of visa issuances and 20% of visa denials).

When the Government requires one spouse to leave the country to apply for immigration status based on his marriage, it therefore asks him to give up the process he would receive in the United States and subject himself to the black box of consular processing.

B

Muñoz, a celebrated workers' rights lawyer from Los Angeles, California, met Luis Asencio-Cordero in 2008, three years after he had arrived in the United States. They have

been married since 2010 and have a child together. In 2013, Muñoz filed an immediate-relative petition for her husband, which USCIS approved. Because Asencio-Cordero had originally entered the United States without inspection, the Government required him to return to El Salvador, his country of origin, for consular processing to obtain his immigrant visa. Yet he also faced a bar to reentry if he left the country. DHS granted him a waiver of this bar upon his anticipated return to the United States because of the "extreme hardship" Muñoz would suffer if he were excluded. 8 U. S. C. §1182(a)(9)(B)(v). In April 2015, Asencio-Cordero traveled from California to El Salvador. That was the last time he stood on American soil.

Asencio-Cordero attended the initial consular interview in San Salvador on May 28, 2015. In December 2015, a consular officer denied his visa application. As justification, the denial cited only to §1182(a)(3)(A)(ii). That statute provides that any noncitizen "who a consular officer . . . knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in . . . any other unlawful activity . . . is inadmissible." In other words, the consular officer excluded Asencio-Cordero based on a belief that he planned to engage in some unspecified unlawful conduct upon return to the United States. "[U]nlawful activity" could mean anything from jaywalking to murder.

Asencio-Cordero has no criminal history in the United States or El Salvador. See 50 F. 4th 906, 911 (CA9 2022); Brief for Respondents 8, n. 5 ("It is uncontested that Asencio-Cordero has never been charged with any crime"). With no obvious justification for the consular officer's belief, Muñoz and Asencio-Cordero asked for reconsideration. Muñoz sought the help of Congresswoman Judy Chu, who sent a letter to the State Department on Muñoz's behalf. The following day, the consulate responded to the letter again with only a citation to §1182(a)(3)(A)(ii). In January

and April 2016, Muñoz asked the State Department for the factual basis for her husband's inadmissibility. She and her husband provided evidence of her accolades at work and attestations of Asencio-Cordero's good moral character. A few days later, the consulate notified Muñoz that the State Department had reviewed the denial and concurred with the consular officer's decision. It denied reconsideration.

After the consulate denied reconsideration, Muñoz and her husband wrote to the State Department again requesting a factual basis for the inadmissibility decision. Asencio-Cordero has no criminal record, but he does have several tattoos from his teenage years. App. 22. They depict a range of subjects, including "Our Lady of Guadalupe, Sigmund Freud, a 'tribal' pattern with a paw print, and theatrical masks with dice and cards." Brief for Respondents 2, n. 2. Some of these images have deep significance in Latin American culture. See, *e.g.*, Brief for Professors and Scholars as *Amici Curiae* 8–10 ("Many Latin Americans view La Virgen de Guadalupe as a special protector, and as a symbol of pan-Latinx identity that transcends attachment to any one geography"). Some also happen to appear on gang members. See *ibid.* (noting that "law enforcement agencies and officials often use tattoos of common Catholic imagery . . . as indicia of gang membership"). Speculating about potential bases for a visa denial, Muñoz and her husband included additional evidence from a court-approved gang expert in their letter to the State Department. The expert reviewed Asencio-Cordero's tattoos and concluded that none were "'related to any gang or criminal organization in the United States or elsewhere.'" 50 F. 4th, at 911. The State Department responded that it lacked authority to overturn consular decisions and "'concurred in the finding of ineligibility.'" *Ibid.* The consulate followed up in May 2016, a year after Asencio-Cordero's initial interview, by listing all the entities that had reviewed the visa application and noting that "'there is no appeal.'" *Ibid.*

It was only after Muñoz and her husband sued the Government in Federal District Court that they finally received the factual basis for the denial. After almost two years of litigation, the Government submitted a declaration from a State Department attorney-adviser. *Id.*, at 912. That declaration stated that the consular officer denied Asencio-Cordero's visa application under §1182(a)(3)(A)(ii) because "'based on the in-person interview, a criminal review of Mr. Asencio Cordero and a review of . . . Mr. Asencio Cordero's tattoos, the consular officer determined that Mr. Asencio Cordero was a member of a known criminal organization . . . specifically MS-13.'" *Ibid.* (alterations omitted).

The Court of Appeals ruled in Muñoz's favor. It held that the Government's reason was too little, too late. The denial of her husband's visa burdened Muñoz's right to marriage, and the Government had provided inadequate process. Even though the Government provided a "facially legitimate and bona fide" reason, that reason was not "timely" enough to satisfy constitutional due process requirements. *Id.*, at 919–921. This Court granted the Government's petition for a writ of certiorari. 601 U. S. ___ (2024).

II

There was a simple way to resolve this case. I agree with JUSTICE GORSUCH that "the United States has now revealed the factual basis for its decision to deny [Muñoz's] husband a visa," and she has thus received whatever process she was due. *Ante*, at 1 (opinion concurring in judgment).[3] That could and should have been the end of it. Instead, the majority swings for the fences. It seizes on the

[3] Unlike JUSTICE GORSUCH, I would vacate and remand the opinion below. The Court of Appeals and District Court correctly resolved the two questions on which this Court granted certiorari. The Ninth Circuit nevertheless vacated the District Court's judgment and remanded based on the answer to a third question, which is not before this Court. See *supra*, at 2, n. 1; 50 F. 4th 906, 923–924 (2022) ("Because no 'fact in the record' justifying the denial of Asencio-Cordero's visa was made available to

Government's invitation to abrogate the right to marriage in the immigration context and sharply limit this Court's longstanding precedent.

Muñoz has a constitutionally protected interest in her husband's visa application because its denial burdened her right to marriage. She petitioned USCIS to recognize their marriage so that her husband could remain lawfully beside her and their child in the United States. It was the extreme hardship Muñoz faced from her husband's exclusion that formed the basis for USCIS's waiver of his inadmissibility. For the majority, however, once Muñoz's husband left the country in reliance on those approvals, their marriage ceased to matter. Suddenly, the Government owed her no explanation at all.

The constitutional right to marriage is not so flimsy. The Government cannot banish a U. S. citizen's spouse and give only a bare statutory citation as an excuse. By denying Muñoz the right to a factual basis for her husband's exclusion, the majority departs from longstanding precedent and gravely undervalues the right to marriage in the immigration context.

A

The constitutional right to marriage has deep roots. "[M]arriage," this Court said over a century ago, "is something more than a mere contract." *Maynard* v. *Hill*, 125 U. S. 190, 210–211 (1888). It is "the most important relation in life," *id.*, at 205, and "the foundation of the family," *id.*, at 211. This Court has described it in one breath as the right "to marry, establish a home and bring up children," a

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[Muñoz and her husband] until nearly three years had elapsed after the denial, and until after litigation had begun, we conclude that the government did not meet the notice requirements of due process when it denied Asencio-Cordero's visa"). I would let the Ninth Circuit decide in the first instance the effect of a Court holding that Muñoz received all the process she was constitutionally due.

right "long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923). In upholding the right of Mildred and Richard Loving to have their marriage license from the District of Columbia recognized by Virginia, this Court emphasized that "[m]arriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival." *Loving* v. *Virginia*, 388 U. S. 1, 12 (1967) (quoting *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U. S. 535, 541 (1942)). Indeed, the right to marriage was one of the first building blocks of substantive due process. The right was so "'fundamental'" and "'implicit in the concept of ordered liberty'" that the *Roe* Court invoked it as part of the foundation underlying the right to abortion. *Roe* v. *Wade*, 410 U. S. 113, 152–153 (1973) (cataloguing existing substantive due process rights as extending to "marriage, procreation, contraception, family relationships, and child rearing and education" (citations omitted)), overruled, *Dobbs*, 597 U. S. 215.

Almost 10 years ago, this Court vindicated the expansiveness of the right to marriage. It upheld the right of James Obergefell and his terminally ill husband, John Arthur, to have their marriage from Maryland recognized in Ohio. Rejecting the idea that "Ohio can erase [Obergefell's] marriage to John Arthur for all time" by declining to place Obergefell as the surviving spouse on Arthur's death certificate, this Court reasoned that "marriage is a right 'older than the Bill of Rights.'" *Obergefell*, 576 U. S., at 666, 678. Marriage "'fulfils yearnings for security, safe haven, and connection that express our common humanity.'" *Id.*, at 666. "Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other." *Id.*, at 667.

The majority, ignoring these precedents, makes the same

fatal error it made in *Dobbs*: requiring too "'careful [a] description of the asserted fundamental liberty interest.'" *Ante*, at 9 (quoting *Washington* v. *Glucksberg*, 521 U. S. 702, 721 (1997)); cf. *Dobbs*, 597 U. S., at 374–375 (Breyer, SOTOMAYOR, and KAGAN, JJ., dissenting). The majority faults Muñoz's invocation of the "'fundamental right to marriage'" as "difficult to pin down." *Ante*, at 9. Instead, it tries to characterize her asserted right as "an entitlement to bring [her husband] to the United States," even though it acknowledges that Muñoz "disclaims that characterization." *Ibid.*

Obergefell rejected what the majority does today as "inconsistent with the approach this Court has used in discussing [the] fundamental rights" of "marriage and intimacy." 576 U. S., at 671. Cataloguing a half century of precedent on the right to marriage, the Court stressed that "*Loving* did not ask about a 'right to interracial marriage'; *Turner* did not ask about a 'right of inmates to marry'; and *Zablocki* did not ask about a 'right of fathers with unpaid child support duties to marry.'" *Ibid.* Instead, "each case inquired about the right to marry in its comprehensive sense" of "marriage and intimacy." *Ibid.* Similarly, Muñoz does not argue that her marriage gives her the right to immigrate her husband. She instead advances the reasonable position that blocking her from living with her husband in the United States burdens her right "to marry, establish a home and bring up children" with him. *Meyer*, 262 U. S., at 399.

This Court has never required that plaintiffs be fully prevented from exercising their right to marriage before invoking it. Instead, the question is whether a challenged government action burdens the right. For example, the Court in *Zablocki* v. *Redhail*, 434 U. S. 374 (1978), examined the "burde[n]" placed on fathers by a statute that required a hearing to "counsel" them "as to the necessity of fulfilling" any outstanding child support obligations before being

granted permission to marry. *Id.*, at 387–388. The Court in *Turner* v. *Safley*, 482 U. S. 78 (1987), applied *Zablocki* to incarcerated people to hold that the particular prison marriage restriction at issue "impermissibly burden[ed] the right to marry." 482 U. S., at 97. There can be no real question that excluding a citizen's spouse from the country "burdens" the citizen's right to marriage as this Court has repeatedly defined it. This Court has never held that a married couple's ability to move their home elsewhere removes the burden on their constitutional rights. It did not tell Richard and Mildred Loving to stay in the District of Columbia or James Obergefell and John Arthur to stay in Maryland. It upheld their ability to exercise their right to marriage wherever they sought to make their home.

Muñoz may be able to live in El Salvador alongside her husband or at least visit him there, but not everyone is so lucky. The majority's holding will also extend to those couples who, like the Lovings and the Obergefells, depend on American law for their marriages' validity. Same-sex couples may be forced to relocate to countries that do not recognize same-sex marriage, or even those that criminalize homosexuality. American husbands may be unable to follow their wives abroad if their wives' countries of origin do not recognize derivative immigration status from women (as was the case in this country for many years, see *ante*, at 12 (noting visa "quotas . . . for female citizens with noncitizen husbands" until 1952)). The majority's failure to respect the right to marriage in this country consigns U. S. citizens to rely on the fickle grace of other countries' immigration laws to vindicate one of the "'basic civil rights of man'" and live alongside their spouses. *Loving*, 388 U. S., at 12.

B

Given that the Government has burdened Muñoz's right to marriage by excluding her husband from the country, the

question is the remedy for that burden. Muñoz argues that this burden triggers procedural due process protections in her husband's visa denial. Emphasizing that substantive due process rights like the right to marriage usually trigger strict scrutiny, the majority faults Muñoz for creating a right "in a category of one: a substantive due process right that gets only procedural due process protection." *Ante*, at 10. Muñoz, however, did not create that category of rights. This Court did. See *Mandel*, 408 U. S., at 768–770. This Court already set the ground rules for when the Government's exercise of its extensive power over the exclusion of noncitizens burdens a U. S. citizen's constitutional rights. See *id*., at 770. In short, a fundamental right may trigger procedural due process protections over a noncitizen's exclusion, but such protections are limited. See *ibid.*

Noncitizens who apply for visas from outside the United States have no constitutional entitlement to enter the country, and therefore typically have no constitutional process protections in the visa application themselves. See *Landon* v. *Plasencia*, 459 U. S. 21, 32 (1982). In contrast, noncitizens who already live in the United States whom the Government seeks to remove have procedural due process protections during that removal. See *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369 (1886); *Zadvydas* v. *Davis*, 533 U. S. 678, 693 (2001). Had the Government sought to remove Muñoz's husband when they were living together in the United States, he would have had his own constitutional protections in those proceedings. Instead, because the Government forced him to leave the country and reenter in order to adjust his immigration status, he lost them.

Not only do noncitizens seeking to enter the United States lack constitutional process rights in their visa applications. This Court has further insulated the Government's visa determinations from review by declining to evaluate them at all. See *ante,* at 6–7. This judge-made "doctrine of consular nonreviewability" reflects the Judicial Branch's

recognition that the "'admission and exclusion of foreign nationals'" is an area of unusually heightened congressional and executive power. *Ante,* at 6–7.[4] When the denial of a noncitizen's visa burdens a U. S. citizen's constitutional rights, however, this Court has had to reconcile the importance of those rights with its recognition of Government authority over visa determinations. In *Mandel*, it set the remedy. The *Mandel* Court held that when a visa denial "implicate[s]" a citizen's rights, a court will not look behind a "facially legitimate and bona fide" reason for the denial. 408 U. S., at 765, 769.

In *Mandel*, a group of U. S. professors sued the Government over the visa denial of Dr. Ernest E. Mandel, a famous Belgian Marxist. See *id.*, at 756, 759–760. The professors argued that excluding Mandel burdened their First Amendment right to hear and meet with him in person. See *id.*, at 760. The Court agreed that the professors had a First Amendment "'right to receive information'" from Mandel.

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[4]Judges created this doctrine because of the otherwise "strong presumption that Congress intends judicial review of administrative action." *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 670 (1986). The majority emphasizes that the Government asked the Court for the holding it reaches today. See *ante,* at 6, n. 3. It is hardly unusual for the Government to ask this Court for less judicial review over its immigration decisions. See, *e.g.*, *Wilkinson* v. *Garland*, 601 U. S. 209 (2024) (arguing that eligibility for cancellation of removal is unreviewable); *Santos-Zacaria* v. *Garland*, 598 U. S. 411 (2023) (arguing that noncitizens must request discretionary forms of administrative review before challenging a final order of removal in federal court); *Patel* v. *Garland*, 596 U. S. 328 (2022) (arguing that federal courts lack jurisdiction to review facts found as part of eligibility determination for discretionary relief); *Garland* v. *Aleman Gonzalez*, 596 U. S. 543 (2022) (arguing that district courts lack jurisdiction to entertain noncitizens' requests for class-wide injunctive relief). Unusually, in this case, the Government's argument against review is not based on any statutes passed by Congress but on a doctrine that this Court created itself. Rather than exercise the restraint counseled by *Mandel*, the majority instead chooses to exclude a fundamental right from *Mandel*'s prudent exception. See *infra*, at 16–19.

Id., at 762, 764. It also emphasized, as the majority does today, Congress's power over the admission and exclusion of noncitizens. See *id.*, at 766–767; *ante*, at 6–7. To avoid the need to balance "the strength of the audience's interest against that of the Government in refusing a waiver to the particular [noncitizen] applicant, according to some as yet undetermined standard," *Mandel*, 408 U. S., at 768–769, the Court instead noted that "the Attorney General did inform Mandel's counsel of the reason for refusing him a waiver. And that reason was *facially legitimate and bona fide*." *Id.*, at 769 (emphasis added). Therefore, "when the Executive exercises [conditional power to exclude] negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant." *Id.*, at 770. In other words, when a visa denial burdens a noncitizen's constitutional rights, rather than attempt to balance the competing interests under strict scrutiny, a court should accept the Government's "facially legitimate and bona fide reason." *Ibid.* That minimal requirement ensures that courts do not unduly intrude on "the Government's sovereign authority to set the terms governing the admission and exclusion of noncitizens," *ante*, at 11, while also ensuring that the Government does not arbitrarily burden citizens' constitutional rights.

This Court has repeatedly relied on *Mandel*'s test in the immigration context. See, *e.g.*, *Trump* v. *Hawaii*, 585 U. S. 667, 703 (2018) (noting that "this Court has engaged in a circumscribed judicial inquiry when the denial of a visa allegedly burdens the constitutional rights of a U. S. citizen"); *Fiallo* v. *Bell*, 430 U. S. 787, 794, 799 (1977) (relying on *Mandel* in declining to "probe and test the justifications for [a] legislative" distinction between mothers and fathers because this Court has applied limited scrutiny to "resolv[e]

similar challenges to immigration legislation based on other constitutional rights of citizens").[5] Indeed, less than a decade ago, six Justices ruling on the exact legal question the Court confronts today would have held that *Mandel* controlled or extended its protections even further in the marriage context. See *Kerry* v. *Din*, 576 U. S. 86, 103–104 (2015) (Kennedy, J., concurring in judgment) ("The reasoning and the holding in *Mandel* control here. . . . Like the professors who sought an audience with Dr. Mandel, [respondent] claims her constitutional rights were burdened by the denial of a visa to a noncitizen, namely her husband"); *id.*, at 107 (Breyer, J., dissenting) (reasoning that

[5] Despite the majority's claim that its decision is the majority rule in the Courts of Appeals, *ante,* at 8, and n. 5, lower courts have rarely reached the question the majority reaches today. That is because they have relied on *Mandel* to hold that the Government has in any case provided a "'facially legitimate and bona fide'" reason. See, *e.g.*, *Sesay* v. *United States*, 984 F. 3d 312, 315–316, and n. 2 (CA4 2021); *Del Valle* v. *U. S. Dept. of State*, 16 F. 4th 832, 838–842 (CA11 2021); *Yafai* v. *Pompeo*, 912 F. 3d 1018, 1020–1021 (CA7 2019). One of the cases the majority cites pre-dates *Mandel*, *Silverman* v. *Rogers*, 437 F. 2d 102 (CA1 1970), and two others reached the majority's holding based only on conclusory assertions, see *Burrafato* v. *U. S. Dept. of State*, 523 F. 2d 554, 555–557 (CA2 1975); *Bright* v. *Parra*, 919 F. 2d 31, 34 (CA5 1990) (*per curiam*). Only two Circuits have used the majority's reasoning to hold that a U. S. citizen's right to marriage does not trigger the *Mandel* remedy. In one, the court had an alternative holding that "even if we take [the right to marriage] as a given, the argument fails because the consulate provided a facially legitimate reason for the visa denials." *Baaghil* v. *Miller*, 1 F. 4th 427, 434 (CA6 2021). In the other, a concurring judge urged his colleagues to resolve this challenge on the same narrow holding that the majority could have followed today. See, *e.g.*, *Colindres* v. *United States Dept. of State*, 71 F. 4th 1018, 1027 (CADC 2023) (opinion of Srinivasan, J.) ("There is no need for us to take up the merits of [the] constitutional question . . . and I would refrain from doing so. Rather, we can rest our decision solely on the ground . . . that even assuming [appellant's] fundamental right to marriage includes a protected interest in living in the country with her husband, such that at least some form of due process scrutiny applies, the government's denial of a visa to him afforded her adequate process").

respondent's "liberty interest [in] her freedom to live together with her husband in the United States" is the kind "to which the Due Process Clause grants procedural protection").

Outside the immigration context, this Court has endorsed similar tests in circumstances where there is a heightened underlying governmental power. For instance, in *Turner*, the Court evaluated the right to marriage in the prison context. Even though an incarcerated person "'retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system,'" the Court emphasized that "[t]he right to marry, like many other rights, is subject to substantial restrictions as a result of incarceration." 482 U. S., at 95 (quoting *Pell* v. *Procunier*, 417 U. S. 817, 822 (1974)). Only because the challenged prison regulation there was not "reasonably related" to the government's articulated penological interests, or "legitimate security and rehabilitation concerns," did this Court hold it unconstitutional. *Turner*, 482 U. S., at 95; see *id.*, at 99.

Just as *Turner* looked at burdens on the right to marriage through the narrow lens of "penological interests" to defer to the government's control over prisons, *Mandel* used a "facially legitimate and bona fide reason" to defer to the Government's power over the exclusion of noncitizens. Neither case erased the constitutional right at issue. The Court simply recognized that the right can be substantially limited in areas where the government exercises unusually heightened control.

Applying *Mandel* and *Turner* here, the remedy is clear. The Government's exclusion of Muñoz's husband entitles her at least to the remedy required in *Mandel*: a "facially legitimate and bona fide reason" for the exclusion. 408 U. S., at 770.

C

The majority resists this conclusion by worrying about its "unsettling collateral consequences." *Ante*, at 16. The majority poses a series of hypotheticals that it fears will result from recognizing the limited right Muñoz proposes. These fears are groundless.

First, the majority's concern that applying *Mandel* to Muñoz's right to marriage in this case will result in a slippery slope of constitutional challenges is unfounded. Muñoz's right triggers limited process protections in part because her husband lost his own procedural protections when the Government required him to leave the country. Muñoz's right to marriage raises that floor from zero process to some by requiring the Government to provide a "facially legitimate and bona fide reason" when her husband receives no process. In contrast, a citizen's liberty interest "in the removal proceeding of her spouse" in the United States, *ante*, at 16, would presumably be limited by the noncitizen's own due process rights in that same proceeding. Similarly, any challenge from a wife to her husband's "'assignment to a remote prison,'" *ibid.*, would presumably be limited by the criminal procedural protections her husband already received.

Second, the majority's reliance on *O'Bannon* v. *Town Court Nursing Center*, 447 U. S. 773 (1980), is misplaced and highlights the speculative nature of its concerns. *O'Bannon* rejected a freestanding constitutional interest in avoiding "serious trauma." *Id.*, at 788. The residents of a government-funded nursing home sought relief from transfer to alternative housing because of the emotional harm they would suffer from the move. *Id.*, at 777–781, 784. Muñoz, however, does not rely on a free-floating emotional harm that separation from her husband will cause. She invokes her fundamental right to marry, live, and raise a family with her husband, the right recognized by this Court for centuries. See *supra*, at 11–14. Denying her husband entry

to the country directly burdens that right.

In sum, the majority's concerns are unwarranted. There are few circumstances where the limited relief sought by Muñoz would be available.

III

A "facially legitimate and bona fide" reason may seem like a meager remedy for burdening a fundamental right. Yet even the barest explanation requirement can be powerful. The majority relies heavily on *United States ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537 (1950). See *ante*, at 6–7, 13–14. A closer look at the story of Ellen Knauff, however, illustrates the importance of putting the Government to a minimal evidence requirement when a visa denial burdens a constitutional right.

Knauff's U. S. citizen husband sought to bring her to the United States after they married during his deployment to Germany. After this Court upheld her exclusion on undisclosed national security grounds, there was a public outcry. See C. Weisselberg, The Exclusion and Detention of Aliens: Lessons From the Lives of Ellen Knauff and Ignatz Mezei, 143 U. Pa. L. Rev. 933, 958–964 (1995). Both Houses of Congress introduced private bills for her relief and, after the Attorney General rushed to remove Knauff from Ellis Island before Congress could act, Justice Jackson (who had vigorously dissented in the case) issued a stay from this Court. See *id.*, at 958, n. 127. After extensive advocacy, the Attorney General ordered immigration officials to reopen the case. See *id.*, at 961–962. Eventually, Knauff won her case before the BIA when the Government failed to prove up its national security concerns. *Id.*, at 963–964. She was finally admitted as a lawful permanent resident. *Id.*, at 964.

The majority relies heavily on "[t]he rule of *Knauff*": that "the Attorney General has the unchallengeable power to exclude" a noncitizen. *Ibid.*; *ante*, at 14 (emphasizing that

"'[n]o limits can be put by the courts upon'" the exercise of the Government's power to "'forbid aliens or classes of aliens from coming within their borders'"). Yet, "the full story of Ellen Knauff shows a populace and a Congress unwilling to accept the exercise of this sort of raw power." Weisselberg, 143 U. Pa. L. Rev., at 964. "Once the government was required to justify its exclusion decision with substantial and reliable evidence, in an open proceeding, Knauff gained admission into the United States." *Ibid.*

Knauff brought her own habeas petition to challenge her exclusion. *Knauff*, 338 U. S., at 539–540. Her husband did not argue that her exclusion burdened his right to marriage. Twenty-two years after *Knauff*, however, when faced with such a challenge, this Court limited the justification that the Government must provide in these circumstances to a "facially legitimate and bona fide reason." *Mandel*, 408 U. S., at 770. The majority, not content to resolve this case on even those narrow grounds, instead relieves the Government of any need to justify itself at all. Knauff's story illustrates why the right to marriage deserves more. By leaving U. S. citizens without even a factual basis for their spouses' exclusion, the majority paves the way for arbitrary denials of a right this Court has repeatedly held among the most important to our Nation.

* * *

A traveler to the United States two centuries ago reported that "'[t]here is certainly no country in the world where the tie of marriage is so much respected as in America.'" *Obergefell*, 576 U. S., at 669 (quoting 1 A. de Tocqueville, Democracy in America 309 (H. Reeve transl., rev. ed. 1900)). Today, the majority fails to live up to that centuries-old promise. Muñoz may be able to live with her husband in El Salvador, but it will mean raising her U. S.-citizen child outside the United States. Others will be less fortunate. The burden will fall most heavily on same-sex couples

and others who lack the ability, for legal or financial reasons, to make a home in the noncitizen spouse's country of origin. For those couples, this Court's vision of marriage as the "assurance that while both still live there will be someone to care for the other" rings hollow. *Obergefell*, 576 U. S., at 667. I respectfully dissent.

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' Response Opposing Defendants' Motion For Leave To File Notice Of Supplemental Authority (ECF 44)

Response Opposing Supplemental Authority Leave

Table of Contents

I. Summary

I am opposed to this Motion for Leave to File Supplemental Authority in general as my wife has been left in dire circumstances unlawfully by USCIS and the latest motion by USATXN only delays relief for my wife.

While USATXN's Supplemental Authority does include interesting quotes from the new Supreme Court decision Department of State v. Munoz (S. Ct. 2024), they, in general, have nothing to do with the Complaint actually before the court.

We have diverse challenges to the Doctrine of Consular Non Reviewability (DoCNR) and the new Supreme Court decision does not really address any of them. As such, an appeal to the 5th Circuit Court is likely no matter how the court decides and the Motion to Dismiss itself is premature as USATXN has not addressed the actual primary causes of action.

The Complaint itself has nine counts and three primary causes of action and USATXN has attempted to mislead the court by addressing issues which are not actually in the Complaint. It is easy to claim a Complaint has no merit when you use misleading and false summaries to reach false conclusions and skirt around the actual issues.

Given the likelihood of appeal to the Fifth Circuit, this court must address each of the nine counts and three primary causes of action in detail. It can not ignore a cause of action or count as USATXN has done else the matter will surely be remanded causing extended delays and significant harm to my wife and her dire circumstances.

Further, once the record is established for the appeal, USATXN will have no opportunity to present any arguments against the unaddressed counts or causes of actions as there are strict rules that arguments can only be brought up to the appellate court if they were previously properly presented to the trial court.

Our pleadings have been lengthy and not necessarily well organized, but, in general, we have presented the arguments necessary to withstand an appeal.

II. Legal Standards

A. Restrictions of FRAP Rule 28(j) Not Applicable

For an unexplained rationale USATXN has restricted itself to 'must not exceed 350 words' from the rules of federal appellate practice. This does not apply to matters under consideration by a trial court for a Motion to Dismiss (MTD). When under appellate review, the appellate court can only address issues presented to the court and, intrinsically, a Citation of Supplemental Authorities which occur after the Notice of Appeal could not have been considered by the court and must, in general, be remanded for consideration by the trial court. While it is acceptable to call such decisions to the attention of the appellate court they are kept brief as they are not really relevant in an appeal.

In contrast, for matters subject to a Motion to Dismiss, it is incumbent on each party to raise all arguments in a timely fashion as they can not be raised on appeal if they weren't presented to the trial court. This can present a significant challenge to the Defendants who have not yet answered the Complaint as the Complaint itself can raise numerous arguments available on appeal.

However, the motion at hand was raised under Local Rule 56.7 which is appropriate for Supplemental Authorities as cited in Highland Capital Mgmt., L.P. v. Bank of Am., Nat'l Ass'n, Civil Action No. 3:10-CV-1632-L (N.D. Tex. Aug. 23, 2013) but there are no such restrictions for the length of the motion itself, the supplement, or the Response.

B. Inclusion of the Supreme Court Opinion Inappropriate

Appellate records are routinely large and difficult to manage. Including a 47 page decision, no matter how relevant is excessive. In the alternative, USATXN could instead have simply provided the court with the Supreme Courts web link to the decision as in https://www.supremecourt.gov/opinions/23pdf/23-334_e18f.pdf to Department of State v. Munoz (S. Ct. 2024). USATXN could also have emailed the decision / pdf file, to the court's clerk and Plaintiffs.

It is suggested that the court strike Doc 44-2 from the record and, as long as it is described as Department of State v. Munoz (S. Ct. 2024), all parties will know how to access the decision directly.

III. Argument and Authorities

A. Excessive Delays Harm Plaintiff Rueangrong Carr

I am opposed to the delay created by this largely irrelevant motion which only serves to delay other more pressing matters.

There are three motions before the court at this time,

- ECF 30, Plaintiff's Motion for Sanctions
- ECF 31, Defendant's Motion to Dismiss
- ECF 32, Plaintiff's Motion to Reconsider, which includes

- Delay of Motion for Partial Summary Judgment ECF 18

Quoting from the pending Motion to Reconsider (ECF 32),

> Even though USCIS informed Mrs. Carr on 31 Jan 2023 (over a year ago) that her I-751 application (for a ten year green card) and N-400 application (for citizenship) were both approved (ECF 10-5)[1] and she only needed to take the Oath of Allegiance to become a citizen, the reality is that at this time she has not been permitted to take the Oath of Allegiance to become a citizen and is an apparent 'undocumented alien' (a.k.a. 'illegal').
>
> All USCIS documents of her lawful permanent resident status have expired (ECF 24-1, 18-6, 20-2), and, contrary to law[2], with no ten year 'green card' she has realistic fears of being deported at any time by ICE (she doesn't trust U.S. immigration), vigilantes (under Texas SB4), or National Guardsmen (to deport millions of illegals who are poisoning the blood of our nation on day one).

USATXN has been aware of my wife's plight since 3 Mar 2024 (ECF 28-1) but has never mentioned any of the four USCIS documents which are the foundation of my wife's plight. It is misleading to summarize the current Complaint without mentioning those fundamental documents and false to claim a failure to state a claim without considering those documents.

Further, if the court grants the MTD and does not address those documents, then the matter will surely be remanded to address those concerns causing significant

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1 ECF 10-5 USCIS Notice of Decision states:
We have approved your I-751, Petition to Remove Conditions on Residence. Our records also indicate we have approved your Form N-400 Application for Naturalization. Because we also approved your N-400, you will not receive a new Permanent Resident Card (also known as a Green Card). Instead, once you have taken the Oath of Allegiance, you will receive a Certificate of Naturalization, which will be proof of your U.S. citizenship.

2 INA 264 is 8 USC section 1304 which in (d) states: (d) Certificate of alien registration or alien receipt card
Every alien in the United States who has been registered and fingerprinted under the provisions of the Alien Registration Act, 1940, or under the provisions of this chapter shall be issued a certificate of alien registration or an alien registration receipt card...

delays in the relief sought.

B. There Are Significant Differences from Relief Sought by Munoz

1. Summary of Munoz

Munoz was eventually provided with the rationale for the visa denial of her husband and given the opportunity to present evidence which was considered in reaffirming the visa denial. Munoz was asking the court to overturn the findings of the 'trial' tribunal which courts are hesitant to do (and wisely so). Congress clearly has the right to exclude criminals from entering the U.S. and the final determination should generally be left to the 'finder of facts'.

Specifically Munoz stated "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." and it appears that Munoz was provided due process and DoS was following the procedures specified by Congress.

2. Non Immigrant Visas Significantly Different

This is in direct contrast to non immigrant visas where interviewers routinely do not follow the procedures specified by Congress as seen in the briefs submitted with Munoz by previous consular officers citing the DoS OIG 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).

Indeed, that sort of disregard for Congress's clearly stated intent was experienced by my wife and sister in law and justifies the relief sought.

3. Unlawful Denial of Non Immigrant Visa, No Due Process Hearing

Both my wife and sister in law have received tourist / business visas so they are not asking the court to override any DoS determinations. However, they each had prior non immigrant visa applications were unlawfully denied:

- They were not given any opportunity to provide any evidence (the interviewer did not give them the opportunity to show the extensive documentation I had helped them prepare). The relevant statute for denial was INA 214(b)[3] which basically says we had to show that we would not overstay our temporary visits but that implicitly says that the interviewer has to allow us to present the evidence required by INA 214(b).
- The written decision denying the prior visa applications contained no reference to any evidence considered.
- The verbal explanation of the justification for denying the visa always varied and was never supported by statute.
- The interview itself was almost certainly recorded so that the differences between the video and written records could be construed as the crime of falsification of government records.[4]
- I was not permitted to represent my wife or sister in law in the interviews even though we had requested this as I am more familiar with American law. We were asking that I be allowed to be present during the interview as a

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3 INA 214(b) is 8 USC 1184 - Admission of nonimmigrants states:
(b) Presumption of status; written waiver
Every alien ... shall be presumed to be an immigrant 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 non immigrant status under section 1101(a)(15) of this title.

4 18 USC Section 1001 states:
(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully -
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(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, ...

supplement rather than replacement.

4. Damages Sustained By Mrs. Carr

In 2018 my wife's non immigrant visa was denied resulting in a delay in her meeting her new family, in particular, my mom who was over 90 and whose health was failing and my young grandchildren who were developing at a rapid rate. These specific damages turned out to be less significant and hard to measure, but I also had concerns that maintaining a permanent resident status had its own hurdles and it was not certain that we could keep her permanent resident status.

In 2022, USCIS unlawfully left my wife stranded in Thailand[5] (after the death of her own mother and an emergency trip to Thailand) and she had to apply again for a non immigrant visa in order return to our home. The $160 visa fee was the least expensive alternative for her return. This cost is attributed by myself half to DoS ($80) for the original unlawful denial and half to USCIS ($80) for their failure to provide my wife with statutorily mandated proof of permanent resident status.

5. Damages Sustained By Mrs. Von Kramer

In 2019 my sister in law applied three times for a non immigrant visa and it was denied unlawfully as described above. Along with the three application fees ($480 total) there was a refund fee for her round trip tickets of $143. However, this is not most significant of the damages.

My sister in law is the widow of a deceased pre-1968 U.S. Army veteran and, hence, able to collect surviving spouse benefits from SSA. Congress restricts the ability of foreign nationals to receive SSA benefits while residing overseas (there

5 8 CFR Section 216.4 states
'Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director [of USCIS] has adjudicated the petition.'

are other exceptions for spouses of pre-1968 veterans) until they have established a 'lawful presence' according to SSA standards, 'have an enduring and close attachment to the United States for at least 5 years' SSA POM RS 02610.025. Her denied visas delayed her ability to begin the 'lawful presence' requirement.

6. Relief Sought Different From Munoz

The current non immigrant visas for my wife and sister in law have expiration dates so it is possible that they will need to apply again[6]. We also have other friends and family members who we wish to host. We are seeking credits for future services for the extra fees we had to pay for the incorrectly denied visa applications.

In addition, for my sister in law we are seeking a simple declaration of this court that she was improperly prevented from visiting the U.S. in 2019, 2020, and 2021 and asking that SSA consider that in its 'lawful presence' determination.

We are asking that DoS OIG and DoJ coordinate with DoS to correct the deficiencies in the current non immigrant process. In particular:

- Insuring that the applicant is permitted to present the evidence required to justify the visa requested
- Insuring that each visa denial has a written description of the evidence considered
- Allowing a representative (as a supplement to the applicant) of:
  - family member,
  - friend,
  - tour sponsor, or
  - employer

  If the representative has U.S. ties, this would resolve the purported

6 ECF 45-1 and ECF45-2 have redacted copies of my wife's and sister in law's current non immigration visas.

'unsettling collateral consequences' (cited in Munoz) of how to allow interested U.S. citizens their own due process in the application.

- Foreign nationals without any close ties to a U.S. resident could find significant challenges in seeking relief from the courts due to the difficulties of establishing venue.

7. Summary of Comparison to Munoz

There are significant differences between the cause of action and relief sought from Munoz and these new challenges to DoCNR should be explored.

C. Doctrine of Consular Non Reviewability Based on False Premise

1. Due Process of Law to All Persons

The flaw is the premise that Congress has a plenary power (or absolute power) to exclude aliens. The constitution confers no such power on Congress or any other part of the U.S. government. While Congress certainly can deprive aliens of the fundamental liberty to travel freely (i.e. Congress can exclude aliens) it can only do so through 'due process of law'. This requires Congress to pass lawful statutes empowering the executive branch to exclude aliens within the requirements of 'due process of law'. This implicitly authorizes some form of judicial review of every decision to exclude an alien.

To restate this, the DoCNR completely ignores the constitutional requirement to the federal government that

'No **person** shall be ... deprived of life, liberty, or property, without due process of law'.[7]

2. Person and Citizen Are Not Synonyms

The authors of the constitution used both 'person' and 'citizen' [8]including both in

7 Bold added by Plaintiffs.

8 Indeed the word citizen itself was largely a creation of the American Revolution as a replacement for 'British

Article I, Section 2, which includes:

> No **Person** shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a **Citizen** of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.
>
> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of **free Persons**, including those bound to Service for a Term of Years, and **excluding Indians** not taxed, three fifths of all **other Persons**.[9]

Clearly the framers were careful in their choice of 'person' or 'citizen'.

3. Americans Had Suffered Grievously During American Revolution

The framers of the constitution had succeeded in the American Revolution but with great losses of all kinds. The American Revolution was particularly devastating because a significant portion of the population remained loyal to the king ('Tories') and caused significant suffering for the rebels as well as suffering themselves from the rebels according to the tides of the war.

Further, this was the first of 'modern' citizen armies and the large human losses which result from citizen armies were unprecedented. In their experience there had only been royal armies which were small (due to the expense) and generally did not harm the royal subjects of either side (it is royal subjects who support the armies thru royal taxes). Royal subjects were treated more like livestock or chattel as they could be sold and traded as needed through sovereign treaties.

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subject (of the Crown)'. There had been citizens and citizen armies in Roman and Greek histories, but the English language did not have any common term for citizens.

9 Bold added by Plaintiffs

The French Revolution (a plausible repercussion of the French assisting the American Revolution against the British) resulted in significantly greater citizen armies and new levels of devastation in the Napoleonic wars.

4. Constitutional Framers Wanted to Create a Lasting Peace

In defining the individual freedoms enshrined in the constitution, they were seeking to create a lasting peaceful government to avoid the devastation they had just experienced. As such the right to democratically elected representatives and a fair hearing before the loss of life, liberty or property were of great importance to them.

The colonists had rankled against their treatment by the British Army and Admiralty Courts. As British subjects they had had due process and elected representatives in England, but as colonists the British Army and Admiralty Courts did not respect those rights. A loyal British subject in the colonies could be required to house and feed British soldiers without any due process. If the local commander needed to house his soldiers, he would simply declare who would provide for them. It is also important to remember that with the smaller royal armies, the soldiers were largely the dregs of society, drunkards and petty thieves who had no alternative to conscription. Housing and feeding the soldiers was not a minor inconvenience.[10]

5. Violence Is The Result of the Unheard

Most Americans can not really appreciate the importance of these fundamental rights but Blacks who had been raised under the Supreme Court doctrine of

10 The British also suffered greatly from the American Revolution and other British colonies benefited with respect to elected representatives and due process. No other British colonies rebelled in the manner of the American Revolution.

'Separate but Equal' knew it very well as stated by Martin Luther King with 'a riot is the language of the unheard'.[11] The American Revolution was the result of violations of the traditional British elected representatives and due process. Anger and violence such as riots and revolutions result when people are not given the opportunity to be heard.

6. The Meaning of Citizen Changed Over Time

When the constitution was enacted the guarantee of due process basically only applied to white, adult, male, Christian property owners. Of course that was a rather lengthy and unwieldy description. Fortunately, there was a much more concise description which was citizen, a term also used in the constitution selectively. The authors of the constitution chose 'No person' for the due process right. I will use the term ‘proper’ citizens to describe ‘white, adult, male, Christian property owners’ with the ‘proper’ in quotes to reflect my disdain for that unreasonably reduced group.

The choice of ‘person’ was largely aspirational as due process had never been provided to non-whites, native Americans, women, slaves, non Christians or the destitute, only proper British subjects, now citizens according to their state.

The original constitution had several contradictions, slavery being, perhaps, the most divisive unresolved issue: are slaves people entitled to due process or property with no rights at all. That issue divided the country leading to the Civil War, a dispute with significantly greater suffering and losses than the American Revolution.

11 Martin Luther King, Grosse Pointe High School - March 14, 1968

As seen below, after rampant disregard for people of color before the Civil War, starting in 1865 there were a series of amendments and acts thru 1871 which eliminated the blatant contradictions and provided liberty and justice for all (except the Indians). There was no change to the due process clause as it already included all persons, a little beyond even the lagging citizenship rights.

However, the Whites in the South violently resisted these reforms with organization such as the Klu Klus Klan (causing the Equal Rights Act of 1870 and Enforcement Act of 1871). It seems that the citizens of the U.S. were not ready for broad promises of liberty and justice for all as the Republicans of the North lost interest preserving the expanded rights and returned to the use of 'proper' citizens leading to The Chinese Exclusion Act of 1882 and Doctrine of 'Separate But Equal' Plessy v. Ferguson, 163 U.S. 537 (1896). The Doctrine of Consular Non Reviewabilty was invented by the Circuit Courts out of nothing but their desires and expediency. DoCNR was unsupported by anything in the constitution or statutes.

Year	**Act / Amendment / Decision**	**Effect**
1850	CA Act For The Government And Protection Of Indians	Vagrant Indians sold as Indentured Servant, Indian Children sold Indentured to Whites
1855	CA "Greaser" Act[12]	Vagrants sold as indentured servants for hard labor.
1856	Dred Scott v. Sandford, 60 U.S. 393 (1856)	Slaves remain property even in states banning slavery
1865	13th Amendment	Abolish slavery
1868	14th Amendment	Citizenship expanded (including slaves, not Indians)

12 Machine readable text for the "Greaser" Act is hard to find so I have included the text in ECF 45-3.

Year	Act / Amendment / Decision	Effect
1870	42 USC section 1981	Equal rights under the law
1871	42 USC section 1983 - Enforcement Act of 1871	Civil action for deprivation of rights, Response to Ku Klux Klan
1882	The Chinese Exclusion Act	Excluded Chinese Laborers
Late 1800s	Doctrine of Consular Non Reviewabilty	Invented by Circuit Courts, Denies Due Process to Aliens
1896	Plessy v. Ferguson, 163 U.S. 537 (1896)	Creates 'Separate but Equal', negates Equal Rights Law of 1870
1920	19th Amendment	Gives women right to vote
1924	Indian Citizenship Act	Grant citizenship to all Indians
1942	EO 9066, Public Law 77-50	Japanese Incarceration
1944	Ex parte Mitsuye Endo, 323 U.S. 283 (1944)	Strike down EO966
1954	Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)	Strike down 'Separate But Equal', mandatory segregation via National Guard
1964 1967 1973 1990	2 USC section 1311 Civil Rights Act Age Discrimination in Employment Act Rehabilitation Act Americans with Disabilities Act	Restrict discrimination race, religion, color, or national origin, also sex for employment Restrict Age Discrimination in Employment Disability Protections Disability Protections
1993	Religious Freedom Restoration Act	Free exercise of religion protected

After the tragic losses of WW1, the United States returned to the dream of liberty and justice for all and extended liberties and full citizenship to women and native Americans. There was a brief relapse during WW2 with the incarceration of Japanese (1942), but that was promptly corrected in 1944.

Then in 1954 the heinous (and false) Doctrine of Separate but Equal was overturned and another series expansions of rights followed until the promise of liberty and justice for all was realized with the sole exception of DoCNR.[13]

7. DoCNR Was Created Out of Expediency, Not Founded in Law

In 1882 the exclusion of the courts from judicial review overseas (e.g. consular activities) was an essential expediency. Communication with the consulates could take weeks. There was no way for the U.S. courts to provide timely oversight. Indeed it could be argued that Congress chose to not provide judicial oversight for consular activities by not creating judges / magistrates to provide the oversight (e.g. a part time Magistrate at each Consulate).

It is not clear that the judges who created the DoCNR and 'Separate But Equal' had any choice. It should be understood that all such judges were surely 'proper' citizens and could well have agreed with sentiment of the masses (i.e. 'proper' citizens of the time) that people of color (a.k.a. 'niggers', 'greasers', 'coolies', and 'Indian Savages'[14]), non Christians (a.k.a. heathens and other derogatory slurs), and the destitute (a.k.a. vagrants, people of low moral character who undermine the proper functioning of society) were vermin who needed to be controlled and exploited for profit if possible or eliminated if there was no profit in it. The view of women was more moderated as every 'proper' citizen had a mother and many had sisters and daughters. The affection for these women tended to moderate the aversion against women in general.

13 That I know of, though, realistically there are probably numerous other injustices seeking correction.
14 'Indian Savages' was used in the Declaration of Independence but by the late 1800's Indians and Savages were synonyms for most people and they would say 'Indians' in polite company but think 'savages'.

According to my usual rules of thirds, one third of the judges probably agreed with the masses that due process did not apply to such vermin and due process would hinder the exploitation of these groups. Another third probably thought that such exploitation was wrong, but did not believe that any order protecting these groups would be respected. If there was no Eisenhower to order the 101st Airborne to enforce segregation, then it would just weaken the court to make an order that the President and Congress would just ignore. They instead went along with 'supporting' the exploitation of these groups. The last third disagreed and advocated another course but were outvoted.

However, we are in a different time. Munoz was able to get due process through court orders so the foundation of DoCNR is exposed as unfounded. It is time for DoCNR to be sent to the trash bin of history with 'Separate But Equal' and the Dred Scott decision.

It is interesting that Congress has designated the DoJ as the sole agency responsible for upholding the law, but not upholding the constitutional rights of individuals. On reflection, that is almost certainly because every agent of the federal government (from judge to officer to employee) must take an oath to support the constitution and, thus, we are each responsible for insuring constitutional rights are upheld.

8. It is Time for DoCNR to Join Its Contemporary, Separate But Equal

Even if DoCNR was based on the inability of the court to provide timely oversight, that justification has past. Since the year 2000 there have been enough fiber optic cables connecting every continent so that consulate officers and judges now have

'instant' access to government records around the world and video conferences can eliminate the need for judges or witnesses to travel. It is time for the courts to step up and take on their role of monitoring the DoS to insure that due process is provided to all persons, even foreign nationals who are outside the U.S..

Of course, there will still be significant venue problems for any foreign national who does not have family, friends, or business contacts residing in the U.S., but Congress has no obligation to provide access to the courts to foreign nationals outside the U.S.. Further, with the widespread access to high speed data around the world, most foreign nationals who have a serious need could likely develop a contact in the U.S. to be a party to the suit and file the suit initially.

To be clear, the federal government has the right to deprive anyone: citizens, permanent residents, and other foreign nationals from life, liberty, and property as long as it is done with due process of law. So Congress certainly has the ability to restrict the fundamental right of movement and travel from aliens, barring entry to the U.S. and deporting them as appropriate.

If it is necessary to determine any factual criteria for admittance or denial, DoS must allow the applicant to present the evidence required for acceptance which is, apparently, not the usual procedure at this time.

The primary and fundamental requirement for such restrictions is due process but the requirement of due process can not be over-ridden by Congress under any circumstances.

9. Even If DoCNR is Valid, The OIG and DoS Must Support Due Process

Every agent of the federal government must swear an oath to support the constitution and the Fifth Amendment due process right applies to all human beings (borrowing from the extended DoJ mission) by a clear choice of the framers of the constitution.

We seek ancillary relief that DoJ work with DoS OIG and DoS Bureau of Consular Affairs to insure that all people get the fair hearings required by due process in future visa interviews.

IV. Conclusion

The court is asked to review the Supreme Court recent decision in Munoz and conclude that the new decision supports the relief we are seeking. The 9th Circuit was able to get due process for Munoz (demonstrating that due process is possible at this time) and while she did not get the requested relief, she and her husband did have a 'fair' hearing. Further, as due process is 'the procedure authorized by Congress' (quoting Munoz) non immigrant visa process must be corrected as denying visas without reviewing any evidence is not what Congress required.

The court is further requested to deny the MTD in its entirety, reverse the delay in the Motion for Partial Summary Judgment, and grant my wife the relief in the form of implementing the USCIS decision of 31 Jan 2023.

Respectfully submitted,

Verification of Response

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: 7. Jul. 2024
Location: Irving, Texas

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.

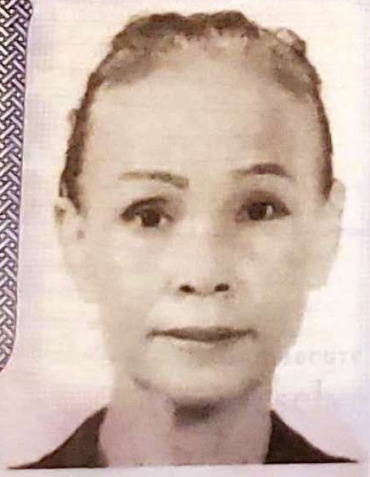
/s *Brian P. Carr*
Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Case, Statute, and Other Index

ตรวจลงตรา / VISAS

VISA

UNITED STATES OF AMERICA



Issuing Post Name
CHIANG MAI

Control Number
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Surname
CARR

Given Name
RUEANGRONG

Visa Type /Class
R B1/B2

Passport Number
AC4221622

Sex
F

Birth Date
[redacted]1961

Nationality
THAI

Entries
M

Issue Date
13DEC2022

Expiration Date
08DEC2032

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Annotation

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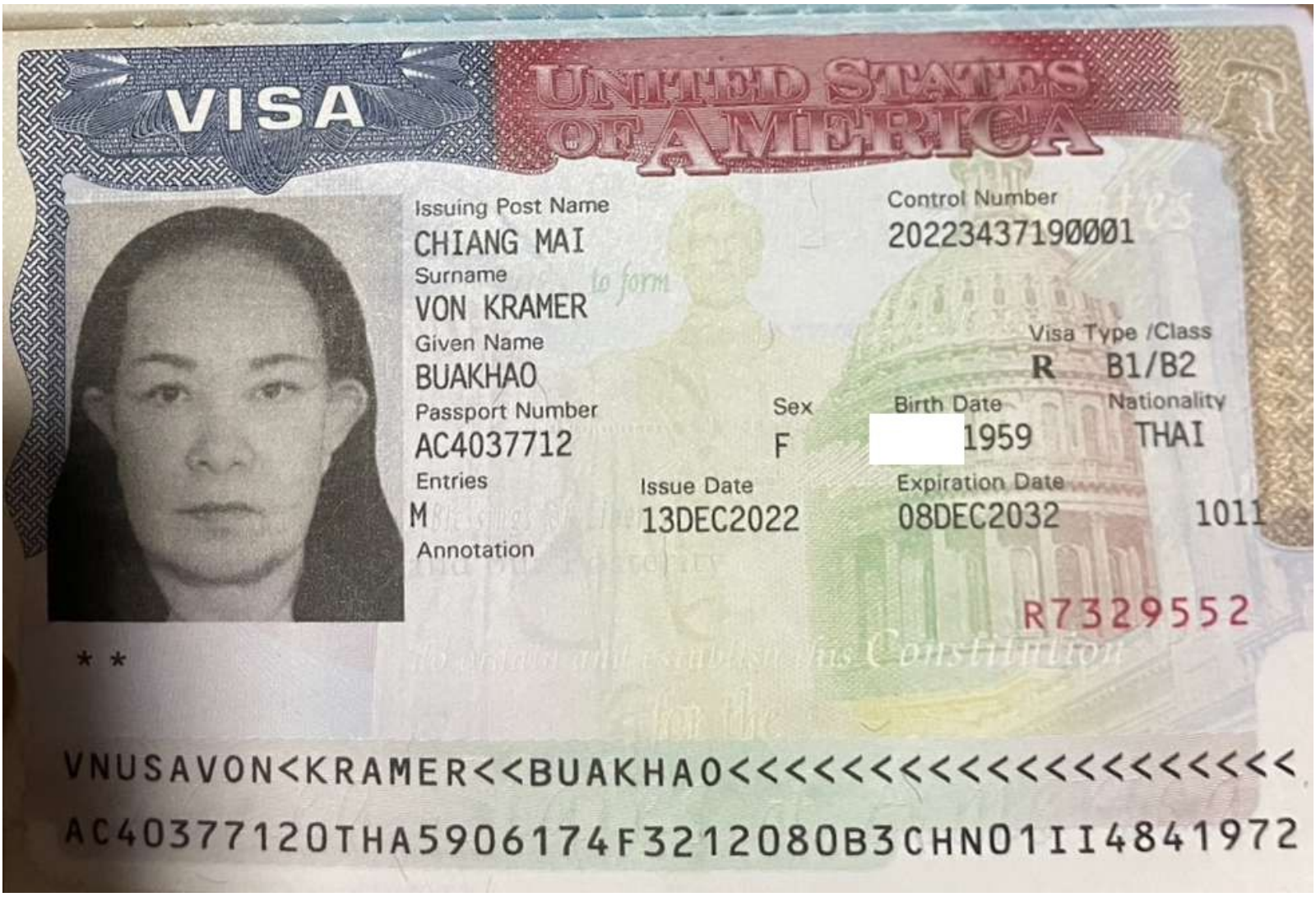
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CHIANG MAI
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LAWS OF THE STATE OF CALIFORNIA, 1855, page 217

CHAPTER CLXXV [175].

AN ACT

To punish Vagrants, Vagabonds, and Dangerous and Suspicious Persons.

[Approved April 30, 1855.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. All persons except Digger Indians[1], who have no visible means of living, who in ten days do not seek employment, nor labor when employment is offered to them, all healthy beggars, who travel with written statements of their misfortunes, all persons who roam about from place to place without any lawful business, all lewd and dissolute persons who live in and about houses of Ill-Fame; all common prostitutes and common drunkards may be committed to jail and sentenced to hard labor for such time as the Court, before whom they are convicted shall think proper, not exceeding ninety days.

SEC. 2. All persons who are commonly known as "Greasers"[2] or Disarming of the issue of Spanish and Indian blood, who may come within the provisions of the first section of this Act, and who go armed and are not known to be peaceable and quiet persons, and who can give no good account of themselves, may be disarmed by any lawful officer, and punished otherwise as provided in the foregoing section.

SEC. 3. It shall be the duty of any Justice of the Peace, on Duty of Justice. knowledge or on written complaint from any creditable person of the State, to issue his warrant to apprehend such person or persons, and upon due conviction to send such person or persons to jail, as prescribed in section first of this Act; and on a second conviction for Second the same offense any offenders may be sentenced to the County Jail for such additional time as the Court may deem proper, not exceeding one hundred and twenty days; and in case of a conviction for either of the offenses aforesaid, an appeal may be taken to the Court of Sessions, in the same manner as provided for by law in criminal cases in this State.

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1 Digger Indians was not defined by the statute but by common usage at the time referred to the indigenous natives, or, in modern parlance, Native Americans.

2 Greasers was not defined by the statute but by common usage at the time was a racial slur referring to the residents of California from the time when it was a part of Mexico or a Spanish colony. In modern parlance we would say Hispanic. There is no conclusive explanation of the source of the term but it was often associated with darker skin. Those Hispanic people with substantially fair skin (more of Spanish origin rather than indigenous people) were not commonly degraded as Greasers.

SEC. 4. The keeper of the Jail or such other person, as the Sheriff of the county may appoint, shall be master or keeper of such prisoners after conviction and shall employ them at any kind of labor that the Board of Supervisors of the county may direct, and each and every person so convicted, shall be secured whilst employed outside of the County Jail, by ball and chain of sufficient weight and strength to prevent escape.

SEC 5. When the Board of Supervisors of the county shall be of opinion that any person, who may have been committed under the provisions of this Act, has so conducted himself or herself, whilst so con- fined or employed, that he or she should be no longer held, said Board of Supervisors may discharge such person from confinement, upon his paying what may remain due of the costs of prosecution and commitment, including his support whilst so confined, or upon giving bond with two or more good and sufficient sureties in the sum of five hundred dollars for future good behavior; provided, that the Board of Supervisors shall have power to discharge any person committed under the provisions of this Act without such conditions, when the health of said person is such as to require his or her discharge.

SEC. 6. This Act shall go into effect thirty days after its passage.

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, et al., Defendants.	Civil Action No. 3:23-CV-02875-S-BT

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs have filed this lawsuit which, in part, alleges violations of due process rights arising out of a consular officer's denial of a nonimmigrant visa. (Doc. 29, at ¶¶ 84–117). Defendants filed a motion to dismiss, raising the doctrine of consular nonreviewability as a ground to dismiss those allegations. (Doc. 31, at 7–8). After Defendants filed their reply in support of their motion to dismiss on June 11, 2024, (Doc. 41), the Supreme Court of the United States issued its opinion in *Dep't. of State v. Muñoz*, 602 U.S. ---, No. 23–334, 2024 WL 3074425 (U.S. June 21, 2024). *Muñoz* analyzes the doctrine of consular nonreviewability and whether a citizen has a liberty interest in their noncitizen spouse being admitted to the country sufficient to overcome that doctrine.

Plaintiffs argue Defendants should not be permitted to file a notice of this supplemental authority because (1) there are other motions currently pending, (2) there

are differences between the details surrounding Plaintiffs' attempts to obtain non-immigrant visas and the underlying facts in *Muñoz*, and (3) Plaintiffs believe the doctrine of consular nonreviewability is "based on a false premise."[1] (Doc. 45, at 4, 6, 10). These arguments do not provide any reason for the Court not to consider newly released, binding authority.

A. The pendency of other motions does not prevent this Court from considering a recent Supreme Court decision.

Plaintiffs point out that there are currently three motions pending in addition to the instant motion for leave to file notice of supplemental authority. (Doc. 45, at 4–5). They argue these pending motions will be delayed by the Court's consideration of *Muñoz*. *Id*. But a litigant's desire for expediency does not require a court to ignore binding authority from the Supreme Court on a relevant legal issue.

It is also worth noting that two of the three pending motions were filed by Plaintiffs—a motion for sanctions and a motion to reconsider a partial motion for summary judgment filed prematurely by Plaintiffs. (Docs. 30, 32). After filing the motion to reconsider, Plaintiffs filed a second premature motion for partial summary judgment on the same grounds. (Doc. 33). Plaintiffs' attempt to cast Defendants' motion as "delay" while simultaneously duplicating these proceedings by filing multiple premature summary judgment motions, a motion for reconsideration, a motion for

[1] Plaintiffs also sent an email to this Court's email address for proposed orders asserting Defendants' deadline to file this reply expired at 6:00pm on Sunday, July 21, 2024. However, because the 14-day time period to file a reply under Local Civil Rule 7.1(f) fell on a Sunday, the deadline runs on Monday, July 22, 2024. *See* Fed. R. Civ. P. 6(a)(1)(C). This reply is therefore timely.

sanctions, and opposing a straightforward motion for leave to file a notice of supplemental Supreme Court authority is puzzling at best.

B. Minor differences in the underlying fact pattern do not render a Supreme Court opinion on a jurisdictional doctrine inapplicable to other cases raising the same doctrine.

Plaintiffs point out differences between the facts underlying *Muñoz* and the instant lawsuit, arguing these differences render it completely inapplicable. But a litigant is not limited to citing only authority arising out of a fact pattern completely identical to their action. Indeed, courts regularly rely upon authority with differences in underlying facts. *See e.g.*, *Dargahifadaei v. Kerry*, No. 3-12-cv-01942-K, 2013 WL 1627887, at *3–4 (N.D. Tex. Apr. 15, 2013) (citing *Centeno v. Shultz*, 817 F.2d 1212, 1213–14 (5th Cir. 1987) as authority mandating dismissal under doctrine of consular nonreviewability despite different visa being sought).

Defendants have raised the jurisdictional doctrine of consular nonreviewability for some of Plaintiffs' claims. The Supreme Court's analysis of that doctrine in *Muñoz* is binding on this Court and therefore appropriate to be considered. If Plaintiffs believe the differences in underlying facts are legally significant and make *Muñoz* distinguishable (which Defendants deny), that would be appropriately raised in any response to the notice allowed by the Court. But Plaintiffs' position on that matter is not a reason for the Court to be wholly precluded from considering a recent Supreme Court holding on the doctrine of consular nonreviewability in determining whether the doctrine applies to this case.

C. Plaintiffs' disagreement with the Supreme Court's holding in *Muñoz* does not make it any less binding on this Court.

Plaintiffs finally argue that the doctrine of consular nonreviewability as upheld by

Muñoz is based on a "false premise," and the Court therefore should not even consider *Muñoz*. (Doc. 45, at 10–19). But Plaintiffs' disagreement with *Muñoz* does not change the fact that lower courts are bound by the Supreme Court. *See Hollis v. Lynch*, 827 F.3d 436, 448 (5th Cir. 2016). As with Plaintiffs' arguments to distinguish *Muñoz*, Plaintiffs' arguments for the Court to ignore *Muñoz* could be raised in any response to the notice allowed by the Court. But these arguments do not constitute a reason to deny leave to file a notice of *Muñoz* as supplemental authority.

D. Conclusion

For the foregoing reasons, and those in Defendants' motion for leave to file notice of supplemental authority, Defendants should be granted leave to file their notice of supplemental authority.

Respectfully submitted,

LEIGHA SIMONTON
UNITED STATES ATTORNEY

/s/ Emily H. Owen
Emily H. Owen
Assistant United States Attorney
Texas Bar No. 24116865
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Telephone: 214-659-8600
Fax: 214-695-8807
emily.owen@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

On July 22, 2024, I electronically filed the above response with the clerk of court for the U.S. District Court, Northern District of Texas. I 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

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.	§ § § § § § § § § §	Case No. 3:23-cv-02875-S-BT

ORDER

Defendants in this *pro se* civil action have filed a Motion to Dismiss for lack of jurisdiction and failure to state a claim. Mot. Dismiss (ECF No. 31). Because the Motion, if granted, would be dispositive of all of Plaintiffs' claims, the Court finds good cause to delay the entry of a Scheduling Order. *See* Fed. R. Civ. P. 16(b)(2) ("The Judge must issue the scheduling order as soon as practicable, but unless the Judge finds good cause for delay, the Judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared"). The Court will set a scheduling conference with the parties, if appropriate, after it has entered Findings, Conclusions, and a Recommendation on the pending Motion to Dismiss.

SO ORDERED.
August 6, 2024

REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

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 Motion for Leave to File Notice of Supplemental Authority (included with this document) UNOPPOSED

Motion for Leave to File

Notice of Supplemental Authority

USCIS Agrees to Provide Due Process and Timely EAD

Plaintiffs respectfully request the Court's permission under Local Civil Rule 56.7 to file the attached Notice of Supplemental Authority. After Plaintiffs filed their Response (ECF 45, 07 Jul 2024) in opposition to Defendants Motion of Supplemental Authority (ECF 44, 01 Jul 2024), USCIS and DoJ agreed that USCIS is not above the law and must follow clear and specific statutes (Title 8, INA chapters) as well as relevant CFR requirements for due process and timely: Employment Authorization Documents (EAD cards) in the cited agreement as well as (it is argued) Oath of Allegiance and Certificates of Naturalization, Green Cards, etc.

Timely Oath of Allegiance Previously Requested is Warranted

If the court orders USCIS to administer the Oath of Allegiance by October 7, 2024 to my wife, Mrs. Carr, then my wife will be able to vote in the November election.

The court has before it Plaintiffs' Motion to Reconsider, ECF 32, filed 14 May 2024, which includes Plaintiffs' Motion for Partial Summary Judgment, ECF 18, filed 28 Mar 2024 where it is requested that the court order USCIS to promptly administer the Oath of Allegiance and provide Mrs. Carr with her Certificate of Naturalization.

The USCIS decision of 31 Jan 2023 (over 18 months ago) is in the record as ECF 10-5 and states:

> We have approved your I-751, Petition to Remove Conditions on Residence. Our records also indicate we have approved your Form N-400 Application for Naturalization. Because we also approved your N-400, you will not receive a new Permanent Resident Card (also known as a Green Card). Instead, once you have taken the Oath of Allegiance, you will receive a Certificate of Naturalization, which will be proof of your U.S. citizenship.

Quoting from the pending Motion to Reconsider (ECF 32):

> Even though USCIS informed Mrs. Carr on 31 Jan 2023 (over a year ago) that her I-751 application (for a ten year green card) and N-400 application (for citizenship) were both approved (ECF 10-5) and she only needed to take the Oath of Allegiance to become a citizen, the reality is that at this time she has not been permitted to take the Oath of Allegiance to become a citizen and is an apparent 'undocumented alien' (a.k.a. 'illegal').

For the last few years I have been a Dallas County Volunteer Deputy Registrar (VDR) working with the League of Women of Voters and other organizations to

register new voters in local High Schools and Colleges and other venues. This year there has been a phenomenal excitement and determination among newly eligible potential voters, especially among young women of color, a group which has traditionally been poorly represented in actual voters. This year will almost certainly be historic in the participation of young people, women, and people of color.

As one of the presidential candidates has vowed to suspend the constitution and become a dictator on day one deporting millions of 'illegals', it is not surprising that there would be great engagement of the voters. There is no evidence that there are actually millions of 'illegals' to deport (most of the recent immigrants of greatest concern are actually Asylum Applicants whose legal rights to work are guaranteed in the cited settlement agreement) so the suspension of the constitution is essential to be able to deport millions of immigrants who at this time are living and working here legally with constitutional rights. Of course this suspension of the constitution also puts permanent residents and naturalized citizens at risk of deportation

As my wife has been left by USCIS as an apparent illegal, she especially wants to vote in this historic election to, among other things, prevent unconstitutional deportation of huge numbers of Asians and Hispanics (the apparent target groups for deportation).

The court is asked to consider an Order concerning only citizenship for my wife so that she can vote in the upcoming election.

Notice of Supplemental Authority

In the web page 'USCIS Class Action, Settlement Notices and Agreements' it states:

> Class Notice in Garcia Perez v. USCIS (PDF, 179.27 KB)
> August 05, 2024
> This Class Notice intends to inform you that on July 30, 2024, the United States District Court for the Western District of Washington, granted preliminary approval of the parties' proposed settlement in Garcia Perez v. U.S. Citizenship and Immigration Services, No. 2:22-cv-00806-JHC (W.D. Wash.). Garcia-Perez is a class action lawsuit involving the federal government's practices with respect to Employment Authorization Documents ("EADs") for applicants for asylum or withholding of removal. Under the terms of the proposed settlement, class members are entitled to new procedures relating to the crediting of time toward eligibility for employment authorization. You may access the Class Notice in the English and Spanish language above. A copy of the proposed Settlement Agreement is also linked. You are hereby notified that a hearing ("Fairness Hearing") has been scheduled for September 26, 2024, at 9:00 am Pacific Time before the Honorable John H. Chun of the United States District Court for the Western District of Washington, in Seattle, Washington for consideration of a proposed settlement of the claims that have been brought on your behalf in this lawsuit.

The proposed Settlement Agreement from the USCIS link and as described above is submitted as ECF 48-1.

Statutory and Federal Rules Basis of Agreement

In Defendant's Motion to Dismiss (ECF 31) there are vague assertions of 'Sovereign Immunity' and executive discretion which do not address any of the actual counts in the Complaint (ECF 29) citing cases in deportation hearings where

INA section 240A(b)(1), 8 USC section 1229b(b)(1) gives the tribunal broad discretion concerning granting an exceptional hardship exemption (with the exceptional hardship being undefined and under tribunal discretion).

However, in the settlement agreement the statute of '8 USC 1158: Asylum' states:

(d) Asylum procedure
(1) Applications ...
(2) Employment
An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum. ...

The relevant federal rules are in '8 CFR 274a.12 Classes of aliens authorized to accept employment.' which states:

...
(c) Aliens who must apply for employment authorization. …
(8) An alien who has filed a complete application for asylum or withholding of deportation or removal pursuant to 8 CFR part 208, whose application:
(i) Has not been decided, and who is eligible to apply for employment authorization under section 208.7 of this chapter because the 150-day period set forth in that section has expired. Employment authorization may be granted according to the provisions of section 208.7 of this chapter in increments to be determined by the Commissioner and shall expire on a specified date; or
(ii) Has been recommended for approval, but who has not yet received a grant of asylum or withholding or deportation or removal;

and '8 CFR 208.7 Employment authorization.' which states:

... the application shall be submitted no earlier than 150 days after the date on which a complete asylum application submitted in accordance with subsection

208.3 and 208.4 has been received. ... the Service shall have 30 days from the date of filing of the request employment authorization to grant or deny that application...

The settlement agreement makes it clear that USCIS must provide an applicant an EAD card within 180 days according to the statutes and rules and any delays must be under the auspices of due process (proper notice of when the 'clock' is stopped and started).

Statutory and Federal Rules For Oath of Allegiance

The timeliness of the Oath of Allegiance is much simpler with INA 337 which is 8 USC 1448 which states:

> (d) Rules and regulations
> The Attorney General shall prescribe rules and procedures to ensure that the ceremonies conducted by the Attorney General for the administration of oaths of allegiance under this section are public, conducted frequently and at regular intervals, and are in keeping with the dignity of the occasion.

The relevant CFR is even more clear with:

> 8 CFR 337.2 Oath administered by USCIS ...
> (a) Public ceremony. An applicant for naturalization ... must appear in person in a public ceremony.... Naturalization ceremonies will be conducted at regular intervals as frequently as necessary to ensure timely naturalization, but in all events at least once monthly where it is required to minimize unreasonable delays.

Clearly the delay of over 18 months after the N-400 application approval on 31 Jan 2023 is excessive and the court is asked to order USCIS to promptly complete the Oath of Allegiance for my wife by 7 Oct 2024.

Respectfully submitted,

Verification of Motion

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: 19. Sep. 2024

Location: Irving, Texas

Certificate of Conference

The foregoing Motion is UNOPPOSED

In accordance with Local Civil Rule LR 7.1, I conferred with AUSA Owens via email concerning this motion and on 19 Sep 2024 she responded that this motion is UNOPPOSED.

/s *Brian P. Carr*

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

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*

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

The Honorable John H. Chun
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Bianey GARCIA PEREZ, Maria MARTINEZ CASTRO, J.M.Z., Alexander MARTINEZ HERNANDEZ, on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES; Ur JADDOU, Director, U.S. Citizenship and Immigration Services; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Mary CHENG, Acting Director, Executive Office for Immigration Review,

Defendants.

Case No. 2:22-cv-00806-JHC

CLASS NOTICE

DATED: July 30, 2024

IMPORTANT CLASS NOTICE

This Notice contains important information that may pertain to you. Please read it carefully. Under a proposed settlement of *Garcia Perez v. U.S. Citizenship and Immigration Services*, No. 2:22-cv-00806-JHC (W.D. Wash.), certain individuals who seek to file a complete Form I-589, *Application for Asylum and Withholding of Removal* ("Asylum Application"), or have already filed Form I-589, are entitled to new procedures relating to the crediting of time toward eligibility for employment authorization.

On June 9, 2022, Plaintiffs filed a class action complaint challenging the federal government's practices with respect to Employment Authorization Documents ("EADs") for applicants for asylum or withholding of removal who had their applications pending for more than 180 days. Plaintiffs are all noncitizens in the United States who have been placed in removal proceedings; have filed a complete Asylum Application; and have filed or will file a Form I-765, *Application for Employment Authorization* ("Form I-765") pursuant to immigration regulations at 8 C.F.R. § 274a.12(c)(8). Defendants include U.S. Citizenship and Immigration Services ("USCIS") and the Executive Office for Immigration Review ("EOIR").

On July 29, 2024, Plaintiffs and Defendants filed a joint motion for class certification and joint motion for preliminary approval of a Settlement Agreement. The general terms of those motions are laid out below.

On July 30, 2024, the Court granted the Parties' joint motion for preliminary approval the Settlement Agreement and ordered that a Fairness Hearing take place on September 26, 2024. Any objections to the proposed settlement should be submitted to the Court within thirty (30) days of the date of this notice, by mailing the objection in an envelope postmarked on or before August 29, 2024 and addressed to: Clerk, U.S. District Court for the Western District of Washington, 700 Steward Street, Suite 14134, Seattle, WA 98101, and including on the envelope and the letter: "Attention: *Garcia Perez v. USCIS*, No. 2:22-cv-00806-JHC (W.D. Wash.)." Objections shall not exceed twenty-five pages in length. Copies of the objection sent to the Court also must be served on counsel for Plaintiffs and counsel for Defendants as set forth below:

TO PLAINTIFFS:

Matt Adams
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Avenue, Suite 400
Seattle, WA 98104

TO DEFENDANTS:

Aneesa Ahmed
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044

All objections must include: (a) a written statement identifying the Class Member's name, address, telephone number, and signature, and, if represented by counsel, the name, address, and telephone number of counsel; (b) a written statement explaining the Class Member's objection and the reasons for such objection; and (c) any documentation in support of such objection. Any objection shall not exceed twenty-five (25) pages in length. If the Class Member wishes to appear at the Fairness Hearing, he or she must also include a statement of intention to appear at the Fairness Hearing.

WHERE CAN I FIND THE COMPLETE SETTLEMENT AGREEMENT?

The complete Settlement Agreement, including definitions of the Class Members, exact terms of relief, and the exact terms of any process available for Class Members to seek review of an alleged violation of the Settlement Agreement, may be found at www.nwirp.org and immigrationlitigation.org. In addition, this information is available on the USCIS website, www.uscis.gov, and the EOIR website, www.usdoj.gov/eoir.

WHO IS A *GARCIA PEREZ* CLASS MEMBER?

This summary of the Class and Subclasses is meant to provide the general guidelines of who qualifies as a Class Member. The *Garcia Perez* Class is a nationwide class comprised of a general class and three subclasses. **There is no requirement and no process for applying for Class**

Membership. A person who falls within the categories enumerated below need not take any other action to be recognized as a Class Member.

***Garcia Perez* Class**
All noncitizens in the United States who have filed or will file with USCIS or EOIR a complete Asylum Application and who would be eligible for employment authorization under 8 C.F.R. § 274a.12(c)(8) but for the fact that their Asylum EAD Clock was stopped or not started prior to 180 days after the date the noncitizen filed a complete Asylum Application.

Remand Subclass
Class Members whose Asylum EAD Clocks were or will be stopped following a decision by an Immigration Judge and whose Asylum EAD Clocks are not or will not be started or restarted following an appeal in which either the Board of Immigration Appeals ("BIA") or a federal court of appeals remands their case for further adjudication of their asylum and/or withholding of removal claims.

Unaccompanied Children Subclass
Class Members in removal proceedings who are unaccompanied children ("UCs") pursuant to 6 U.S.C. § 279(g) and whose Asylum EAD Clocks are not started or will be stopped while waiting for USCIS to adjudicate the filed Asylum Application.

Change of Venue Subclass
Class Members in removal proceedings whose removal proceedings have been or will be transferred to a different Immigration Court through a granted change of venue motion, and for whom EOIR has stopped or will stop the Asylum EAD Clock based solely on the change of venue.

WHAT BENEFITS ARE PROVIDED TO *GARCIA PEREZ* CLASS MEMBERS?

This summary of the benefits available to Class Members is meant to provide the *general* guidelines of who qualifies as Class Members. A person who believes he or she is a Class Member and has been denied a *Garcia Perez* member benefit should first review the exact terms of the Settlement Agreement or seek legal assistance to do so.

***Garcia Perez* Class Benefits:**
EOIR will provide written guidance to Immigration Judges directing them to clearly articulate the reason for the case adjournment on the record at the end of each hearing and that they may inform the parties of whether the Asylum EAD Clock is running or stopped. EOIR upgraded the EOIR Courts & Appeals System ("ECAS") CASE Portal to include case-specific adjournment code history relating to the 180-day Asylum EAD Clock as part of the information available to applicants' representatives of record. *Pro se* applicants may request, orally or in writing, a printout of their case-specific adjournment code history relating to the 180-day Asylum EAD Clock; Immigration Court personnel will be required to respond at the time of an in-person request or within twenty-five (25) business days of receipt of a request not made in-person. EOIR will publish guidance on its website to clarify the requirements, expectations, and procedures for individuals who contest the status of their Asylum EAD Clocks in proceedings before EOIR. An applicant may raise an Asylum EAD Clock correction request in writing or orally at an Immigration Court proceeding and will receive a response at the Immigration Court hearing or a written response within 25 business days of receipt of the request.

USCIS will modify its Case Status Online Tool ("CSOL") to allow anyone with a pending Asylum Application to determine, in addition to their current case status, whether their Affirmative Asylum EAD Clock is stopped because of an applicant-caused delay and the total number of days accrued at the time of a stoppage. USCIS will revise the 180-Day Asylum EAD Clock Notice to provide an exhaustive list of clock-impacting events in the affirmative asylum process to increase applicants' notice of consequences to their Asylum EAD Clock based on actions they take or fail to take. USCIS will provide a mechanism for applicants to request a correction of their Asylum EAD Clock through the eRequest Self-Service tool on the USCIS website. USCIS will also provide a mechanism for applicants to call the USCIS Contact Center, who will route the applicant's inquiry to an asylum office. USCIS will generally respond to any Asylum EAD Clock correction request within 25 business days of receipt of a clock correction request. USCIS will update the agency's public guidance to clarify further the requirements, expectations, and procedures for individuals who contest their Asylum EAD Clock information.

Timeframe for benefits:
EOIR will provide guidance regarding these benefits within ninety (90) days of the Effective Date of the Settlement Agreement.

USCIS will provide these updates within 180 days of the Effective Date of the Settlement Agreement.

Remand Subclass Benefits:
USCIS has updated the language on its website and clock notice to explain the time between an Immigration Judge's asylum decision and a BIA remand or between a BIA decision and a federal court of appeals remand will be credited toward the 180-day Asylum EAD Clock. USCIS will update its message to include instructions that an applicant should submit a copy of the applicable remand order with their I-765 application.

Timeframe for benefits:
The updated language will remain in effect for the remainder of the Agreement.

Unaccompanied Children Subclass Benefits:
USCIS policies and guidelines will control the Asylum EAD Clock for UCs who have filed an Asylum Application. USCIS will issue guidance affirming that, with regard to unaccompanied children any adjournment code associated with the transfer of jurisdiction from EOIR to USCIS should not stop the 180-day Asylum EAD Clock.

Timeframe for benefits:
The updated language will remain in effect for the remainder of the Settlement Agreement.

Change of Venue Subclass Benefits:
A change of venue will not stop the 180-day Asylum EAD Clock in cases pending before EOIR. Defendants will update the adjournment codes for EOIR and USCIS to reflect that a change of venue does not stop the 180-day Asylum EAD Clock in cases pending before EOIR.

Timeframe for benefits:
This policy will remain in effect for the remainder of the Settlement Agreement.

WHAT IS THE EFFECTIVE DATE OF THE SETTLEMENT AGREEMENT?

The *Garcia Perez* Settlement Agreement becomes effective upon the U.S. District Court's final approval of the Settlement Agreement.

WHEN WILL THE SETTLEMENT AGREEMENT TERMINATE?

The *Garcia Perez* Settlement Agreement and all of the rights acquired under the Settlement Agreement, shall end four (4) years following the full implementation of all the terms of Agreement, or upon the Effective Date of Agreement plus six (6) years, whichever shall first occur.

HOW DO I BRING A CLAIM UNDER THE SETTLEMENT AGREEMENT?

A person who believes he or she is a Class Member and has been denied a Class Member benefit may be entitled to bring a claim under the *Garcia Perez* Settlement Agreement. If you believe that you are a Class Member and that you have been denied a benefit of Class Membership, you must follow the Dispute Resolution Mechanism outlined in the Settlement Agreement. For further information regarding the dispute resolution process, including the complete *Garcia Perez* Settlement Agreement, please visit the websites of Class counsel, www.nwirp.org, and immigrationlitigation.org. In addition, this information is available on USCIS' website, www.uscis.gov, and EOIR's website, www.usdoj.gov/eoir.

You may also contact the lawyers representing the Class:

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Avenue, Suite 400
Seattle, WA 98104
(206) 587-4009
(206) 587-4025 (Fax)

NATIONAL IMMIGRATION LITIGATION ALLIANCE
10 Griggs Terrace
Brookline, MA 02446
(617) 819-4649

Do not contact the U.S. District Court for additional information.

U.S. Citizenship and Immigration Services

MENU

USCIS Extends Green Card Validity for Conditional Permanent Residents with a Pending Form I-751 or Form I-829

Release Date : 01/23/2023

USCIS is extending the validity of Permanent Resident Cards (also known as Green Cards) for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence, or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status for 48 months beyond the card's expiration date. This change started on January 11, 2023, for Form I-829 and will start on January 25, 2023, for Form I-751.

We are making this change to accommodate current processing times for Form I-751 and Form I-829, which have increased over the past year.

USCIS has updated the language on Form I-751 and Form I-829 receipt notices to extend the validity of a Green Card for 48 months for individuals with a newly filed Form I-751 or Form I-829. We will issue new receipt notices to eligible conditional permanent residents who previously received notices with an extension shorter than 48 months and whose cases are still pending. These receipt notices can be presented with an expired Green Card as evidence of continued status, while the case remains pending with USCIS. By presenting your updated receipt notice with your expired Green Card, you remain authorized to work and travel for 48 months from the expiration date on the front of your expired Green Card.

As a reminder, conditional permanent residents who plan to be outside of the United States for a year or more should apply for a reentry permit by filing Form I-131, Application for Travel Document, before leaving the United States. For more information, see our International Travel as a Permanent Resident webpage.

Last Reviewed/Updated: 01/23/2023

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 2nd Motion to Amend Complaint Certificate of Conference - OPPOSED

Table of Contents

2nd Motion to Amend Complaint

Introduction

This Motion is submitted in accordance with FRCP Rule 15(a)(2) which states:

> a party may amend its pleading only with ... the court's leave. The court

should freely give leave when justice so requires.

Along with corrections of typographical and clerical errors there are additions and corrections based on events that happened after the date of the pleading to be supplemented, FRCP Rule 15(d) and correct a clerical error as to the individual / office to represent Department of State (DoS) under FRCP Rule 15(c)(1)(C).

Typographical and Clerical Errors

There are corrections of typographical errors such as a correction so that the 9 counts are numbered 1 to 9 rather having two count 8's and no count 9. No party benefits from retaining these typographical errors. They simply introduce confusion for all parties.

In addition there are additions to reference the ECF documents which have been added to the record which were previously referred to in the original complaint. These references are not really additions to the record in this matter but simply aid all parties in understanding and verifying the different affirmed statements in the Amended Verified Complaint.

There is also the addition of a table of contents, reference table, and time line table, none of which are formal parts of the record but added for the convenience of the court and other parties.

Supplemental Events and Corrections

One of the more pressing reliefs sought in the Complaint was for a 10 year green card for Mrs. Carr but this was provided by USCIS a few months ago in late May 2024. The amended complaint is adjusted to record this event and adjust the relief

in accordance with FRCP Rule 15(d).

Addition of an additional representative for DoS

INA 104 which is 8 USC section 1104 states:

> (a) Powers and duties
>
> The Secretary of State shall be charged with the administration and the enforcement of the provisions of this chapter and all other immigration and nationality laws relating to (1) the powers, duties, and functions of diplomatic and consular officers of the United States, **except those powers, duties, and functions conferred upon the consular officers relating to the granting or refusal of visas;** (2) the powers, duties, and functions of the Administrator; and (3) the determination of nationality of a person not in the United States. [1]

The Plaintiffs were unaware of these unusual restrictions but their numerous prior complaints had often been referred to the Bureau of Consular Affairs (BCA) and so the Assistant Secretary of State for Consular Affairs had been notified on 6 Oct 2023 of the complaints (see ECF 17-3).[2]

No Need to Deny Pending Motion to Dismiss

The second USATXN Motion to Dismiss (ECF 33, 09 May 2024) is still pending before the court. The court is asked to not deny this second Motion to Dismiss as moot as the changes in this amended complaint do not impact any of the claims in the pending Motion to Dismiss. Instead the court is asked to leave this second Motion to Dismiss as pending and finally rule on the motion based on its merits.

1 Bold added by Plaintiffs.

2 On that date, the Assistant Secretary of State for Consular Affairs was Rena Bitter who was copied on the email.,

Significant Changes

Updates to Affirmed Statements

For the convenience of the court, the significant changes are included as follows:

Changes of significance:

20. The U.S. Department of State (hereafter DoS) is an agency of the United States and a Defendant in this matter. Because of the unusual division of authority and responsibility in DoS, DoS is represented by both the Secretary of State and the Assistant Secretary of State for Consular Affairs in their professional capacities with contact information:

The Executive Office
Office of the Legal Adviser, Suite 5.600
600 19th Street Ste 5, Suite 5 600, NW
Washington, D.C. 20522

109. Mrs. Von Kramer was also unable to establish a lawful presence in the United States during the years of 2019, 2020, and 2021 according to SSA policies concerning payments to non-citizens residing outside the United States. An exception is granted to surviving spouses who have established a 'lawful presence' in the United States with five years of legal visits to the United States which demonstrate enduring ties to the United States. The requirements for these lawful presence visits are also complex and ambiguous (to the Plaintiffs) with the unusual requirement that for a visit to count for 'lawful presence' it must be longer than one day and shorter than 30 days (and not a full calendar month). A stay for an entire year also counts. See SSA POM RS 02610.025 5-Year Residency Requirement for Alien Dependents/Survivors Outside the United States (U.S.). 1

1. In 2023 Mr. Carr expressed an interest in the 'lawful presence' requirements with some SSA employees and after minimally including SSA in this suit, SSA has substantially improved and clarified the governing rules in SSA POM RS 02610.025 with an increased focus on 'sincere effort to establish enduring ties to the U.S..'

166. Mr. and Mrs. Carr would later learn that her I-751 was actually denied. USCIS would later deny her N-400 in a sham hearing and continue to refuse to provide her with a 10 year green card until after this suit was filed. ~~(no green card would ever be issued on that application based on the statement that Mrs. Carr's N-400 was approved).~~ As more than thirty days have passed since

this effective denial based on statements which USCIS believed to be false, there were no avenues within USCIS to actually get the permanent green card.

209. It appears that when USCIS attempts to effectively deny an application by claiming approval based on false pretenses, there is no way to appeal or correct the error other than the federal district courts.

In late May 2024, Mrs. Carr received her requested 10 year 'green card' (see ECF 49-3) from USCIS without any explanation. This was several months after the denied request of 19 Oct 2023 to USCIS as described above as well as the filing of this suit, the first USATXN Motion to Dismiss (ECF 15, 08 Mar 2024) and the second USATXN Motion to Dismiss (ECF 33, 09 May 2024).

It is possible that USCIS had concluded that some of the relief sought in Plaintiff's Motion for Partial Summary Judgment (ECF 18, 28 Mar 2024) was well justified and USCIS provided the requested relief rather than waiting for this court to order it.

As Mrs. Carr had her 10 year green card her fears of being deported without cause or notice if she failed her citizenship test (para 149) were reduced and it appeared that further relief was not forthcoming, the Carr's submitted a new N-400 application on 10 Sep 2024 (receipt is ECF 49-4) with an application fee of $710 and an estimated first interview date in May of 2025.

251. On 8 Sep 2023 Mr. Carr asked for the assistance of the DoJ with respect to the USCIS and related agencies. The DoJ had previously been copied on the various complaints with the USCIS agencies. On 7 Nov 2023 an expanded notice of intent to contest the unwarranted denial of the N-400 application was sent to DoJ and the USCIS Director which is attached as ECF 30-8. The request for assistance to the USCIS Director could be construed as a 8 USC 1447(a) request for a hearing before an immigration officer due to the exorbitant cost of N-336 applications (para 223-253 and relief 38).

Updates to Requested Relief

Relief:

20. The primary relief sought is for Mrs. Carr to receive her Certificate of Naturalization as soon as possible. However, specific relief sought include orders directing:
A. Mrs Carr should receive her 48 month extension letter or a 1 year extension letter as soon as possible, specifically within one week of the date of issuance of the court's order.
B. Mrs Carr should receive her 10-year Permanent Resident Card as soon as possible. Specifically within one month of the court's order. *This relief and the 48 month extension letter above are no longer required as Mrs. Carr was unexpectedly provided with her 10 year Permanent Resident Card by USCIS in late May 2024 after this suit was filed as described in*

para 209 negating the need for the court to order this relief or the relief in A.
C. Mrs. Carr should have her Oath of Allegiance ceremony scheduled and completed within 1 month and her Certificate of Naturalization issued within 2 months of the court's order.

22. Directing that Mrs. Carr be given a credit for future services with USCIS for the extraneous I-751 application fees of $680 which were duplicated with N-400 services (interview and biometrics). Mrs. Carr never received any I-751 specific services and should not have been charged for the services. In addition, Mrs. Carr should be given an additional credit for $710 for the additional N-400 application (ECF 49-4) as described in para 209. These credits can be used for future services with USCIS for herself, her family, Mr. Carr's family, or Mr. or Mrs. Carr's friends.

Summary

Attached as Exhibit 1 (ECF 49-1) is the resulting Complaint to be used in the event the Second Motion to Amend is granted. Attached as Exhibit 2 (ECF 49-2) is a modified Complaint which shows the original complaint along with changes in purple showing the old text (struck out) and new text.

The Plaintiffs ask that the court grant this Second Motion to Amend the Complaint and direct the clerk to issue a new Summons for the Department of State via the Assistant Secretary of State for Consular Affairs.

Respectfully submitted,

Verification of Motion

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: 19. Nov. 2024

Location: Irving, Texas

Reference Index Table

Case Document Time Line

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29 Dec 23	5	Summons
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04 Jan 24	8	Order, Docket text Clerk Update Summons, Caption
04 Jan 24	9	Corrected Summons
11 Jan 24	10	Proof of Service on 9 Jan 24
03 Feb 24	11	Date of Notice, USPS, USPS OIG, USPS BoG
03 Feb 24	11-1	Machine Readable copy of ECF3 Complaint 29 Dec 23
07 Feb 24	12	DoS picked up Complaint on 17 Jan 24
07 Feb 24	12-1	DoS returned Complaint, sent 26 Jan 24, rcvd 31 Jan 24
07 Feb 24	12-2	DoS resent Complaint rcvd 5 Feb 24
27 Feb 24	13	DoS OIG, copy of ECF 3 Complaint received on 11 Jan 24
05 Mar 24	14	USCIGIE received Complaint at new address 31 Jan 2024
05 Mar 24	14-1	USCIGIE at old address 11 Jan 2024, returned to sender
08 Mar 24	15	Defendants' Motion to Dismiss
09 Mar 24	16	Date of Notice, USCIS, DHS OIG, SSA
10 Mar 24	17	Date of Notice, DoJ USATXN 12 Jan 23
28 Mar 24	18	Plaintiffs Response, Mtn For Prtl Summary Jdgmnt, Mtn Amend
28 Mar 24	18-1	Amended Complaint
28 Mar 24	18-2	Changes included in Amended Complaint
29 Mar 24	19	Plaintiffs' Response contained in ECF 18 (cfk)
05 Apr 24	20	Plaintiffs' Crtfct of Conference, Motion to Amend UNOPPOSED
08 Apr 24	21	Defendants' Crtfct of Conference, Motion to Amend UNOPPOSED
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19 Apr 24	24	Plaintiffs' Motion to Seal ECF 20-1, improperly redacted
22 Apr 24	25	Plaintiffs' Crtfct of Conference for ECF 24,
22 Apr 24	26	Magistrate RR Order Resolving Pending Motions
22 Apr 24	27	Defendants Substitution of Counsel, Owen for Padis
23 Apr 24	28	Plntff Reply to MfPSJ and Response to Defective 56(d) Mtn
23 Apr 24	29	Plaintiff First Amended Complaint
09 May 24	30	1st Motion for Sanctions for Defendants' Motion to Dismiss
09 May 24	30-3	Affirmation of Mr. Carr requesting creative sanctions
09 May 24	30-4	Affirmation about Mr. Padis' attempt to trick Plaintiffs
09 May 24	30-6	Affirmation sanctions for 'not precedent' cases citations
14 May 24	31	Defendants' Motion to Dismiss
14 May 24	31w	Proposed Order Granting Dfndnts' Mtn to Dismiss, word doc
14 May 24	32	Plaintiffs' Motion to Reconsider
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15 May 24	33	Plaintiffs' Motion for Partial Summary Judgment
15 May 24	33w	Proposed Order, Pltf Motion for Partial Summary Judgment
28 May 24	34	Plntff Rspns Opposing Dfndnts' 2nd Motion to Dismiss (31)
28 May 24	34-1	Affirmation of Mr. Carr requesting creative sanctions
28 May 24	34-2	Affirmation of Mr. Carr supporting Count 3, 4 and Count 5
28 May 24	34-3	Affirmation of Mr. Carr supporting Count 7 and Count 8
28 May 24	34-4	Affirmation of Mr. Carr supporting Count 6 and Count 9
28 May 24	34-5	Affirmation comparing Defendants Summary to Actual Summary
29 May 24	35	Defendants' Response Opposing Motion for Sanctions (ECF 30)
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04 Jun 24	36	Defendants' Response Opposing Motion To Reconsider (ECF 32)
05 Jun 24	37	Defendants' Motion to Strike, Response MfPSV(33)
05 Jun 24	38	Defendants' Affidavit Supporting Motion to Strike
07 Jun 24	39	Plaintiffs' Reply Supporting Motion for Sanctions (ECF 30)
07 Jun 24	39-2	Affirmation comparing Padis' Summary to Actual Summary
09 Jun 24	40	Plaintiffs' Response Opposing Motion to Strike (ECF 37)
		Plaintiffs' Reply MfPSJ (ECF 33)
11 Jun 24	41	Defendants' Reply Supporting Motion to Dismiss (ECF 31)
13 Jun 24	42	Plaintiffs' Reply Supporting Motion to Reconsider(ECF 32)
17 Jun 24	43	Order Mtn under Rule 56(d)(ECF 37) Denying MfPSJ (ECF 32)
01 Jul 24	44	Defendants' Mtn to Submit Supplemental Materials (ECF 34)
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01 Jul 24	44-1	Dfndnts' Spplmntal Materials, Department of State v. Munoz
01 Jul 24	44-2	Decision Department of State v. Munoz (S. Ct. 2024)
07 Jul 24	45	Pltnfs Rspns Oppsng Mtn to Sbmt Spplmntl Materials (ECF 44)
07 Jul 24	46	Dfndnts' Reply Supporting Supplemental Materials (ECF 44)
07 Aug 24	47	Order (RR) delaying decision on MTD (ECF 31)
09 Sep 24	48	Plntffs' Notice of Supplemental Authority
xx Nov 24	49	Plaintiffs' 2nd Motion to Amend Complaint
xx Nov 24	49-1	Plaintiffs' Proposed 2nd Amended Complaint
xx Nov 24	49-2	Plaintiffs' Proposed Changes for 2nd Amended Complaint

Other Documents

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Date	Doc	Contents
1855	45-3	CA "Greaser Act", vagrancy act which targets Greasers.
01 Dec 06	39-1	5th Circuit Court Removes Persuasive exception to LR 47.5.4
27 Oct 17	18-7	USPS OIG Audit, 1.9 million falsified times, DR-AR-18-001
29 Aug 18	12-3	Mr. Carr's I-29F affirmation available to DoS on 29 Aug 18
09 Oct 18	34-6	DoS OIG response to 20190052 referred to in ECF 29 para 128
10 Oct 18	10-4	DoS Heinbeck, verbal visa denial was not based on law
13 Nov 18	20-1	Improperly Redacted, Sealed, Permanent Resident Card
13 Nov 18	24-1	Mrs. Carr Permanent Resident Card redacted, exprd 13 Nov 20
12 Aug 19	16-7	Flight tckts 13 Oct to 26 Oct, available to DoS on 9 Sep 19
28 Aug 19	13-1	Pltf's email invitation available to DoS on 9 Sep 19
29 Aug 19	12-4	Pltf's affirmations available to DoS on 9 Sep 19
25 Sep 19	17-5	Pltf's accomodations 14 Oct 19 to 19 Oct 19
27 Mar 21	18-5	USPS Priority Mail delivery, 11 day delay, no refund
09 Apr 21	18-3	USPS Rcpt, $26.35, Overnight Express, Guaranteed Delivery
15 Apr 21	18-4	USPS Tracking, falsified delivery, still at Post Office
05 May 21	18-8	USPS refund request status, 6006595, Dispute Paid
09 Jun 21	11-2	USPS Hooper, scan on 15 Apr 21 false, early, no refund
01 Aug 21	11-3	to USPS IG, requests crimes reported to DoJ
16 Sep 21	18-9	to USPS, USPS Scarpelli $26.35 refunded, no transaction ID
19 Oct 21	11-4	USPS FOI Hefley, OIG workers decide on case by case basis
17 Nov 21	11-5	to USPS IG, report malfeasance in USPS OIG, not report
12 Dec 21	18-6	USCIS 24 month extension letter, expired 13 Nov 2022
31 Jan 22	30-2	Texas Disciplinary Rules of Professional Conduct
07 Jun 22	10-1	USPS Delaney, OIG decides prosecution, no report to DoJ
03 Aug 22	10-2	Mr. Carr, notice to USPS BoG of USPS OIG Malfeasance
12 Dec 22	10-3	USPS BoG response, referred USPS OIG complaint to USCIGIE
13 Dec 22	45-1	Mrs. Carr non immigrant visa which expires 08Dec2032
13 Dec 22	45-2	Mrs. Von Kramer non immigrant visa which expires 08Dec2032

Date	ECF	Contents
03 Jan 23	20-2	USCIS A-551, expired 2 Jan 24
23 Jan 23	48-2	USCIS announces new 48 month extension for I-751 applctns
30 Jan 23	16-4	USCIS FOIA NRC2023277190, unsigned interview results
31 Jan 23	10-5	USCIS, I-751 and N-400 approved, no green card provided
26 Feb 23	16-2	to USCIS FOIA, request for entire record including video
03 Mar 23	14-4	to DoJ: Notice / Request, cc: USPS, USPS BoG, USPS OIG
19 Apr 23	39-3	DoS OIG response to H20231749 2023, Complaint para 128
24 Apr 23	34-7	Complaint submitted online to DoS OIG
05 Jun 23	17-1	DoJ Request forwarded to USPIS, NRC2023277190
20 Jun 23	14-2	to DoS, DOS OIG, USCIGIE, DoJ: Notice / Request
24 Jul 23	12-5	DoS Stein FOIA response, no documents returned, INA 222(f)
09 Aug 23	14-3	USCIGIE close Case 23-083, no action taken
25 Aug 23	32-1	Status of Mrs. Carr I-751 and N-400 applications
25 Aug 23	32-2	Request to DHS OIG, USCIS Director, etc
01 Sep 23	10-6	USCIS, 30 Jan 23 interview did not occur
06 Sep 23	10-7	USCIS, interview scheduled for 10 Oct 23, no purpose stated
10 Sep 23	49-5	DHS OIG, USCIS, DoJ notice of falsified cancellation
15 Sep 23	16-1	USPS mail, ECF 10-7 mailed 12 Sep 23, arrived 15 Sep 23
19 Sep 23	10-8	USCIS, rqst to reschedule denied, entire record considered
24 Sep 23	30-5	USCIS G-28 request Mr. Carr as Mrs. Carr's representative
26 Sep 23	30-7	Justification for delaying interview of 10 Oct 2023
05 Oct 23	16-3	USCIS FOIA Panter response NRC2023277190
06 Oct 23	17-3	DoJ, DoS request, cc: DoS IG, USCIGIE, DoS BCA
06 Oct 23	17-4	DoJ, USCIS request, cc: DHS IG, USCIGIE
09 Oct 23	14-5	to DoJ, clarify USPS request, re: NM301959635
09 Oct 23	17-2	(duplicate) to DoJ, clarify USPS request, re: NM301959635
13 Oct 23	10-10	USCIS, N-400 denied, unexplained contradicts prior records
24 Oct 23	49-6	CIGIE, DOJ and USPS request for assistance
27 Oct 23	10-11	USCIS, green card denied, too late to appeal 31Jan23
31 Oct 23	10-9	to USCIS FOIA, request for entire record including video
1 Nov 23	14-6	USCIGIE close Case 24-010, no action taken
7 Nov 23	30-8	Notice of Intent to Contest Denial of N-400 sent to DoJ
13 Nov 23	34-6	Response letter from DoS OIG FOIA to 2023-P-022
13 Nov 23	34-8	Response documents from DoS OIG FOIA to 2023-P-022
12 Dec 23	16-6	to USCIS FOIA request, cumulative N-400 data
12 Dec 23	16-7	to USCIS FOIA request, cumulative I-751 data
20 Dec 23	13-2	to DoS FOIA request, cumulative visa data
21 Dec 23	13-3	DoS FOIA acknowledgment F-2023-13477 for 20 Dec 23
10 Feb 24	13-4	DoS FOIA request statuses 10 Feb 24
01 Mar 24	28-1	Redacted Email Thread 1 Mar 24 to 18 Apr 24
17 Apr 24	30-1	email thread from 17 Apr 2024 to 26 Apr 2024.
28 May 24	49-3	10 year Green Carr for Mrs. Carr, complaint3 para 209
10 Sep 24	49-4	Receipt for new N-400 application, complaint3 para 209

Certificate of Conference

The foregoing Motion is OPPOSED

In accordance with Local Civil Rule LR 7.1 on 11 Nov 2024 I sent an email to opposing counsel concerning this motion but have not received any response. No conference was held and LR 7.1 directs that all motions which do not have a conference should be considered OPPOSED.

/s Brian P. Carr

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

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

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

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 Second Amended COMPLAINT

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The Plaintiffs, Brian P. Carr (hereafter referred to as Mr. Carr), Rueangrong Carr (hereafter referred to as Mrs. Carr) and Buakhao Von Kramer (hereafter Mrs. Von Kramer) appear pro se in this matter, as and for their complaint allege the following:

Introduction

1. This matter concerns the Defendants falsification of government records and, potentially, obstruction of justice through failure to report or correct federal crimes, and the Plaintiffs' Fifth Amendment right to due process of law.

Due Process Requirements

2. Almost all of the counts raised in this matter center around due process. Since the 70's the U.S. Supreme Court has expounded on the requirements of Due Process for administrative

procedures such that it is not an obscure arcane right, but rather a central pillar of how the U.S. government must act when dealing with individuals. There is an excellent overview of 'due process' in Cornell Law LII Procedural Due Process which lists the ten key elements required for due process as:

1. An unbiased tribunal.
2. Notice of the proposed action and the grounds asserted for it.
3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented.
10. Requirement that the tribunal prepare written findings of fact and reasons for its decision

These elements are derived from Judge Henry Friendly's article titled "Some Kind of Hearing".

USPS Falsifies Delivery Record

3. In April of 2021, Mr. Carr purchased a guaranteed delivery Express Mail label from the United States Postal Service (hereafter USPS). The package was delivered late but a postal employee falsified the delivery record to indicate that package was delivered on time. As a result, Mr. Carr was unable to get the guaranteed refund of $26.35. Mr. Carr appealed administratively with USPS and later with USPS Office of the Inspector General (hereafter USPS OIG), the Council of the Inspectors General on Integrity and Efficiency (hereafter CIGIE), USPS Board of Governors, and Department of Justice (hereafter DoJ) to correct the falsified documents and get the requested refund. No refund has been received.

Department of State Denies Non-Immigrant Visa Without Due Process

4. In 2018 and 2019 Mrs. Carr and her sister, Mrs. Von Kramer, applied for non-immigrant visas which were denied by the Department of State (hereafter DoS) through the Bureau of Consular Affairs (hereafter BCA) without due process. In particular, the denial was a form letter with no reference to the actual evidence and which contradicted the verbal explanations

of the denial by the interviewer. This could be construed as falsification of government records through omission of required information. Further, in each case the denial was based on a rationale that was not supported by the evidence or law in the matter. As there was no administrative appeal available, Mr. Carr sought correction of the injustice through the DoS OIG. CIGIE, and DoJ. Later non-immigrant visas for Mrs. Carr and Mrs. Von Kramer were approved in 2022 but both sisters suffered financial harm from the delay in receipt of the visas.

Mrs. Von Kramer Receives Survivor Benefits

5. Mrs. Von Kramer is the widow of a deceased American veteran and was able to visit the U.S. in 2022 and commenced receiving survivors' benefits from Social Security in May of 2023, but she must return to the U.S. every six months as she was not able to establish her 'lawful presence' in the U.S. in 2019, 2020, and 2021 as she planned.

USCIS Denies Citizenship Application Based on Falsified Documents

6. On 31 Jan 2023 as a result of a joint interview held on 30 Jan 2023 for a permanent green card (I-751) and for citizenship (N-400), the United States Citizenship and Immigration Service (USCIS) approved Mrs. Carr's I-751 application for a permanent green card while not actually providing the green card as her N-400 citizenship application was also approved.
7. However, instead promptly providing Mrs. Carr with a Certificate of Naturalization, on 01 Sep 2023, USCIS updated her N-400 record to note that the interview of 30 Jan 2023 was canceled due to unforeseen circumstances.
8. Mr. Carr complained to USCIS, the Department of Homeland Security (DHS) OIG and DoJ of falsified records (the interview had been completed and the N-400 had been approved). Even so, USCIS scheduled a 'second' N-400 interview for 11 Oct 2023, a date when USCIS had been informed that Mrs. Carr would be out of the country. Mr. and Mrs. Carr made numerous efforts to reschedule the interview which were refused. USCIS denied Mrs. Carr's N-400 application on 14 Oct 2023 for 'failure to appear'. Mr. Carr has since complained to DHS OIG of 'whistleblower' retaliation for his previous reports of federal crimes and other malfeasance by USCIS.

Jurisdiction and Venue

9. This Court has subject matter jurisdiction over this action pursuant to 28 USC § 1331 and 28 USC § 1367, 42 USC Ch. 21B and the Administrative Procedure Act (APA, 5 USC § 551–559, 5 USC § 702), as a case arising under 18 USC § 1001, 18 USC § 1505, 18 USC § 1510, 18 USC § 201, 18 USC Ch 96 (RICO), 18 USC § 1038 18 USC § 10, 5a USC IG ACT 1978, 39 USC (Postal Service), INA 8 USC Ch 12, 8 CFR § 216.4, 5 USC § 2302(b)(9)(D), 8 USC § 1184, 8 USC § 1146, 8 USC § 1447, 8 USC § 1421(c), 28 USC Part II - Department Of Justice as well as the Fifth Amendment of the U.S. Constitution right to due process.

10. Venue is proper in this district pursuant to 28 USC § 1391 (b) because a substantial part of the events or omissions giving rise to the claim have occurred or will occur in this district and Plaintiffs Mr. and Mrs. Carr reside in this District and Mrs. Von Kramer, as a foreign national, receives her U.S. mail care of Mr. Carr.

11. Mr. Brian P. Carr (hereafter Mr. Carr) is a U.S. citizen and resident of Dallas County in the State of Texas and a Plaintiff appearing Pro Se in this matter. Mr. Carr's contact information is:

Brian P. Carr
1201 Brady Dr
Irving, TX 75061
carrbp@gmail.com
518-227-0129

12. Mrs. Rueangrong Carr (hereafter Mrs. Carr) is a U.S. Permanent Resident and resident of Dallas County in the State of Texas and a Plaintiff appearing Pro Se in this matter. Mr. Carr is Mrs. Carr's spouse and to the degree that it is legally permissible, Mr. Carr will represent Mrs. Carr. Mrs. Carr's contact information is:

Rueangrong Carr
1201 Brady Dr
Irving, TX 75061
carrbp@gmail.com
518-227-0129

13. Mrs. Buakhao Von Kramer (hereafter Mrs. Von Kramer) is a citizen and resident of Thailand with a U.S. B-1 / B-2 non immigrant visa (business / tourist). Mrs. Von Kramer's U.S. mailing address is care of Mr. Carr, a resident of Dallas County in the State of Texas.

Mrs.Von Kramer is a Plaintiff appearing Pro Se in this matter. Mrs. Von Kramer is the widow of Nikolaus Von Kramer, a German National, U.S. Army veteran (pre 1968), U.S. citizen, married to Mrs. Von Kramer on 12 January 2006, and died 26 April 2014. Mrs. Von Kramer is also Mrs. Carr's sister. Mrs. Von Kramer has also requested that Mr. Carr represent Mrs. Von Kramer to the degree that it is legally permissible. Mrs. Von Kramer's contact information is:

Buakhao Von Kramer
c/o Brian Carr
1201 Brady Dr
Irving, TX 75061
carrbp@gmail.com
518-227-0129

14. Mrs. Von Kramer's legal residence is:

105 - 3 M 5 T YANGNERNG
SARAPEE, CHIANG MAI 50140
THAILAND

15. The United States government is the primary Defendant in this matter and is represented by the U.S. Attorney for the Northern District of Texas in her professional capacity with contact information:

United States Attorney
Northern District of Texas
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699

16. The U.S. Department of Justice (hereafter DoJ) is an agency of the United States, a Defendant in this matter and is represented by the Attorney General in his professional capacity with contact information:

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

17. The United States Postal Service (hereafter USPS) is an agency of the United States, a Defendant in this matter and is represented by the Postmaster General in his professional capacity with contact information:

Postmaster General

USPS Headquarters
475 L'Enfant Plaza SW
Washington DC 20260-0010

18. The USPS Office of the Inspector General (hereafter OIG) is an agency of the United States, a Defendant in this matter and is represented by the USPS Inspector General in her professional capacity with contact information:

USPS Inspector General
1735 North Lynn Street
Arlington, VA 22209-2005

19. The USPS Board of Governors (BoG) is the governing body of the USPS, an agency of the United States. The USPS BoG is a Defendant in this matter and is represented by the Chairman in his professional capacity with contact information:

USPS Board of Governors Chairman
475 L'Enfant Plaza SW
Washington DC 20260-0010

20. The U.S. Department of State (hereafter DoS) is an agency of the United States and a Defendant in this matter. Because of the unusual division of authority and responsibility in DoS, DoS is represented by both the Secretary of State and the Assistant Secretary of State for Consular Affairs in their professional capacities with contact information:

The Executive Office
Office of the Legal Adviser, Suite 5.600
600 19th Street Ste 5, Suite 5 600, NW
Washington, D.C. 20522

21. The DoS OIG is an agency of the United States, a Defendant in this matter and is represented by the DoS Inspector General in her professional capacity with contact information:

U.S. Department of State Inspector General
1700 North Moore Street (SA-39)
Arlington, VA 22209

22. The Council of the Inspectors General on Integrity and Efficiency (hereafter CIGIE) is an agency of the United States, a Defendant in this matter and is represented by the Executive Director in his professional capacity with contact information:

Executive Director

Council of the Inspectors General on Integrity and Efficiency
1750 H Street NW Suite 400
Washington, DC 20006

23. The U.S. Citizenship and Immigration Services (hereafter USCIS) is an agency of the United States, a Defendant in this matter and is represented by the USCIS Director in her professional capacity with contact information:

USCIS Director
20 Massachusetts Avenue, NW
Washington, DC 20529

24. The Department of Homeland Security (hereafter DHS) OIG is an agency of the United States which oversees USCIS, a Defendant in this matter and is represented by the DHS Inspector General in his professional capacity with contact information:

Department of Homeland Security Inspector General
245 Murray Dr.; Building 410;
Washington, DC 20528

25. The Social Security Administration (hereafter SSA) is an agency of the United States, a Defendant in this matter and is represented by the SSA Commissioner in her professional capacity with contact information:

Social Security Administration Commissioner
1300 D. Street SW
Washington, D.C. 20024

Count 1

USPS Falsifies Delivery Records, Refuses Credit

26. The Plaintiffs repeat and re-allege paragraphs 1 through 25, as if fully set forth herein.
27. On April 9, 2021 Mr. Carr purchased an 'Overnight Express' click'n'ship for $26.35 with tracking number 9470103699300057573507 with guaranteed delivery to return his passport from the Thai embassy to his home address (see ECF 18-3). The Thai embassy mailed his passport back and the shipment was accepted by USPS at 8:46PM on 13 April 2021 with guaranteed delivery by 12PM on 15 April 2021. This was longer than overnight as it was received late in the day.
28. However, the package did not arrive at the Irving Post Office until 11:18 AM 15 April 2021

and was 'out for delivery' at 11:29 AM. It was scanned as delivered at 11:35 while the driver was almost certainly still at the Post Office, a common practice for improper 'Stop the Clock' scans (see ECF 18-4).

29. It is virtually impossible to make the drive from the Post Office to Mr. Carr's house in six minutes. Note that while improper 'Stop the Clock' scans have a relatively benign name, they are, in fact, crimes of falsifying government records as per 18 USC § 1001 (a) (1).
30. Mr. Carr was anxious to get his passport and checked for the package several times on the morning of 15 April, 2021. When Mr. Carr received notice of the delivery at 11:35 AM via email, both Mr. Carr and Mrs. Carr went out to look for the package but could not find it.
31. Mr. Carr also called the Post Office about the missing package and was advised to not worry as there had been vehicle problems that morning and that his package would arrive soon. Mr. Carr asked if the record of delivery time would be corrected but received a non-committal answer. Mr. Carr also took a time stamped photo of the front porch area with no package present after it had been recorded as delivered.
32. At 12:30PM the package was in Mr. Carr's mail box, delivered after the guaranteed delivery time (contrary to the improper 'Stop the Clock' delivery scan).
33. That afternoon Mr. Carr initiated an online request for a refund (refund request number 6006595) which was denied in minutes as the package was falsely reported as delivered on time.
34. Two weeks later Mr. Carr was permitted to appeal that arbitrary denial and explained about the illegal 'Stop the Clock' scan and on 5 May 2021 the status of the refund was changed to 'Dispute Paid' (see ECF 18-8). However, the credit card which Mr. Carr used for the online 'click n ship' never posted the refund.
35. On 9 June, 2021, Mr. Scott Hooper, District Manager, Dallas Customer Service and Sales, 951 W. Bethel Rd., Coppel, Texas, 75099-9998 replied to Mr. Carr's queries about the falsified delivery time via Congressman Veasey stating that Mr. Rodney Malone, Postmaster, Irving, TX found that "the guaranteed date and time for delivery of the Priority Express Mail was April 15, 2031, by noon. Mr. Malone retrieved data from the carrier's scanner and was able to confirm the package was scanned as delivered on April 15, 2021 at 11:35 a.m.. Mr. Malone states the carrier has been trained in the proper disposition and scanning of Priority Express Mail. The signature was waived; therefore, allowing delivery

directly to Mr. Carr's mailbox. Unfortunately, to be able to correct a scan in our system, it must be within the previous 21 calendar days." (see ECF 11-2)

36. Mr. Carr contacted USPS customer service on numerous occasions as there had not been any refund but was only told to wait longer for the refund even though he had already waited far longer than the suggested waiting time.
37. When Mr. Carr complained that the refund was due many months ago, the response was just a generic statement about submitting a new refund request (which would be denied as it was too late to initiate a new refund request).
38. On 3 September 2021, Ms. Scarpelli of the USPS responded to Congressman Veasey stating that Mr. Carr's refund was paid on 5 May 2021 but on further investigation by Mr. Carr there were no details of the refund.
39. After Mr. Carr made numerous attempts to find the transaction ID of the credit to his bank it became apparent that Ms. Scarpelli had been misled by the numerous falsified documents which resulted from the improper 'stop the clock' scan of his package and faulty USPS business processes to issue credits when a falsified delivery record indicates an 'on time' delivery. (See ECF 18-9)
40. It appears that the Accounting Service Center approved the refund and passed it off to Customer Service to make the actual refund. However, because the tracking record had a falsified delivery time via the improper 'Stop the Clock' scan which was not corrected by management (a potential crime itself), customer service could not give the refund but referred Mr. Carr back to accounting services or asked Mr. Carr to start a new claim for a refund (which was not permitted at that time due to the delay).
41. There are now numerous documents which are false due to the original falsified delivery time and thousands of others as documented by USPS OIG (see ECF 18-7), to include quality reports to Congress and the U.S. public, profitability reports for individual post offices and regions, and bonuses paid to management of said post offices and regions. This is a prime example of how one uncorrected falsified document multiplies until it becomes hard to find any truthful and correct documents. These problems were referred to USPS management as well other defendants on 3 Mar 2023 in ECF 14-4.

Count 2

USPS OIG Refuses to Investigate or Report Federal Crimes

42. The Plaintiffs repeat and re-allege paragraphs 1 through 41, as if fully set forth herein.

43. Mr. Carr visited the USPS OIG web hotline which stated "the USPS OIG Hotline CANNOT assist you with daily mail delivery and tracking problems" but also "the USPS OIG Hotline CAN assist you with ... Employee Misconduct".
44. Mr. Carr made several submissions to the Hotline which includes Submission 167800 on 18 May 2021, Submission 170675 on 27 May 2021, Submission 184761 on 19 July 2021, and Submission 209111 on 22 October 2021. However, even though he cited specific federal crimes of falsifying government records, defrauding postal customers and USPS management uniformly unable to make any corrections, in all cases the complaint was simply referred back to USPS local management and with no correction or action taken. However, each complaint was closed as successfully resolved even though no corrections or actions were taken.
45. On 1 August 2021 Mr. Carr wrote directly to the USPS Inspector General inquiring as to the origin of the policy preventing any USPS OIG investigation of certain crimes of falsifying government records, e.g. improper 'Stop the Clock' scans of packages as delivered prior to actual delivery and, amongst other things, defrauding postal customers (see ECF 11-3).
46. This letter seems to have been referred back to the USPS OIG Hotline where they suggested that Mr. Carr would need to file a Freedom of Information Act request to get the information he required.
47. Mr. Carr submitted the FOIA request and received a statement from Tanya Hefley on 19 October 2021 stating "However, we were advised, during processing, the OIG Hotline determines the best routing (OIG, Inspection Service, Postal Service, other agency, etc.) for an allegation on a case-by-case basis." (see ECF 11-4)
48. A 2017 USPS OIG audit found there were over 1.9 million improper 'stop the clock' scans out of the 25.5 millions which were analyzed. The result was that over 7 percent of the analyzed scans were improper. Extending this to the over 4 billion scanned packages during 2017, as many as 280 million of such scans defrauded customers by these improper scans preventing 'guaranteed delivery' refunds. Further, the USPS OIG listed over about 1.4

million customer complaints in FY 2017 related to delivery. (see ECF 18-7)

49. In a 2020 Blog report by USPS OIG, "Specifically, 38 percent of the more than 1,100 packages that were selected at these units and that were in the facility before the carriers arrived for the day had been improperly scanned."
50. When Mr. Carr reported the details of the falsified delivery time to OIG case workers, it was not only 'likely' that a federal crime had been committed, but,in light of USPS OIG reports on the problem (see ECF 18-7), it was 'beyond reasonable doubt.'
51. However, the reality is that improper 'Stop the Clock' scans are federal crimes and are not ever referred to the Attorney General as required by 5a USC IG ACT 1978 § 4.
52. On 1 August 2021 Mr. Carr wrote to the USPS IG directly complaining of an apparent illegal order preventing USPS OIG case workers from reporting known federal crimes (the well documented improper 'stop the clock scans' (a.k.a. falsified government records) to the Attorney General as required explicitly by 5a USC IG ACT 1978 § 4 which states in part that the 'Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law'. (see ECF 11-3)
53. The USPS IG made no response but via U.S. Representative Marc Veasey, Ms. Kelly Delaney, Senior Attorney, Government Relations, USPS OIG, replied on 7 June 2022 (see 10-1,an electronic document already sent to the relevant Defendants) and stated

> The OIG conducts investigations to determine whether evidence exists of misconduct or criminal activity by postal employees and, when appropriate, refers such matters for criminal prosecution. When employee conduct does not meet the threshold for prosecution, we typically refer such matters to Postal Service management officials for their determination of possible administrative action. … We did not identify a violation that warranted referral for criminal prosecution.

54. Thus, the OIG is claiming the authority to decide which cases should be prosecuted while it is clear from 5a USC IG ACT 1978 § 4 that Congress intended that the decision to prosecute is reserved solely for the Attorney General (or the DoJ realistically).
55. It is apparent that the USPS OIG has decided to allow the USPS to commit certain federal crimes with impunity thereby defrauding thousands of postal customers each year.
56. On 3 August 2022, Mr. Carr wrote to the USPS Board of Governors (see ECF 10-2

previously provided to relevant Defendants) complaining of apparent illegal orders preventing the USPS IG from properly reporting federal crimes to the DoJ as required by statute, possibly a crime itself of obstruction of justice.

57. There was no response from USPS BoG but on 14 Dec 2022 from Andrew Jones, USPS Government Relations Representative replied via Representative Veasey (see ECF 10-3) stating 'the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is responsible for investigating complaints about an Inspector General. CIGIE conducts its investigations independently, and it has requested that all inquiries related to its functional responsibilities be referred to CIGIE for reply.' It claims that the complaint was forwarded to CIGIE but no response was forthcoming.
58. There are anecdotal reports of widespread falsification of records of all types within USPS which is the likely result of USPS OIG unlawfully granting USPS the ability to falsify delivery records with impunity. These problems were referred to USPS IG as well other defendants on 3 Mar 2023 in ECF 14-4.

Count 3

DoS Denies Mrs. Carr Visa without Due Process

59. The Plaintiffs repeat and re-allege paragraphs 1 through 58, as if fully set forth herein.
60. Mr. and Mrs. Carr had married on 23 June 2018 in Thailand and applied for an immigration visa via an I-130 petition submitted to USCIS on 17 July 2018.
61. However, they learned that the I-130 petition normally takes over a year to be processed. They were concerned that his mother was over 90 years old and her health was failing. It was unlikely that she would survive for more than a year. The couple wanted Mrs. Carr to be able to meet Mr. Carr's mother so they decided to apply for a non-immigration visa.
62. As a result, Mr. Carr completed the application for a non-immigration visa DS-160 for Mrs. Carr with the $160 fee paid by Mr. Carr with his American credit card.
63. Mr. Carr requested that he be permitted to attend the interview as Mrs. Carr representative as he was more familiar with his mom's health and his finances. However, he was told that was not possible due to security and space concerns at the consulate.
64. As an alternative, Mr. Carr completed an I-864 affidavit of support showing assets of $2,986,370.28 over 90% of which were in IRA accounts which could not be moved outside

of the U.S. without complex and expensive tax implications. He also attached an affirmed statement attached to the I-29F supporting those assets and an explanation that the couple had sufficient assets to live wherever they chose and that it would be incredibly stupid for them to overstay their visa as it would preclude freedom to travel in the future. They were not stupid people. (see ECF 12-3)

65. On 29 Aug 2018 Mrs. Carr had an interview for a B-1 / B-2 non immigrant visa (business / tourist) at the Chiang Mai Consulate in Thailand with appointment AA00843QZW.
66. The interviewer did not review any of the papers which Mr. Carr had prepared but instead did a cursory review of Mrs. Carr visa application record and noted the I-130 application to immigrate. The interviewer then informed Mrs. Carr that she could not get a tourist visa because she had an outstanding immigration visa application. The only way she could get a tourist visa would be to rescind her immigration application first and then reapply for a tourist visa. This deeply upset Mrs. Carr, presenting her with a sort of Sophie's choice dilemma. Needless to say, the interviewer's verbal claim was totally contrary to the published requirements and the law in these matters.
67. The actual denial letter had no references to any evidence presented or reviewed but simply cited section 214(b)[1] and 'you did not overcome the presumption of immigrant intent, required by law, by sufficiently demonstrating that you have strong ties to your home country that will compel you to leave the United States at the end of your temporary stay'.
68. Mr. and Mrs. Carr were unlawfully denied their ability to travel freely due to denial of Mrs. Carr's visa application.
69. Mr. Carr complained to the DoS OIG with complaint H20190052 citing the lack of due process through the denial of the right to representation (Mr. Carr could not attend the interview), the denial of the opportunity for Mrs. Carr to present evidence, and the denial of the right to a written decision based solely on the law and evidence presented. Mr. Carr explained that the requirement that Mrs. Carr rescind her immigration application was not supported by the law and, as such. was unlawful.
70. On 10 October 2018 DoS OIG responded with ECF 10-4.
71. The response was signed by Cristin Heinbeck, Outreach and Inquiries Division, Visa Services of DoS which stated in part:

1 INA 214 is 8 USC § 1184

there is no provision in U.S. law that specifically precludes issuance of a nonimmigrant visa to an applicant with a pending immigrant visa case. However, such an applicant must still demonstrate that he or she has clear ties to a continuing life overseas and evidence that he or she intends only a temporary visit to the United States. Such evidence is required to overcome the provisions of section 214(b) of the INA.[2]

72. The DoS did not address the denial of the right to representation and the right to present evidence. Of course an applicant will not be able to overcome the provisions of section 214(b) if they are not permitted to present the evidence which is required by section 214(b)[3].
73. As DoS OIG improperly abdicated its responsibility to oversee BCA and referred these serious violations of the Fifth Amendment rights of Due Process to BCA, Mr. Carr continued his efforts a just and lawful decision by writing several emails to the Chiang Mai Consulate General.
74. Mr. Carr was able to persuade USCIS to expedite the I-130 immigration petition process and it was approved within four months (likely a record for such petitions in Thailand at that time).
75. Mr. and Mrs. Carr were also subjected to unwarranted stress in getting the I-130 so quickly as was the staff at USCIS who had to deal with the constant concerns raised by Mr. Carr about every delay.
76. Mrs. Carr was able to meet Mr. Carr's mother and that was a source of joy for all parties. Mr. Carr's mother died within a week of their arrival so the desire to visit promptly was well founded.
77. Mr. and Mrs. Carr returned to Thailand after a roughly three month visit to the United States (so would not have 'overstayed' a tourist visa in any case).
78. However, four years later USCIS failed in meeting its statutory mandate to allow Mrs. Carr to work and travel freely (see 8 CFR § 216.4 (b)) and left Mrs. Carr stranded in Thailand, unable to return to the U.S..
79. As a result, Mrs. Carr had to make a second application for a tourist visa with DoS BCA with the interview on 12 Dec 2022 at the Chiang Mai Consulate with appointment

2 INA 214 is 8 USC § 1184
3 INA 214 is 8 USC § 1184

AA00BCSFIT.

80. Mr. Carr sent an explanatory email to the Chiang Mai Consulate General citing the previous letter from DoS stating that Mrs. Carr's previous visa application was denied unlawfully and explaining that USCIS had unlawfully left Mrs. Carr stranded in Thailand, attaching the supporting documents for this conclusion. Mr. Carr asked that an adequately trained interviewer be assigned to review Mrs. Carr's visa application so that there would not be further unjust and unlawful decisions.
81. The Consulate General responded that all interviewers were properly trained and made their decisions independently of any input from the Consulate General but it is possible that an addendum was made to Mrs. Carr's file explaining the sensitivity of the application.
82. Mrs. Carr's second visa application was approved with no substantial input from Mrs. Carr, only an online review of the status of the application.
83. The cost of this second visa application fee was $160 which Mr. Carr attributes half to USCIS for leaving Mrs. Carr stranded in Thailand and half to DoS BCA for unlawfully denying the first visa application.

Count 4

DoS Denies Mrs. Von Kramer Visa without Due Process

84. The Plaintiffs repeat and re-allege paragraphs 1 through 83, as if fully set forth herein.
85. Mrs. Von Kramer is the widow of an American veteran who died on 26 April 2014 (born 19 Nov 1944). Mrs. Von Kramer had promptly notified the U.S. embassy and Social Security of his death.
86. A member of the embassy staff had kindly mentioned to Mrs. Von Kramer that if she visited the U.S. regularly she could get survivor benefits from Social Security. She also explained that if Mrs. Von Kramer did not have friends or family in the U.S. it would be prohibitively expensive and not really possible.
87. As a result, after Mrs. Carr (her sister) had become a Permanent Resident of the U.S., Mrs. Von Kramer's younger daughter Yui Montira Moongram submitted a DS-160 visa application for Mrs. Von Kramer and paid the $160 fee. Her first interview was held on 9 Sep 2019 at the Chiang Mai consulate.
88. Mrs. Von Kramer asked that Mr. Carr attend the interview. Mr. Carr inquired again and was

told that only the applicant was permitted in the consulate due to security and space constraints.

89. Mr. Carr helped Mrs. Von Kramer prepare an extensive folder of papers (more than an inch thick) to demonstrate her financial resources and ties to Thailand. It started with dual affirmations for Mr. Carr and Mrs. Von Kramer (see ECF 12-4, affirmed under penalty of perjury) with descriptions of the other 'exhibits' which included:
    - Round trip tickets to the U.S. with the first flight on 13 Oct 2019 on the same flight to the U.S. as Mr. and Mrs. Carr were taking and return flights for Mrs. Von Kramer after a 14 day stay (longer than the 1 day minimum requirement and shorter than the 30 day / full month maximum for a 'lawful presence' visit as described in the affirmations). See ECF 16-7.
    - An email from Mr. Carr inviting Mrs. Von Kramer to stay at their house during her visit to the U.S.. See ECF 13-1,
    - Previously Mr. Carr had provided Mrs. Von Kramer with a statement from one of Mr. Carr's retirement accounts showing over $400,000 in assets (signed by Mr. Carr), but as this ran to over ten pages it was decided to not include it in the packet and rely on the substantial savings Mrs. Von Kramer demonstrated below. Instead the focus would be on the accommodations and opportunities for service and volunteering and other 'lawful presence' activities described in attachments to the invitation email. See ECF 13-1,
    - A signed copy of Mr. Carr's passport ID page.
    - A Thai bank statement showing a roughly $30,000 balance in Mrs. Von Kramer's name for the last six months (and certified at the bank).
    - Deeds to Mrs. Von Kramer's houses in Chiang Mai and Chiang Rai with pictures of the houses (they are nice houses) along with her and her dogs, two daughters, and other sister and brother (in different pictures).
    - Deeds to some of her farm land (prime rice paddies in Chiang Rai where Mrs. Von Kramer was born).
    - Title to her car along with pictures of her with the car and family members.
    - University diplomas for her two daughters.
    - Documentation of her daughters' long term employment as a nurse in Chiang Mai and Network Engineer in Bangkok together with pay stubs.

- Documentation of her marriage to Mr. Von Kramer and his death.
- An explanation by Mr. Carr of the requirements to get social security survivors' benefits which include several 'lawful' visits to the U.S. over a five year period (and a stipulation that any overstays would disqualify her from any future benefits).

First Visa Application Denied

90. Surprisingly enough, the interviewer verbally denied Mrs. Von Kramer first visa application based on her not having firm travel plans. This was not based on any evidence as Mrs. Von Kramer had copies of her flight tickets and invitation as described above.
91. Further, the written denial letter was identical to the one Mrs. Carr had received with no references to any evidence presented or reviewed but simply cited INA 214(b)[4] and 'you did not overcome the presumption of immigrant intent, required by law, by sufficiently demonstrating that you have strong ties to your home country that will compel you to leave the United States at the end of your temporary stay'.
92. Mrs. Von Kramer apologized to Mr. Carr at the end of the interview for not presenting her case well, but the real problem was the denial of her right to Due Process and representation.
93. Mrs. Von Kramer was raised in a very poor family with nine children and a sharecropper father. She had a limited education of only four years before she needed to start working to help support the family.
94. As a girl from a poor family in Thailand she was taught to be polite and not speak out. She was not taught how to persuasively and clearly advocate for her position. However, Due Process is guaranteed to all persons who deal with the U.S. government and the right to representation is to insure that justice is not provided only to the rich and well educated.

Second Visa Application Denied

95. Mr. Carr completed a second DS-160 visa application for Mrs. Von Kramer with the interview on 30 Sep 2019 at the Chiang Mai Consulate (appointment AA009APPX1) and Mrs. Von Kramer paid the roughly $160 fee in Thai Baht.
96. Mrs. Von Kramer was able to mention to the interviewer that she wanted to apply for Social Security but the interviewer falsely claimed that she could have her social security claims handled in Manila in the Philippines and did not need a U.S. visa for that. It is unclear if the interviewer was ignorant of Social Security rules and regulation or maliciously told her false

4 INA 214 is 8 USC § 1184

information.

97. Mrs. Von Kramer mentioned her contact at the embassy who had explained the U.S. requirements for non citizens to receive Social Security benefits overseas to Mrs. Von Kramer, but the interviewer declined to call her.

98. The interviewer also did not read Mr. Carr's extensive explanation of Social Security rules and regulations applicable to Mrs. Von Kramer but instead denied her application based on the false claim that she could get her social security benefits in the Philippines.

99. The written denial letter was the same form letter as before with no mention of the actual evidence considered.

Third Visa Application Denied

100. Mrs. Von Kramer again apologized to Mr. Carr for not presenting her case well as she had not given the interviewer the extensive documentation which Mr. Carr had compiled.

101. Mr. Carr completed a third DS-160 visa application for Mrs. Von Kramer with the interview on 9 Oct 2019 at the Chiang Mai Consulate (appointment AA009BKKHR) and Mrs. Von Kramer paid the roughly $160 fee in Thai Baht.

102. Before the interview, Mrs. Von Kramer practiced handing the packet of documentation to the interviewer as she had not done that in previous interviews. Mr. Carr also ensured that she called attention to his affirmation which explained all the other attachments as well as the requirements for Social Security benefits paid to foreign nationals overseas.

103. In the actual interview, Mrs. Von Kramer did hand the packet to the interviewer and he did spend a few seconds reading the first few pages, before closing the packet and informing Mrs. Von Kramer that she could not get a visa as she was a widow and too old with insufficient ties to Thailand. If she were to remarry she could reapply and might be eligible for a visa.

104. Of course this verbal rationale is completely contrary to the published rules and laws for non-immigration visas.

105. The written denial letter was the same form letter as before with no mention of the actual evidence considered.

106. It should be noted that if Mrs. Von Kramer were to remarry, she would no longer be eligible for SSA survivors' benefits, the central focus of the first few pages of Mr. Carr's affirmation.

107. It is also apparent that the DoS BCA has unpublished unwritten unlawful policies which are followed by interviewers such as:
   - Immigration applicants should not be granted tourist visas irrelevant of the actual facts and circumstances.
   - Widows of deceased American citizens (or more properly surviving spouses) should never be granted tourist / business visas irrelevant of the actual facts and circumstances

   The last item may be intended to reduce drains on the overburdened social security system which could be considered an admirable goal, but it is up to Congress to balance the complex trade offs of such matters.

108. Mrs. Von Kramer suffered financial loss due to these unlawful denials of visa applications to include three application fees ($160 times 3, or $480) but also the flight tickets she was not able to use. Her round trip fare via Expedia on China Southern Airlines was $511.53 which was a bargain for non-refundable tickets, but Expedia was helpful in negotiating with China Southern Airlines due to the extenuating circumstances and was able to get a refund of the entire amount less the stated change fee of $134. See ECF 16-7.

109. Mrs. Von Kramer was also unable to establish a lawful presence in the United States during the years of 2019, 2020, and 2021 according to SSA policies concerning payments to non-citizens residing outside the United States. An exception is granted to surviving spouses who have established a 'lawful presence' in the United States with five years of legal visits to the United States which demonstrate enduring ties to the United States. The requirements for these lawful presence visits are also complex and ambiguous (to the Plaintiffs) with the unusual requirement that for a visit to count for 'lawful presence' it must be longer than one day and shorter than 30 days (and not a full calendar month). A stay for an entire year also counts. See SSA POM RS 02610.025 5-Year Residency Requirement for Alien Dependents/Survivors Outside the United States (U.S.). [5]

Fourth Visa Application Approved

110. Mrs. Von Kramer made a fourth application for a tourist visa with DoS BCA with the interview on 12 Dec 2022 at the Chiang Mai Consulate with appointment AA00BCSFIT.

5 In 2023 Mr. Carr expressed an interest in the 'lawful presence' requirements with some SSA employees and after minimally including SSA in this suit, SSA has substantially improved and clarified the governing rules in SSA POM RS 02610.025 with an increased focus on 'sincere effort to establish enduring ties to the U.S..'

111. Mrs. Van Kramer was able to schedule her interview to be 15 minutes after Mrs. Carr time slot so that the two sisters went in together. It happened that Mrs. Carr was able to introduce Mrs. Von Kramer to Mrs. Von Kramer's interviewer with the statement 'She is my sister' before Mrs. Carr went on to her interview.

112. Mrs. Von Kramer was prepared with a more extensive folder of papers and had practiced presenting the papers with simple and brief explanations (e.g. "Here is an invitation letter from my brother-in-law, here is a picture of me with my sister and brother-in-law, here is a copy of my brother-in-law's passport page which he has signed for me, …")

113. However, before Mrs. Von Kramer could start her presentation, the interviewer asked if she would be traveling with others. She answered that she would be traveling with her sister and brother-in-law and the interviewer replied 'Let me look into the status of the other members of your group'. He then briefly looked at records on his computer before telling Mrs. Von Kramer that her visa application was approved.

114. It is possible that Mrs. Von Kramer's interviewer may have read any notes or concerns about Mrs. Carr's visa application made by the Chiang Mai Consulate General in response to Mr. Carr's previous email.

SSA Conditionally Grants Survivors' Benefits

115. As a result, Mrs. Von Kramer was able to visit the United States briefly in 2022 and 2023, possibly establishing a lawful presence for those years according to SSA standards. See SSA POM RS 02610.025 5-Year Residency Requirement for Alien Dependents/Survivors Outside the United States (U.S.)

116. After a weekend trip to Cancun Mexico in January of 2023, Mrs. Von Kramer continued the process of applying for SSA survivors' benefits which started in May of 2023 and have continued with the requirement that Mrs. Von Kramer can not continue to receive benefits outside the U.S. if she is outside the U.S. for more than six months.

117. Mrs. Von Kramer has met SSA's requirements for payments and intends to continue her regular visits to the U.S. until SSA determines that she has established a lawful presence in the U.S. for five years.

DoS Refuses FOIA Requests

118. On 11 May 2023 via the DoS FOIA request web page Mr. Carr submitted two FOIA requests along with emails to FOIARequest@state.gov with required release forms for Mrs.

Von Kramer and Mrs. Carr seeking all records related to the visa applications cited herein..

119. On 24 July 2023 responding to Case Number: F-2023-08493 Laura Stein, Deputy Director, Office of Domestic Operations, Directorate for Visa Services (DoS) stated that even with authorizations for release of FOIA information from Mrs. Carr and Mrs. Von Kramer, the DoS would still be required by section 222(f) of the Immigration and Nationality Act (8 USC § 1202(f)) to keep confidential any visa records that were not previously received from or sent to the subject of the request. See ECF 12-5.

120. This misconstrues 8 USC § 1202(f) which states:

> (f) Confidential nature of records shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States,

121. However, the Fifth Amendment guarantees to all persons (including foreign nationals) the right to Due Process which certainly includes access to all the evidence presented against them. All such information must be released to the applicant in order to administer the immigration laws and the applicants' due process rights so 222(f) does not apply to applicants seeking access to records applicable to their case.

122. These requirements on administrative procedures even extend to properly classified information covered by the Classified Information Procedures Act (CIPA) which provides uniform procedures for prosecutions involving classified information.

123. 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. On 20 Jun 2023 Mr. Carr notified DoS and other defendants of these crimes and other problems in ECF 14-2.

Count 5

DoS OIG Refuses to Investigate or Report Federal Crimes

124. The Plaintiffs repeat and re-allege paragraphs 1 through 123, as if fully set forth herein.

125. In early October 2018 Mr. Carr submitted a complaint via the DoS OIG hotline (a web page) concerning malfeasance in the processing of visa applications as the DoS BCA did not

provide due process, particularly the right to representation, lack of a written decision based on the evidence and the law, and right to appeal.

126. On 10 October 2018 he was assigned reference number H20190052 and a response which included 'We have reviewed your complaint and determined that the appropriate office to address your concerns is the Bureau of Consular Affairs, Executive Office. Your information has been forwarded to that office.' See ECF 10-4.

127. This was consistent with The DoS OIG hotline web page at https://www.stateoig.gov/hotline which states 'Please note: OIG does not investigate complaints about the denial of U.S. visas.'

128. In April of 2023 Mr. Carr again complained about the lack of due process in processing visa applications and explicitly cited the plausible allegation of falsifying government records (see ECF 34-7) but received the same response (apparently a form email) with H20231749 on 24 April 2023 for Mrs. Carr (see ECF 34-7) and H20231753 on 19 April 2023 for Mrs. Von Kramer where DoS OIG stated that it was forwarding the matter to DoS BCA without taking any action (ECF 39-3).

129. However, in the 2023 complaints Mr. Carr explicitly made a plausible allegation of falsifying government records (a federal crime) from omitting required information from the denial notices as required by Due Process. Specifically there was no reference to any of the actual evidence presented or considered. See ECF 34-7.

130. The right to a written decision well founded on the evidence is particularly important (perhaps the foundation of due process) and 18 USC § 1001 defines a federal crime (falsification of government records) as:

> (a) ... whoever, in any matter within the jurisdiction of the executive... branch of the Government of the United States, knowingly and willfully --
>
> (1) falsifies, conceals, or covers up ... a material fact;

131. This has been held to include the omission of required facts which would include the rationale for a particular visa denial. It would also include having contradictory records, e.g. the video recording which included absurd conclusions such as that Mrs. Carr could not receive a non-immigration visa while she had an outstanding immigration application and a written decision which has no explanation at all.

132. Mr. Carr asked that the matter be forwarded to the DoJ as DoS OIG was required to report

all plausible allegations of federal crimes to the Attorney General by statute, i.e. 5a USC IG ACT 1978 § 4 which states in part that the 'Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law'

133. Mr. Carr explained that if the DoS OIG did not have sufficient resources to investigate every plausible allegation of a federal crime, it was acceptable to forward the complaints to another department for resolution (perhaps even local management) as long as the complaint was also forwarded to the DoJ. See ECF 34-7, ECF 17-3.

134. Further, on 20 June 2023, Mr. Carr reported this malfeasance and, potentially, obstruction of justice within the DoS OIG to the DoS IG, Secretary Blinken (DoS), DoJ (cc) and CIGIE, ECF 14-2, ECF 34-7, ECF 17-3.

Count 6

CIGIE Takes No Action to Insure Lawful IG Compliance

135. The Plaintiffs repeat and re-allege paragraphs 1 through 135, as if fully set forth herein.

136. On 20 June 2023, Mr. Carr complained to the CIGIE about DoS IG not reporting federal crimes to the DoJ as required by statute, ECF 14-2

137. On 9 August 2023 the CIGIE responded that it was closing the case IC23-083 with no action taken (a standard form letter email with no reference other than the date of complaint and case number), ECF 14-3

138. On 9 Oct 2023, Mr. Carr complained to the CIGIE about USPS IG not reporting federal crimes to the DoJ as required by statute, ECF 14-5.

139. On 1 Nov 2023 the CIGIE responded that it was closing the case IC24-010 with no action taken (a standard form letter email with no reference other than the date of complaint and case number), ECF 14-6.

140. Mr. Carr was seeking that the council abide by its charter and insure that all Inspector Generals (IG) and staff under the different IGs are aware of the requirement to report all federal crimes to the Attorney General (AG) or, logically, the Department of Justice (DoJ), whenever they believe a federal crime has been committed within their purview / department(s) which they monitor. See 5a USC IG ACT 1978 § 4 which states in part that the "Inspector General shall report expeditiously to the Attorney General whenever the

Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law." See ECF 17-3.

141. It appears the United States Postal Service (USPS), Department of State (DoS) and Department of Homeland Security (DHS) IG's have each decided that they can choose not to prosecute certain federal crimes, particularly those crimes which have been integrated into the monitored departments normal procedures and which would be greatly disruptive to the monitored department to correct. They do this by refusing to report these crimes to the DoJ.

142. However, just because criminally illegal processes are integrated into the monitored department does not make them immune from prosecution. The decision to prosecute resides solely with the DoJ and failure of the IG to report federal crimes is at least malfeasance and could be construed to be obstruction of justice (another federal crime).

143. Mr. Carr was not asking for prosecution of any crime but only a directive from the CIGIE that all OIG personnel report all plausible allegations of federal crimes to DoJ even if they do not have sufficient resources to investigate the allegation and can not confirm that the crime is likely, much less prosecutable.

144. Further, it appears that the CIGIE has gone from a council which was intended to develop and enforce the highest standards and adherence to the law to instead become a group that supports and encourages criminal behavior in their monitored departments and shares ideas and methods for supporting the criminal behavior. This could be construed as going beyond simple obstruction of justice to violating federal RICO criminal statutes, e.g. collusion between the illegal orders of the USPS BoG, USPS senior management, USPS IG, and CIGIE.

18 USC § 1505 - Obstructions of proceedings (OIG Case)

18 USC § 1510 - Obstruction of criminal investigations

Bribery to prevent communication with investigator

18 USC § 201 - Bribery of public officials and witnesses

Illegal order to OIG case worker to not report federal crimes to DoJ,

Case worker (or IG) gets to keep job if they do not report federal crimes to DoJ

18 USC Ch 96 (RICO) -

145. Of course Mr. Carr is not arguing that the RICO charges would be prosecutable or even recommending / asking the DoJ to prosecute any party, only that DoJ insures that all

agencies of the U.S. government endeavor to obey all lawful statutes to include reporting all plausible allegations of federal crimes to the DoJ. On 24 Oct 2023 Mr. Carr asked that CIGIE, DoJ and other defendants correct these deficiencies in ECF 49-4.

Count 7, USCIS commits crimes and ignores constitution

USCIS Terrorizes and Denies Travel Thru Illegal Denial of Interview Waivers

Initial Applications

146. The Plaintiffs repeat and re-allege paragraphs 1 through 145, as if fully set forth herein.

147. On 04 Aug 2020, USCIS received Mrs. Carr's I-751 application for a permanent green card (remove two year conditions) with receipt MSC2091582908. However, there was no interview with Mrs. Carr receiving an 18 month extension letter and later a 24 month extension letter (thus extending the original expiration of her 'green card' from 13 Nov 2020 to 13 Nov 2022). See ECF 18-6, 12 Dec 2021. This delay in scheduling the I-751 interview is a direct violation of 8 CFR § 216.4(b)(1) which states:

> … The 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.

148. On July 11, 2022, Mrs. Carr submitted her N-400 application for naturalization as USCIS timetables suggested her I-751 interview was imminent and there was a 9 month delay for N-400 interviews. This would allow her to complete her I-751 interview and get her permanent green card about six months before her N-400 interview. This would allow time for her to study for the English and civics exams without concerns about having an expired green card.

Mrs. Carr's emphatic desire for a permanent green card before citizenship

149. It is important to understand that Mrs. Carr was absolutely terrified of USCIS. As an older immigrant from a poor family with extremely limited education, only 4 years of schooling, and no formal exposure to English in her childhood, Mrs. Carr feared arbitrary, capricious and unjust actions by USCIS such as deporting her without cause or notice if she failed her citizenship test or leaving her stranded overseas, not able to return to the U.S..

150. Mr. Carr also came from a relatively poor family, but he was born in the U.S. and was very fortunate. Mr. Carr graduated from West Point and later received a graduate degree from

M.I.T.. Mr. Carr could not believe that USCIS would take unlawful and illegal actions such as leaving Mrs. Carr stranded overseas unable to return to the U.S.. It turns out in retrospect that Mrs. Carr was more correct than Mr. Carr.

Unlawful Restrictions on Travel by USCIS, Stranded in Thailand

151. In September of 2022, Mrs. Carr returned to Thailand on an emergency basis as her mother's health was failing. Sadly Mrs. Carr arrived just after her mother's death but was able to participate in the funeral ceremonies which extended until December of 2022 as Thai traditions has the ashes from the cremation waiting 100 days before being taken back by the family.

152. Her green card and extensions expired on 13 Nov 2023 while Mrs. Carr was in Thailand on an emergency basis (see ECF 24-1 and 18-6). Even though 8 CFR § 216.4 states ... 'Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director [of USCIS] has adjudicated the petition.', USCIS refused to provide Mrs. Carr with any documentation to allow her return to the United States. This is contrary to the above statute.

153. USCIS's suggestion for how Mrs. Carr was to return to the US was via an I-131A (for travelers who have 'lost' their documents to get a one time document allowing their return for a $575 fee), see ECF 18-6. Instead Mrs. Carr got a $160 multiple entry B1 / B2, business / tourist visa and was able to return to the USA in late Dec 2022, ECF 45-1.

Rescheduling Original Interview

154. Further, USCIS scheduled Mrs. Carr's N-400 interview for 14 Dec 2022. Mr. Carr explained to USCIS that Mrs. Carr would be unable to attend as she was out of the country and could not return due to USCIS's refusal to provide her with proof of valid permanent resident status. On 21 Nov 2022 USCIS canceled the 14 Dec 2022 interview and later scheduled her joint interview for I-751 and N-400 for 30 Jan 2023.

A-551 Passport Stamp Instead of Green Card

155. Mrs. Carr was also able to come into a USCIS office on 3 Jan 2023 to get an A-551 stamp in her passport which was valid for one year but does not provide the full ability to travel and work freely of a traditional green card. See ECF 20-2.

Improper Application of English Requirement to Older and Poor
Discriminates Against Buddhist and Islamic Cultures

156. Prior to the interview on 30 January 2032, Mr Carr initiated a complaint with the DHS OIG that the English requirements for naturalization were discriminatory based on religion, income, age and culture.

157. It is well established that the appropriate time to learn the sounds of English is soon after birth. Further the appropriate time to learn to recognize the shapes of English characters is before adolescence.

158. For example, in Thai language there is no 'th' sound and the pair of plosive sounds d and t are not in the Thai language. The Thai language includes only the consonant that is between d and t. As an adult, Mr Carr cannot hear the sound that is between d and t nor can he pronounce it. Similarly, as Mrs. Carr was not exposed to English at an early age, she is unable to hear or pronounce the 'th' sound.

159. Further, the time to learn to recognize the characters of the English alphabet is before adolescence. While it is possible to learn to recognize a foreign alphabet during later years, the recognition will never be as quick, accurate or comfortable as if it was learned before adolescence.

160. The actual effect of the English requirement for citizenship is to discriminate against older individuals from poor families from Buddhist and Islamic countries.

USCIS Denies Green Card Through ‘False’ Claims of Approval
Joint I-751 and N-400 Interview of 30 Jan 2023
Both 10 Year Green Card And Citizenship Approved

161. There was a joint I-751 and N-400 application on 30 Jan 2023. The informal results were that Mrs. Carr failed the English and civics tests (ECF 16-4). The interviewer also canceled the 'final' portion of the I-751 interview which was an undocumented and possibly unlawful review of the 'criminal background' questions from some previous forms (not part of the I-751 application itself) as Mrs. Carr did not understand English and so could not personally answer those questions.

162. The results of the interview were given verbally and informally at the time of the interview. There was also a poorly written and ambiguous form letter with check boxes concerning the N-400 results (similar to ECF 16-4 though the provided copy was hand written).

163. However, the next day (31 Jan 2023) USCIS entered a formal written decision for the I-751 application (ECF 16-4, previously provided to relevant Defendants) which stated in part:

> We have approved your I-751, Petition to Remove Conditions on Residence. Our records also indicate we have approved your Form N-400 Application for Naturalization. Because we also approved your N-400, you will not receive a new Permanent Resident Card (also known as a Green Card). Instead, once you have taken the Oath of Allegiance, you will receive a Certificate of Naturalization, which will be proof of your U.S. citizenship. If you have questions regarding this process, please contact the USCIS contact center at 800-375-5283.

164. Mr. and Mrs. Carr were elated at this change in fortune as it was a complete reversal of the informal verbal results. They relied on the formal written decision as a final findings of facts, decision, and order (to borrow from judicial terminology which is appropriate for a serious due process matter concerning the ability to vote and work and travel freely).

USCIS Denied I-751 Through False Statements

165. Within a couple of weeks Mr. and Mrs. Carr inquired at the specified contact number as to when the Oath of Allegiance would be scheduled and were told that the normal processing time for such matters was 4 or 5 months and that they should call back after that.

166. Mr. and Mrs. Carr would later learn that her I-751 was actually denied. USCIS would later deny her N-400 in a sham hearing and continue to refuse to provide her with a 10 year green card until after this suit was filed. As more than thirty days have passed since this effective denial based on statements which USCIS believed to be false, there were no avenues within USCIS to actually get the permanent green card.

USCIS Unlawful Policies Justified as 'Enforcement'

167. The US government has had a long history of discriminating against foreign nationals with USCIS and its counterpart for visas in the Department of State each contributing through an unlawful disregard for due process.

168. However, during the Trump era with the appointment of Director Francis Cissna, confirmed 5 Oct 2017, USCIS went to new heights of illegally mistreating foreign nationals.

169. Specifically, USCIS stopped waiving of the interview for an I-751 application even though these waivers were mandatory in accordance with 8 CFR § 216.4 (b) which states:

> "The 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."

The unlawful elimination of waivers (previously about 90% had been waived) created an explosion in the unlawful queue for I-751 interviews for USCIS which already had an illegal 1-year backlog of applications. Further, the interviewer was now required to verbally confirm the prior criminal background questions.

170. As most I-751 applicants do not speak English and most USCIS interviewers speak only English, USCIS effectively stopped conducting interviews for I-751 applications. Instead of adding more resources to conduct the expanded interviews with the collected fees, USCIS just illegally stopped conducting interviews which, along with the illegal termination of the mandated waivers, added to the explosion of the illegal queue for I-751 interviews. Executive Discretion gives wide latitude to the executive branch but this does not extend to explicitly prohibited behavior when there are legal options available such as using the collected fees for their specified purpose of granting waivers and conducting interviews. As cited above, USCIS was explicitly required to grant a waiver or schedule the interview and adjudicate the I-751 within 90 days of the acceptance date of the I-751 in 8 CFR § 216.4(b)(1).

171. Instead USCIS simply waited until the applicant later filed an N-400 application for citizenship, though not all applicants later filed N-400 applications. Then the interviews were combined with the verbal review of the criminal background questions conducted in English, assuming the applicant was able to pass the English test. Further, the criminal background questions were already part of the N-400 interview in any case.

172. However, if the applicant was unable to pass the English test, then USCIS was in a bind for the I-751 new criminal background portion of the joint interview. USCIS had to find a creative solution to process this case.

173. It appears that USCIS chose to effectively deny the I-751 application by claiming it was approved along with the N-400 so that no permanent resident card was provided. However, USCIS would then refuse to provide either a permanent resident card or certificate of naturalization by later claiming in future case updates that the N-400 application had not

been approved.

174. This meets the criteria of a federal crime because the effective denial of the I-751 application was based on a claim that USCIS believed was false. For future reference, this will be called 'effective denial based on false premises'.

USCIS Provides Incomplete or False Estimates of Interview Dates

175. When USCIS effectively ceased providing separate I-751 interviews, they did not provide notice to applicants nor did they provide accurate estimates for the dates when interviews would be scheduled. The actual scheduling of I-751 interviews was **never** unless the applicant submitted an N-400 application (citizenship) in which case both interviews were scheduled together almost immediately irrelevant of the normal queue for N-400 interviews.

176. This caused great uncertainty and fear for those applicants who were poorly educated with limited English ability and poor understanding of US government procedures such as Mrs. Carr.

177. The phone number provided by USCIS for questions and concerns was answered by an automated phone system which was distinctly unresponsive and would routinely hang up on applicants if they were not able to correctly formulate a request or question which the automated could respond to.

178. For most of the time when the I-751 application was pending scheduling an interview (and in a queue over two years long and growing), there were no requests or questions which the automated system could respond to. It was certain that the automated system would hang up on the applicant after about five minutes of struggling to find a way to speak to an actual person where they could explain their concern. This phone number was the only point of contact for applicants attempting to get information about the status of their application. See ECF 18-6.

Criminal Background Questions Unlawful

179. Just after the interview of 30 January 2023, Mr Carr also initiated an IG complaint concerning the criminal background questions which were routinely included as part of the USCIS application policy.

180. In particular, there are no exceptions provided about classified information which cannot be released to the interviewer or records sealed by a lawful court order.

181. Further, it is overly broad to not restrict the questions to actual convictions for serious crimes. As stated the questions would include every minor traffic or even parking violation in the state of Texas where such violations are considered crimes. The truth is, no one remembers all the situations where they may have gone over the speed limit or parked a few inches too close or too far from the curb.

182. In fact, the only accurate answer to any of the criminal background questions is 'yes' with an explanation of 'I can neither affirm nor deny the existence of information relating to this question.'. Any other answer could risk violations of the law by providing either classified or sealed information. Further, no one remembers or knows all the circumstances where they may have violated some minor traffic, parking, or zoning regulation.

USCIS Informed of Upcoming Travel Plans

183. In August, Mr. and Mrs. Carr contacted USCIS about scheduling a new A-551 stamp for Mrs. Carr's passport to preserve her limited ability to work and travel based on their travel plans to be out of the country from 10 Oct 2023 to 25 Dec 2023. They were told that they could not get a replacement A-551 stamp as they can only be issued within 30 days of expiration and the applicant must be in the US to get the stamp.

184. In August Mr. Carr also contacted his congressman, Representative Veasey, seeking assistance in getting the Oath of Allegiance scheduled as no action had been taken in the matter.

USCIS Denies Citizenship After Approval

False Notice that N-400 Interview of 30 Jan 2023 Canceled

185. However, on 01 Sep 2023 USCIS sent a notice which states that "the interview of 30 Jan 2023 was canceled due to unforeseen circumstances" (sent under the N-400 receipt, see ECF 10-6). Of course this is a completely false document (and hence a federal crime) as the N-400 interview was completed and this document contradicts several previous documents and verbal statements as well as the final decision in the I-751 case and later activity in the N-400 case.

186. On 5 Sep 2023 Mr. Carr and Mrs. Carr called USCIS at the prescribed number and spoke with Destiny, ID G010590.

They asked that Destiny send an email to the appropriate party to promptly schedule Mrs.

Carr's Oath of Allegiance as stated in the cited I-751 approval notice and, in the alternative, if an N-400 was not actually approved, that Mrs. Carr be sent a new 10 year Permanent Resident Card.

Destiny explained that **it is not uncommon for additional interviews to be required even after the I-751 and N-400 are approved** and that Mrs. Carr could not be sent the approved Permanent Resident card. Implicitly her statement indicates that such formal approvals were actually effective denials based on false premises.

At that time Mr. Carr asked that Destiny take notes for details to include in the email she would send on their behalf.

Mr. Carr cited 18 USC § 1001 which is one of many criminal codes for falsification of government records and states in part:

(a) ... whoever, in any matter within the jurisdiction of the executive... branch of the Government of the United States, knowingly and willfully --

(1) falsifies, conceals, or covers up ... a material fact; ... or

(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

(3) prohibits taking any action based on a false document with the implicit exceptions that actions may be taken to: correct the false document or, if the individual is not authorized to correct the false document, to report the false document to their supervisor and / or the relevant OIG explaining that there is an existing false document and a possible federal crime when the document was created.

N-400 Interview Scheduled for 11 Oct 2023, Insufficient Notice

187. On 06 Sep 2023 USCIS scheduled an interview for 11 Oct 2023 as shown in ECF 10-7, but the actual notice was not received until 15 Sep 2023 when it was too late to respond until the next week as Mrs. Carr worked Tuesday to Sunday and was not able to respond while she was working.

188. The arrival date of this notice is a critical issue as there must have been timely notice of the interview in order to justify the denial of the N-400 application for failure to appear. In ECF 16-1 is an email from USPS which shows the mail which arrived at their address on 15 Sep 2023. The notice of 06 Sep 2023 seems to have been mailed on 12 Sep 2023 according to the postmark shown in the USPS email. As 30 days notice is required for such interviews, the notice on 15 Sep 2023 was not timely for an 11 Oct 2023 interview and the denial of the N-400 application for failure to appear must be overturned due to lack of notice.

189. In the contested decision (see ECF 10-10, N-400 denied for failure to appear) there is no claim of any notice at all and it appears that USCIS routinely delays mailing documents a few days after the date of the 'notice'. In cases of mailed documents they adjust the 30 days to 33 days to allow for time in the mail, but there is no adjustment for delay in printing and actually mailing the notice. Given that this document took 9 days to arrive, a more realistic adjustment for mailing would be 45 days if mailed without the normal proof of mailing.

Complaint of Falsified Records, 01 Sep 2023 Cancellation

190. On 10 Sep 2023, Mr. Carr contacted the USCIS director, DoJ and DHS IG reporting the contradictory records (was the interview held on 30 Jan 2023 which approved the I-751 and N-400 or was it canceled with no results), ECF 49-3. With contradictory records, one or more of them must be false, the foundation of the federal crime of falsification of government records.

191. Mr. Carr also asked for acknowledgment of the report within 7 days. No such acknowledgment has been received to date.

192. On 06 Oct 2023, Mr. Carr asked that DoJ assist in correcting these serious defects in USCIS and DHS IG, ECF 17-4. The reports of the crime and request for assistance have previously been provided to relevant Defendants. (Note: Mr. Carr was unaware of the scheduling of the interview for 11 Oct 2021 on 06 Sep 2023 when he first reported the crime).

193. On 12 Sep 2023 Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Umika, ID G20028112.

They complained of the 1 Sep 2023 I-797 Notice of the canceling of the 30 Jan 2023 N-400 interview due to unforeseen circumstances (described previously). They explained that the interview was held on that date and the 01 Sep 2023 document is a false record (and federal crime) which also contradicts the I-751 final decision of 31 Jan 2023 which

stated that the N-400 application was approved at that interview. They advised Umika that she must either correct the false record or, if she did not have the authority to correct the record, she must contact either her supervisor or the IG or both to report the crime. Failure to do so on her part would itself be a crime under 18 USC § 1001, part 3, which Mr. Carr read to her after asking her to take notes.

Mr. and Mrs. Carr also asked that Mrs. Carr immediately be sent the new 48 month extension letter which was publicly authorized by USCIS on 23 Jan 2023, one week before the interview (so USCIS was required to have mailed her a copy of the extension letter before the interview). The USCIS announcement was also about two months after they had complained to USCIS and the DHS OIG that USCIS had unlawfully left Mrs. Carr stranded in Thailand due to the absence of such a 48 month extension letter.

They also asked that USCIS send Mrs. Carr a permanent green card as soon as possible as there was now a record in the N-400 case indicating that her N-400 application had not been approved and so there was no basis for withholding the approved green card.

They also asked that the local representative contact the USCIS director in order to get copies of the emails which properly explained their complaints to date as that was the only method of sending written documents to USCIS for their consideration.

They also asked that the local representative call them back on Monday 18 Sep 2023 at 9AM as Mrs. Carr would be working during normal business hours on Tuesday through Sunday and unable to take calls. No such callback was made. (Note: At this time, Mr. Carr was unaware of the scheduling of the interview for 11 Oct 2021 on 06 Sep 2023 and did not receive notice until 15 Sep 2023.)

First Request to Reschedule Interview

194. On 19 Sep 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with David, ID G009845. (Note: this request was timely as Mr. Carr only learned of the scheduled interview date on 15 Sep 2023)

They requested that the interview scheduled for 11 Oct 2023 be rescheduled as they had

prior plans to be out of the country from 10 Oct 2023 to 25 Dec 2023.

Mrs. Carr asked if the interview could be scheduled for only a day or two earlier but they were told that it could not be scheduled earlier.

Their request to reschedule the interview was assigned ID T1B2622391513DAL.

Upon a lengthy description of the purpose of the ten week trip, David incorrectly summarized the reason for the trip as 'leisure' which raised concerns for Mr. Carr that their trip was not being given appropriate gravity. They asked that David request that USCIS reschedule for after the completion of their trip on 25 Dec 2023. It turned out that David was restricted to 80 characters in his request and so described the reason for rescheduling as Mrs. Carr will be out of the country from 10 Oct 2023 to 25 Dec 2023 to increase the likelihood that the individual who responded would be aware of the duration of their trip.

They also asked that Mrs. Carr be provided with a 12 month extension letter as her A-551 stamp would expire on 03 Jan 2023 and if there were health or other problems which delayed their return, she would no longer have proof that she was authorized to work and travel freely. David assigned sn 30214416 to a request that a local USCIS representative call Mrs. Carr from 2028382104 to discuss the extension letter.

Unsuccessful Call Back on 21 Sep 2023

195. The call back by the local USCIS representative was made on 21 Sep 2023 in the morning. Mrs. Carr was not home (as she was working) but it was rescheduled for later that evening at 7:30PM when Mrs. Carr was likely to be home. Mr. Carr called Mrs. Carr and she came home a little early and was home by 7PM but the USCIS representative did not return the call as agreed upon. No further return calls were made for this request.

Request that Mr. Carr be Mrs. Carr's Authorized Representative

196. Due to the confusion of not being able to get any response from USCIS, on 25 Sep 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Martha, ID G029811.

They asked about how to submit a G-28 appointment of Mr. Carr as the representative in this matter. They were told to mail the application to:

ATTN: N-400, G28 submission
850 NW Chipman Rd, Suite 5000
Lees Summit, MO 64063

An online G-28 request had been submitted on 24 Sep 2023 and the hard copy request was mailed on 26 Sep 2023. Martha also explained how to submit a document directly to USCIS on their web site and an electronic copy of the G-28 was submitted on 28 Sep 2023. See ECF 30-5.

Martha also explained that USCIS responds to G-28 requests within 30 days. No response has been received to date on this G-28 request.

Denial of Reschedule Request, Not Sent to Authorized Email

197. While speaking with Martha on 25 Sep 2023, Mr. and Mrs. Carr also learned that on 19 Sep 2023, USCIS had denied their request to reschedule the interview and sent an email to airpk1961@gmail.com, an email address that is rarely monitored. See ECF 10-8.

198. This was not proper. Before they were married Mrs. Carr had used that email and Mr. Carr had used carrbp@gmail.com. However, since their marriage they have shared their emails with both parties having full access to both email addresses. As they have a legal union, they are not required to maintain separate personal email addresses and now reference all emails to carrbp@gmail.com which is regularly monitored. In rare cases when businesses insist on separate email addresses for separate persons, they provide Mrs. Carr's old email address, but that address is not regularly monitored. At no time have they agreed that USCIS should direct email notices to Mrs. Carr's old email address and none of the submissions to USCIS have authorized the use of that email address. The actual email from USCIS was previously provided to relevant Defendants as USCISnotReschedule20230919.pdf. It stated in part: "Type of service requested: -- Appointment Reschedule ... USCIS has reviewed your request for a rescheduled appointment, and we regret to inform you that your request has been denied based on the

information provided. Failure to comply with your appointment notice or to appear for your scheduled interview may result in adjudication of your application based on the available information."

New request to Reschedule Interview

199. Due to the delay in their receipt of the denial of their request to reschedule the interview (sent on 19 Sep 2023, found on 25 Sep 2023), Mr. Carr uploaded a timely explanation of the reasons for rescheduling the interview on 27 Sep 2023 (see ECF 30-7) along with copies of the flight tickets, date restricted European visas, hotel reservations, required medical insurance coverage and European bus tour tickets, all of which are non-refundable. The document explains that the purpose of the trip is religious obligations, family obligations, business promotion, business training and education, and leisure. Planning for the trip was started in Feb 2023 and the leisure portion of the trip was to celebrate the approval of Mrs. Carr's N-400 application for naturalization as USCIS stated in the USCIS approval of I-751 and N-400 in ECF 10-5 on 31 Jan 2023.

200. On 2 Oct 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Crystal, ID G027432.

Mr. and Mrs. Carr asked that Crystal submit a new request to reschedule the interview based on the documents submitted on 27 Sep 2023. Crystal explained that they could not make a new request to reschedule the interview until 15 days after the previous denial on 19 Sep 2023, i.e. 04 Oct 2023 (after the start of Mrs. Carr work week).

They explained that they had provided additional justification for rescheduling the interview which has been uploaded for USCIS to consider.

They asked that USCIS review the uploaded G-28, separately filed online and sent via mail and submitted electronically 28 Sep 2023 (ECF 30-5). Crystal explained that USCIS has 30 days to act on G-28 requests.

201. On 10 Oct 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Antoinette, ID G0023588.

Mr. and Mrs. Carr asked that Antoinette submit a new request to reschedule the interview

explaining that it was more than 15 days after the previous denial of the request to reschedule and explained that they had submitted additional documentation.

Antoinette contradicted the previous representative, Crystal, and stated that new requests to reschedule can only be made more than 30 days after a previous denial. As interviews are scheduled with the nominal 30 days notice (33 days if notice is by mailing), this would ensure that USCIS never reconsiders any denial of rescheduling no matter what the extenuating circumstances. As this claim also contradicts the previous representative it is likely that Antoinette's and possibly Crystal's claims are false and, hence, federal crimes.

Access to Case Records Unlawfully Denied

202. On 01 Sep 2023, Mr. Carr submitted a request for the entire record in the I-751 and N-400 cases via an online submission of a G-639 FOIA request. Mr. Carr asked for every email, message, or other records which reference the two receipts in this matter (MSC2091582908 and IOE9752855294) including both audio and video recordings. The request was assigned request ID NRC2023277190 and the response was made on 05 Oct 2023.

203. However, the response was only 32 pages and was only the original I-751 and N-400 applications. On 31 Oct 2023 a new FOIA request was submitted via email a copy of which is ECF 10-9. Note that this is a violation of the applicant's due process right to have access to the evidence against the applicant. Mr. Carr had requested access to every record which the tribunal relied on to deny the N-400 application, but was denied access to all such records. It is also possible that the claim that there were only two responsive documents was a federal crime of falsifying government records as it is clear that more records were requested and there was no justification for withholding the other documents.

USCIS Denies N-400 Citizenship Application for Failure to Appear

204. The Decision from USCIS dated 13 October 2023 previously provided to relevant Defendants as ECF 10-8 states:

On July 11, 2022, you filed a Form N-400, Application for Naturalization, with U.S. Citizenship and Immigration Services (USCIS) under section 319 of the Immigration and Nationality Act (INA). After a thorough review of the information provided in your application for naturalization, the documents supporting your application, and your testimony during your naturalization interview, USCIS has determined that you are not

eligible for naturalization. Accordingly, USCIS must deny your application for naturalization. ...

On November 13, 2018, you obtained conditional permanent resident status through your spouse and your conditions were removed on January 30, 2023. USCIS received your Form N-400 on July 11, 2022, and on January 30, 2023, you appeared for an interview to determine your eligibility for naturalization.

At the beginning of your naturalization interview, an Immigration Services Officer placed you under oath and then administered the naturalization test. At that time you were unable to write a sentence in ordinary usage of the English language, and answer 6 of 10 U.S. Government and history (civics) questions correctly. Since you did not achieve a passing score on the English or civics portions of the naturalization test, on October 11, 2023, you were scheduled for a second interview to retake these portions of the naturalization test. On October 11, 2023, you did not appear as requested. Further, you have not provided USCIS with a good reason for your absence. Your failure to appear at the second interview means you have not passed the English or civics testing requirements for naturalization. As a result, you are ineligible for naturalization since you have not demonstrated your ability to pass the English or civics requirements for naturalization. Therefore, USCIS must deny your application for naturalization. See INA 312 and Title 8, Code of Federal Regulations (8 CFR) 312.5(a) and (b).[6]

If you believe that you can overcome the grounds for this denial, you may submit a request for a hearing on Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, within 30 calendar days of service of this decision (33 days if this decision was mailed). See attached 8 CFR 336.2 (a) and 103.8(b). Without a properly filed Form N-336, this decision will become final. See INA 336.[7]

USCIS Refuses to Provide New Green Card

205. On 19 Oct 2023, Mr. and Mrs. Carr called USCIS at the proscribed number and requested

6 INA 312 is 8 USC § 1423, refers to 8 CFR § 312
7 INA 336 is 8 USC § 1447

that Mrs. Carr be sent a new Green Card as her I-751 was approved on 31 Jan 2023 but the Green Card was withheld as her N-400 was also approved and her Certificate of Naturalization was imminent. However, the purported Decision of 14 Oct 2023, ECF 10-8, clearly indicates that USCIS does not intend to provide Mrs. Carr with the promised Certificate of Naturalization in the foreseeable future.

206. This request resulted in a referral of T1B2922301353MSC which concerned 'Non Delivery of Permanent Resident Card'. It was answered on 27 Oct 2023 with the document previously provided to relevant Defendants as ECF 10-11 which listed 'Type of service requested: -- Non-Delivery of Permanent Resident Card' but answered with: "You ... contacted U.S. Citizenship and Immigration Services (USCIS) because you have not received your denial, termination or revocation notice. **We have enclosed a copy of the notice for your reference**. Please note that we are not able to extend the period for you to file an appeal from this decision. Therefore, follow the instructions on your notice carefully and submit accordingly."

207. **There was no notice attached** and the text does not make sense with respect to the request for a green card from an approved application. It appears to be the standard form letter message supporting a denial of a request. However, the actual notice (ECF 10-5) was in the form of an approval which was actually an 'effective denial based on false premises'. As such, it did not include the normal (and required) verbiage of notice of appeal requirements.

208. The form letter does mention the requirement to contest an unfavorable decision within 30 days and, of course, pay the $700 fee first. However, as this decision referred to was an approval which was illegally contorted by false pretenses to be an effective denial, the text of the response is not responsive to actual request.

209. It appears that when USCIS attempts to effectively deny an application by claiming approval based on false pretenses, there is no way to appeal or correct the error other than the federal district courts.

In late May 2024, Mrs. Carr received her requested 10 year 'green card' (see ECF 49-3) from USCIS without any explanation. This was several months after the denied request of 19 Oct 2023 to USCIS as described above as well as the filing of this suit, the first USATXN

Motion to Dismiss (ECF 15, 08 Mar 2024) and the second USATXN Motion to Dismiss (ECF 33, 09 May 2024). It is possible that USCIS had concluded that some of the relief sought in Plaintiff's Motion for Partial Summary Judgment (ECF 18, 28 Mar 2024) was well justified and USCIS provided the requested relief rather than waiting for this court to order it.

As Mrs. Carr had her 10 year green card her fears of being deported without cause or notice if she failed her citizenship test (para 149) were reduced and it appeared that further relief was not forthcoming, the Carr's submitted a new N-400 application on 10 Sep 2024 (receipt is ECF 49-4) with an application fee of $710 and an estimated first interview date in May of 2025.

Legal Arguments

Lack of Jurisdiction

210. Of primary importance is the lack of jurisdiction for USCIS to revise or ignore a prior final decision.

211. It is well understood that in the interest of justice to all parties in an action, there must be some final closure of arguments and litigation. Final decisions are intended to provide that relief to all parties with the caveat that each party has 30 days to notify all other parties of any pending disagreements. This is normally done through a notice of appeal requirement, generally within 30 days after proof of service of the decision by the prevailing party.

212. If USCIS had any complaints or concerns with the findings of facts in the I-751 decision of 31 Jan 2023, they should have raised the concerns within 30 days of publication of the decision.

213. As there is no avenue for USCIS to submit a motion for reconsideration of a matter which was decided by USCIS, the only forum where USCIS can seek redress is a new action in the federal district courts.

214. To provide otherwise is to deny all applicants to USCIS from the justice of having any final decision.

Lack of Notice to Support Failure to Appear

215. Another fundamental principle of due process is that all participants must be given adequate

and sufficient notice of any action. It is clearly a travesty of justice to deny an application because of failure to appear when there is no evidence of notice.

216. In particular, in this case there is compelling evidence showing that Mr. Carr did not receive notice of the upcoming interview until less than 30 days before the interview, i.e. 15 Sep 2023 for a hearing on 11 Oct 2023. As such, the improper denial must be overturned.

Lack of an Independent and Impartial Tribunal

217. One of the fundamental premises of due process is to have matters decided by an independent and impartial tribunal. It is important to recognize that Mr. Carr had filed numerous complaints with the DHS OIG concerning malfeasance and other unlawful activities by USCIS. His final complaints were for the federal crimes of falsifying government records by several employees who reported directly or indirectly to the director who made the final decision.

218. It is absurd to even consider that the Field Office Director, Ms. Montgomery, could be unbiased in resolving a matter in which several of her employees were accused of federal crimes which would surely reflect poorly on her own performance and future career opportunities.

Additional Federal Crimes by Ms Montgomery

219. One of the foundations of any government of law is to have accurate written records of all proceedings. That is almost certainly why Congress has decided to make it a serious federal crime to falsify any government record.

220. When Director Montgomery cited the approval of the I-751 application without mentioning the finding of an approval of the N-400 application, she falsified the record by omitting required facts..

221. When Director Montgomery stated 'Further, you have not provided USCIS with a good reason for your absence.' without mentioning the original request to reschedule she committed the crime of falsifying the record by failing to include required facts. Further, Director Montgomery does not mention the extensive documentation of substantial financial and personal impact required to change long standing plans in order to attend the interview. This evidence was provided to USCIS, and she falsified the record by omitting critical facts.

222. The entirety of her decision is based on timely notice and lack of response but she fails to discuss any of the factors which are critical elements of her decision.

Right of Appeal Prohibitive / Denied

223. The contested decision continues with the following text in ECF 10-10:

> If you believe that you can overcome the grounds for this denial, you may submit a request for a hearing on Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, within 30 calendar days of service of this decision (33 days if this decision was mailed). See attached 8 CFR 336.2 (a) and 103.8(b). Without a properly filed Form N-336, this decision will become final. See INA 336.[8]

224. An initial reading of this paragraph suggests that there are administrative procedures for appealing such bad decisions. However, while USCIS borrows heavily from judicial terminology in describing their processes and procedures creating the semblance of 'due process', the reality is USCIS does not provide any of the elements of due process.

225. In particular, the required fee to file N-336, request for a hearing, was a hefty $700 (now $780) while the fee for filing a new N-400 is only $625. Similarly, the filing fee for a motion to reconsider is also $700 as is the fee for filing a 'Notice of Appeal'. For a budget minded applicant, the filing fees with federal district courts are a much more affordable $350 (admittedly heavily subsidized) so that applicants with limited assets may only be able to afford to file with the district courts rather than pursue the absurdly expensive administrative alternatives.

226. The likely reason that federal district courts are heavily subsidized is that justice should be provided to all persons and should not be restricted to the wealthy who can afford substantial fees.

Automated Phone System Prevents Applicants from Being Heard

227. It is a violation of due process for USCIS to restrict applicants to an automated phone system for all questions, concerns, requests, and evidence.

228. First of all, USCIS can not require all applicants to have phone access. They must provide a physical address where applicants and their representative or interpreter can ask questions and present concerns, requests, issues, and evidence. Appointments can not be required though substantial waits may be required without an appointment.

229. This in person access is required as each applicant must be permitted to be heard whether they have access to a phone or are technically savvy.

8 INA 336 is 8 USC § 1447

230. Further, it is a violation of due process when the automated phone system hangs up on applicants who are not able to correctly state their needs. The system must instead pass the request on to a human representative to hear the issues of the applicant though this option may be deferred during non-business hours and holidays.

231. While providing this human access can be a significant expense, it is required for the due process opportunity to be heard.

232. If USCIS chooses it can also provide online secure messaging to applicants and their representatives as a cost effective way of providing a reliable and less expensive method raising concerns and getting responses.

Difficult Appointment of Spouse as Representative

233. It is a violation of the due process for USCIS to restrict the ability of an I-751 applicant's spouse to represent the applicant.

234. Due process requires the right to representation though not necessarily by an attorney. As the spouse is an American citizen, they almost certainly have better English and U.S. government skills. As such they are ideal representatives for their immigrant spouses.

235. In fact it is completely legal and proper for a spouse to represent the other party as needed in a real legal union (a.k.a. marriage). In truth, one of the signs of a fake marriage would be the absence of the citizen spouse to represent the immigrant spouse.

Inclusive Assumptions for Freedom of Information Act Requests

236. As due process requires that the applicant have full access to all of the evidence presented against him or her, the FOIA default must be to provide all records including audio and video recordings which the tribunal has access to.

Plaintiffs Were Damaged by USCIS's Unlawful Decisions and Actions

237. The refusal of USCIS to provide Mrs. Carr with her Certificate of Naturalization harmed Mrs. Carr by limiting her ability to vote and enjoy other privileges of citizenship. Also, Mrs. Carr has close family members (which includes two sons. a brother, and two sisters including Mrs. Von Kramer) who have been denied their right to apply for immigration and be placed in the queue for Permanent Residence (Green Card) as well as, potentially, citizenship.

Count 8

DHS OIG Takes No Action To Address Criminal Behavior

238. The Plaintiffs repeat and re-allege paragraphs 1 through 237, as if fully set forth herein.

239. On 4 Dec 2022, Mr. Carr complained via DHS OIG Hotline that Mrs. Carr had been stranded in Thailand through the unlawful, knowing failure of USCIS to abide by the statutory mandates of 8 CFR § 216.4 ... "Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition."

240. Mr. Carr was assigned case number HLCN1670132157186 but has not received any further response from DHS OIG.

241. On 5 Dec 2022 expanded on his complaint against USCIS and received case number HLCN1670226793068 but has not received any further response.

242. It is possible that the announcement on 23 Jan 2023 of a new 48 month extension letter (ECF 48-2) was based on Mr. Carr's complaint on 4 Dec 2022 that Mrs. Carr was stranded in Thailand due to the expiration of her 24 month extension letter.

243. However, Mrs. Carr's freedom to work and travel freely was never restored as she never received the 48 month extension letter.

244. On 10 Sep 2023, Mr. Carr notified the DHS OIG directly through the IG of the federal crimes committed by USCIS (ECF 49-5). He also opened a complaint via DHS OIG Hotline and was assigned case number HLCN1694292030038.

245. On 13 Nov 2023, Mr. Carr notified the DHS OIG through an online hotline complaintof the additional federal crimes committed by USCIS as previously reported to the DHS IG in ECF 30-8 as well as the 'whistleblower' retaliation taken by USCIS against Mrs. Carr for Mr. Carr's widespread reports of federal crimes. The complaint via DHS OIG Hotline was assigned case number HLCN1699850033209.

246. It is the DHS OIG's responsibility to not only insure that such serious malfeasance and deprivation of a person's constitutionally guaranteed rights do not happen but also that the harm from failures is redressed to the degree possible by the monitored agency (USCIS in this case).

Count 9

DoJ Takes No Action To Address Criminal Behavior

247. The Plaintiffs repeat and re-allege paragraphs 1 through 246, as if fully set forth herein.

248. On 3 Mar 2023 Mr. Carr notified the DoJ Attorney General via mail of the allegations raised against the USPS, USPS OIG, and USPS BoG (ECF 14-4). The DoJ had previously been copied on the allegations as they were raised to the relevant agencies.

249. The DoJ opened reference NM301959635 for the matter with email contact of criminal.division@usdoj.gov, referring the matter to the Postal Inspection Service.

250. On 20 June 2023 Mr Carr notified the DoJ and other defendants via mail of federal crimes and malfeasance in the DoS and related agencies and asking assistance in correcting the unlawful actions (see ECF 14-2). Mr. Carr did not request the prosecution of any party. The DoJ had previously been copied on the various complaints with the DoS agencies.

251. On 10 Sep 2023 Mr. Carr asked for the assistance of the DoJ with respect to the USCIS and related agencies, ECF 49-3. The DoJ had previously been copied on the various complaints with the USCIS agencies. On 7 Nov 2023 an expanded notice of intent to contest the unwarranted denial of the N-400 application was sent to DoJ and the USCIS Director which is ECF 30-8. The request for assistance to the USCIS Director could be construed as a 8 USC § 1447(a) request for a hearing before an immigration officer due to the exorbitant cost of N-336 applications (para 223-253 and relief 38).

252. On 9 Oct 2023, Mr. Carr again asked the DoJ and other defendants for assistance with the USPS problems clarifying that he was not seeking prosecution of any party but instead seeking to end the federal crimes and other unlawful practices, ECF 14-5.

253. On 25 Oct 2023, Mr. Carr again asked the DoJ for assistance in correcting the unlawful practices by CIGIE with respect to failing to maintain proper standards for IG's and OIG employees. He did not request the prosecution of any party, only assistance in preventing unlawful conduct. ECF 49-4.

Relief Sought

PRAYER FOR RELIEF

WHEREFORE, The Plaintiffs ask this Court to enter Orders:

USPS, OIG and DoJ Corrections

1. Directing USPS to provide a credit for future services for $26.35 to Mr. and Mrs. Carr; In the alternative, USPS can provide a credit to Mr. Carr's credit card (the same card which was charged initially) or a check in that amount to Mr. Carr in the event that USPS finds it too cumbersome to add support for credits for future services to its online web services.
2. Directing USPS to update its dispute / credit process so that postal customers can get guaranteed refunds for late deliveries with a single visit / web form with the presumption that the delivery was late as attested by the customer (and notice that falsifying a government record is a federal crime).
3. Directing USPS OIG to do a preliminary investigation whenever USPS delivery records conflict with the customer's attestation. USPS OIG must refer the matter to DoJ in all cases where there is clear evidence that either the customer or the delivery driver falsified a government record. Due to the automated nature of many USPS records, this determination could be automated to a substantial degree so that USPS OIG staff only need to get involved with cases where there are clear indications of falsification of government records.
4. Directing USPS to promptly correct all incorrect delivery records, certainly before they are accumulated and reported to Congress and the U.S. public or used for computing management bonuses.
5. Directing USPS OIG, DoS OIG, and DHS OIG to expeditiously investigate all plausible allegations of federal crimes. In the event that an OIG does not have sufficient resources to expeditiously investigate all plausible allegations of a federal crime sufficiently to determine if a federal crime is likely, it can refer the matter to local management or other parties for resolution, but it must report all such plausible allegations of federal crimes to DoJ which it does not investigate itself. If an OIG finds that any allegation of a federal crime is likely it must expeditiously report the matter to DoJ whether or not the crime is deemed to be worthy of prosecution. The determination of prosecution is reserved solely to DoJ.
6. Directing DoJ to investigate USPS BoG, USPS management, USPS IG, and USPS OIG management to determine if there were illegal orders preventing USPS OIG staff from reporting federal crimes to the DoJ. If there is evidence of such illegal orders, all such orders must be properly rescinded. Any penalties or prosecution is solely at the discretion of DoJ.
7. Directing DoJ to investigate USPS BoG and USPS management to determine if there were

illegal orders encouraging falsifying delivery records (a.k.a. improper 'Stop the Clock' scans). If there is evidence of such illegal orders, all such orders must be properly rescinded. Any penalties or prosecution is solely at the discretion of DoJ.

Department of State Corrections

8. Directing DoS to provide a credit for future services of $80.00 to Mr. and Mrs. Carr and $624 to Mrs. Von Kramer. These credits can be used by the parties themselves, their family, or their friends. In the alternative, the DoS can provide checks in those amounts to the Plaintiffs in the event that DoS finds it too cumbersome to support these credits in their otherwise automated payment system.
9. Directing DoS to ensure that all visa denials include clear and specific references to the evidence considered and rationale for denial. All visa denials must be reviewed by supervisors and corrected if there is not clear and specific references to the evidence considered and the rationale for denial. The applicant must be promptly informed of the rationale for the rejection in writing in any case. Any visa denials which are not corrected in this fashion should be referred to the DoS OIG and reported to the DoJ for any such omissions for decisions on prosecution for falsification of government records through omission of required facts.
10. Directing DoJ to work with DoS to ensure that all the elements of Due Process are properly implemented in the visa application review process with particular attention to the right to representation and the right to access all the evidence presented against the applicant.
11. The European Schengen visas could be considered as a starting point as they are able to provide fair and consistent visitor visas at an affordable rate, often relying on global firms who handle much of the burden of collecting and reviewing the required paperwork.
12. Directing DoS OIG to investigate whether there were unpublished unlawful policies or guidance provided to interviewers such as denying non immigrant visas to older widows of deceased American citizens or applicants with concurrent immigration applications. All such policies must be rescinded and any decisions on prosecution is reserved to the DoJ.
13. Directing DoS to evaluate all non-immigrant visa applications since 1 Jan 2018 to the present on a per country basis to determine the denial rate for applications where according the applicant was over 57 years old and marital status listed in the application would be indicative of eligibility for SSA survivors' benefits, specifically deceased spouse who was

an American citizen or permanent resident with more than ten years residence and not remarried.

14. DoS is further directed that if the denial rate for the identified applicants is more than one standard deviation higher than all applicants for the specific country, then all identified applicants must be contacted and offered a credit for the prior denied visa application(s), adjusted for any increases in the application fees. Further, the prior applicant must also be provided with the SSA's preliminary determination of current eligibility for survivors' benefits based on the deceased spouse's work history and other dates provided by DoS from the visa application.

SSA Order

15. Directing SSA to reconsider the finding that Mrs. Von Kramer's does not have five years of lawful presence in the United States. As Mrs. Von Kramer was unlawfully prevented from visiting the United States in 2019, 2020 and 2021 with the stated goal of, among other things, establishing a lawful presence, the SSA is directed to credit her with having met the requirements of lawful presence for those three years. If her actions in 2022 and 2023 or later years meet the requirements for lawful presence, then Mrs. Von Kramer must be held to have established a lawful presence in the United States and granted the benefits thereof.
16. Any DoS identified applicants whose previous non-immigrant visas may have been improperly denied as determined above and who later are granted non-immigrant visas should also be given letters from the DoS stating that the applicant may have been denied prior visa applications unlawfully and asking that SSA credit the applicant with 'lawful presence' for the years when they may have been unlawfully denied the ability to visit the U.S. with the letter identifying the date of the first improper denial and the date of the first approved visa.

CIGIE Corrections

17. CIGIE must review its standards and policies to ensure that all IG's and OIG employees are aware of the requirements to expeditiously investigate and report federal crimes. In the event that a particular OIG does not have sufficient resources to expeditiously investigate all plausible allegations of a federal crime sufficiently to determine if a federal crime is likely, it can refer the matter to local management or other parties for resolution, but it must report all such plausible allegations of federal crimes to DoJ which it does not investigate itself. If

a particular OIG finds that any allegation of a federal crime is likely it must expeditiously report the matter to DoJ whether or not the crime is deemed to be worthy of prosecution. The determination of prosecution is reserved solely to DoJ.

18. Directing the DOJ to investigate the failure of CIGIE to itself promptly investigate and report federal crimes. All such practices and policies which led to past failures must be rescinded. The decision on penalties and prosecution are reserved solely to the DoJ.

USCIS Corrections

Credit for Visa Fees when Stranded Overseas

19. Directing USCIS to provide a credit for future services with USCIS to Mr. and Mrs. Carr for $80 for use on their behalf as well as their family members and friends. This credit is half of the business / tourist visa application fee which was required in order for Mrs. Carr to return to the U.S. when she was stranded in Thailand in 2022. The fee was $160, but DoS has been requested to provide the other half for their unlawful denial of such a visa to Mrs. Carr in 2017. In the alternative USCIS may choose to provide checks to all injured parties as an alternative to credits for future services in this and other reparations, but this is solely at the option of USCIS. It is possible that the total reparations requested may justify handling them as credits for future services.

Right to work and travel freely as well as right to vote

20. The primary relief sought is for Mrs. Carr to receive her Certificate of Naturalization as soon as possible. However, specific relief sought include orders directing:

A. Mrs Carr should receive her 48 month extension letter or a 1 year extension letter as soon as possible, specifically within one week of the date of issuance of the court's order.

B. Mrs Carr should receive her 10-year Permanent Resident Card as soon as possible. Specifically within one month of the court's order. *This relief and the 48 month extension letter above are no longer required as Mrs. Carr was unexpectedly provided with her 10 year Permanent Resident Card by USCIS in late May 2024 after this suit was filed negating the need for the court to order this relief or the relief in A.*

C. Mrs. Carr should have her Oath of Allegiance ceremony scheduled and completed within 1 month and her Certificate of Naturalization issued within 2 months of the court's order.

In the event that this court determines that it does not have jurisdiction to fully order the

implementation of the Final Decision of 31 Jan 2023 approving both of Mrs. Carr's I-751 and N-400 applications, the court is asked review the Denial of Mrs. Carr's N-400 application on 14 Oct 2024 'de novo' per 8 USC § 1421(c).

Credit for Delay in Granting Citizenship

21. Directing USCIS to credit Mrs. Carr with additional credits for the deprivation of the rights of citizenship to include the rights for close family members to seek immigration authorizations as well as the right to vote and such. As it is not possible retroactively grant Mrs. Carr the right to vote and others rights of being a U.S. citizen (such as the right to visit Europe without a European visa) the family members should be credited with twice the delay in her citizenship, i.e. their position in the queue for immigration visas should be adjusted as if their application was received earlier. The doubling of their credit in queue position corrects not only the delay in their application but also they get their citizenship rights (e.g. voting) earlier in compensation for the deprivation of Mrs. Carr's citizenship rights (e.g. voting). For Mrs. Carr the computation of the credit for family members immigration should be based on the delay in citizenship which should be from 13 Nov 2021 to the date when her Certificate of Citizenship is actually given to her. The 2021 is used because that is the earliest date that Mrs. Carr was eligible to become a citizen and is in recognition of the unwarranted challenges and barriers USCIS placed on her citizenship. Indeed Mrs. Carr would have become a citizen on that date had USCIS permitted it.

Credit for Extraneous I-751 Fees

22. Directing that Mrs. Carr be given a credit for future services with USCIS for the extraneous I-751 application fees of $680 which were duplicated with N-400 services (interview and biometrics). Mrs. Carr never received any I-751 specific services and should not have been charged for the services.

In addition, Mrs. Carr should be given an additional credit for $710 for the additional N-400 application (ECF 49-4) as described in para 209.

These credits can be used for future services with USCIS for herself, her family, Mr. Carr's family, or Mr. or Mrs. Carr's friends.

Review of Other I-751 and N-400 Records

23. Directing that USCIS databases should be queried for all I-751 records processed since 1 Jan 2018 to determine how many other records were similarly falsified. In particular, how many I-751 applications by quarter were approved but with no permanent resident card or Certificate of Naturalization issued within 90 days.
24. If the identified applicants are found to have a statement in the I-751 approval that the corresponding N-400 had been approved then these applicants should be issued a Certificate of Naturalization as soon as possible if they have not already been issued said certificate.
25. All such applicants should be similarly credited for future services with USCIS for their use, their families use, or their friends use for the cost of the I-751 application fee. In addition, any relatives who apply for immigration visas based on their citizenship status should be credited with double the time of the original applicant's delay. The delay is computed to be from the date of the I-751 claim of N-400 approval to the actual date of issuance of a Certificate of Naturalization.
26. If the number of applicants and immigration credits are so large as to substantially impact current immigration queue members, USCIS is directed to apply to Congress to get sufficient additional slots for each country so as to preserve the integrity of the queue for that country.

Falsified Records Must Be Corrected

27. Further, all falsified records should be deleted (actually hidden to avoid potential database corruption) with new records of a falsified record being inserted at the same date and time of the deleted/hidden record. There should be an additional corresponding record at the current date and time which includes the content of the falsified record for later review.
28. All reports to Congress and other entities which relied on these falsified completion records must be revised to note the number of records which were previously recorded as processed, but were actually pending correction of the false resolution. The corrected resolutions should be added to current reports as approvals from previously denied falsified records (a new category).

Adjustments for Language / Cultural Differences

29. Just as USCIS has added exemptions for people with medical impairments, as well as exemptions based on age, USCIS is directed to extend these exemptions to consider the

education opportunities presented to a particular individual before they were 21. They should also be extended to consider the difficulty in mastering English based on the nation of birth.

30. For example, there could be an annual review by country of the rate of application for citizenship as well as the rate of granting citizenship. Exemptions should be granted to individuals from countries like Thailand where mastering English is extremely difficult for those who are older and poorly educated. The exemptions should be granted based on age less years of formal training in English before they were 21 and sufficient to correct the rate of citizenship approvals to match those of countries such as Canada or the United Kingdom where the rate of granting citizenship is, presumably, highest.
31. The approval rate would be the number of approvals from a particular country divided by the number of permanent residents from that country who are eligible to apply for citizenship, not the number who actually apply. It is expected that there will be a large backlog of residents from Buddhist / Muslim countries who would like to be citizens but did not apply because the English and Civics test was too difficult for them to pass based on their lack of exposure to English in their youth.
32. For countries such as Thailand and other Buddhist / Muslim countries, this would likely mean eliminating the English and civics test for all N-400 applicants for a few years until the rate of granting citizenship matches that of Canada or the United Kingdom. This would be a valuable correction to eliminate the past unlawful discrimination against certain groups based on religion, race, culture, and age.

USCIS Must Correct Time For Legal Notice

33. USCIS be directed to allow more time for timely notices of actions. If USCIS wishes to update its notice process to record and publish accurate records of the actual date of mailing of notices, 7 days could be added to the actual date of mailing for notices. Three days for first class mail is insufficient to be confident of prompt receipt.
34. As it generally takes USCIS 6 days to print a notice and prepare it for mailing, this would normally be 45 days after the date of the decision itself to allow for unforeseen delays in processing before and after mailing.
35. Of course, any denials based on assumed notice without an accurate record of delivery (signature required mailing or process server), would be conditional and must be easily

contestable in the event that there was not actual timely delivery. The applicant must be able to contest the denial without any additional fees by explaining any extenuating circumstances which prevented timely notice or appearance (e.g. applicant was in the hospital and did not receive the notice or was not able to appear or answer while hospitalized).

36. For all cases where USCIS denied an application for failure to appear and there was not 45 days notice nor any record of the actual date of mailing, all such actions since 1 Jan 2018 must be remanded to USCIS for proper processing overturning all denials where there was not proof of timely notice.
37. The applicant must be given a credit for the filing fees for the original application as well as having the application opened again for proper consideration. All denial records must be updated to note the denial was overturned due to lack of notice. All reports to Congress and others which were based on the improper denial (showing an application was processed) must be corrected to show that the application was incorrectly denied and has been returned to an active status.

Adjustment of USCIS Fees for Appeal, Reconsideration

38. USCIS fees for N-336 requests to review, motions to reconsider, notice of appeal, and actual appeal filing must be reduced so that they are not prohibitive. It is suggested that no motion to argue or motion to reconsider should cost more than 5% of the federal district court filing fee (now $350, hence no more than $17.50). Actual appeal filing fees should not exceed half the district court filing fees, e.g. $175. There must be no fee for N-336 and other motions to reconsider when the applicant is contesting presumptive / conditional denials for failure to appear as the applicant must be provided the opportunity to explain failures in actual notice or extenuating circumstances which prevented appearance or answering (e.g. hospitalization).
39. The justification for this is to encourage applicants to seek redress with the USCIS rather than going directly to the district courts. It also furthers due process by making the proceedings fair and providing opportunities for applicants to be heard / argue their cases as necessary.

USCIS Must Restore Interview Waivers and

Cease Criminal Background Reviews for I-751 Applications

40. The administrative policies implemented by the prior USCIS director in the 2018 time frame must be rescinded. They do not provide any improvement in enforcement and greatly harm applicants' rights in these matters. They are also in direct violation of the waiver or interview within 90 days requirement explicitly stated in 8 CFR § 216.4(b)(1) and cited above.
41. Mrs. Carr is requesting that interview waivers be resumed at an accelerated rate so that at least 2 months of backlog are eliminated each month. Realistically that means that three months of applications must be granted their permanent resident card each month without the optional interview and without further delay.
42. This should eliminate the current illegal four year backlog within two years.
43. Once the backlog is reduced to three months the accelerated approvals can be eliminated and mandatory approvals without interview will only be for those applications which have languished in the queue for up to three months and the total number of pending applications exceeds the number of new applications.
44. If there are concerns about applicants not understanding the criminal background questions in English, USCIS can provide written copies of the criminal background questions translated into all the appropriate languages. However, these questions should only be applied to new applicants for immigration visas, not approved permanent residents.
45. USCIS should immediately begin with interview waivers for the oldest applications, but if USCIS wishes, it can send out new forms to potential waiver recipients asking for authorization to access all of their social media, mobile and credit rating records for both spouses. Failure to provide authorization or the appropriate accounts and addresses would result in a delay of any interview waivers. All applicants who authorized full electronic access to their records could be granted waivers before applicants who did not provide such access though the delay in the scheduling of an interview is restricted to 90 days in 8 CFR § 216.4(b)(1) in all cases.
46. Over time, USCIS could develop AI programs which very accurately identify fake marriages based on the contents or lack of social media and other records. Given the vast amount of information available through phone records (e.g. Google's timeline which could

show the location of each spouse for every day and night of their purported marriage), social media and credit histories, the interview itself appears to be a highly ineffective and very expensive method of identifying fake marriages. A well trained AI program could identify fake marriages with substantially greater accuracy at a fraction of the cost of interviews.

Required Access Provided to Applicants

47. USCIS must immediately disable hang ups by the automated phone system and instead fail over to a human representative. Further, USCIS must send notices to all active applicants of the address where they can go without any appointment to ask questions and raise concerns. USCIS must respond to in person questions, concerns and requests.

48. Secure messaging systems are now relatively routine technology and should be offered as an addition to the MyUSCIS web page to provide a more reliable and cost effective alternative for those applicants who choose to use this option. It is absurd to require technically savvy applicants or their representatives to navigate the lengthy automated phone system to get to speak to a person who will reduce their input to 80 characters at great expense to USCIS and great information loss from incomplete or inaccurate transcription.

USCIS Must Guarantee Applicants' Right to Representation

49. USCIS must grant immediate approval to any spouse who files to become an applicant's representative. Further, the application form itself must be adjusted to allow that option on the application itself.

50. Pending I-751 applicants must be notified immediately of their ability to add their spouse as a representative via a simple phone call.

More Expansive FOIA Responses

51. USCIS must change its defaults for FOIA requests to provide access to every record including audio and video recordings which reference the requested receipt number.

DHS OIG Corrections

52. Directing DHS OIG to ensure that it promptly investigates and reports all federal crimes as described above. Further, while the decision to prosecute resides solely with the DoJ, the DHS OIG needs to ensure that serious malfeasance such as depriving foreign nationals of their constitutional rights is promptly investigated and corrected. Further, the DHS OIG must ensure that appropriate and timely redress is provided to injured parties.

53. For example, if a foreign national is unlawfully stranded overseas, the DHS OIG must ensure

that the offending agency corrects the defect promptly, perhaps sending a PDF file with the required extension letter via email to the stranded party in time to not hinder their travel plans. The 23 Jan 2023 approval of a 48 month extension letters was too late and was not provided to the injured party in this case.

DoJ Corrections

54. Directing the DoJ to investigate and track all plausible allegations of federal crimes as necessary to insure that the criminal behavior is not repeated and that injured parties receive appropriate redress. It is acceptable for local OIG's or even local management to complete the bulk of the investigations as long as the DoJ monitors the results and does not forego the option of criminal prosecution until adequate remediation is put in place to prevent future crimes and redress is provided to all injured parties.
55. Directing the DoJ to investigate all failures of OIG's to expeditiously report plausible federal crimes to the DoJ as described above. Any failures to report federal crimes must be investigated as potential 'obstruction of justice' crimes though prosecution remains the purview of the DoJ and the threat of prosecution should be used as a cudgel to insure future adherence as well as redress when appropriate.
56. Granting the Plaintiffs such additional relief as the interests of justice may require, together with their costs and disbursements in maintaining this action.

Respectfully submitted,

Verification of Complaint

We the undersigned Plaintiffs hereby affirm under penalty of perjury in both the United States and Thailand that as individuals:

1. I have reviewed the allegations and believe all of the allegations 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 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: 19. Nov. 2024
Location: Irving, TX

/s *Air Carr*

Rueangrong Carr
1201 Brady Dr
Irving, TX 75061
Date: 19. Nov. 2024
Location: Irving, TX

/s Buakhao Von Kramer

Buakhao Von Kramer
105 - 3 M 5 T YANGNERNG
SARAPEE, CHIANG MAI 50140 THAILAND
Date: 19. Nov. 2024
Location: Irving, TX

Reference Index Table

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*

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Case Document Time Line

Date	ECF	Contents
29 Dec 23	3	Complaint
29 Dec 23	5	Summons
03 Jan 24	7	Plaintiffs Motion to Correct Summons
04 Jan 24	8	Order, Docket text Clerk Update Summons, Caption
04 Jan 24	9	Corrected Summons
11 Jan 24	10	Proof of Service on 9 Jan 24
03 Feb 24	11	Date of Notice, USPS, USPS OIG, USPS BoG
03 Feb 24	11-1	Machine Readable copy of ECF3 Complaint 29 Dec 23
07 Feb 24	12	DoS picked up Complaint on 17 Jan 24
07 Feb 24	12-1	DoS returned Complaint, sent 26 Jan 24, rcvd 31 Jan 24
07 Feb 24	12-2	DoS resent Complaint rcvd 5 Feb 24
27 Feb 24	13	DoS OIG, copy of ECF 3 Complaint received on 11 Jan 24
05 Mar 24	14	USCIGIE received Complaint at new address 31 Jan 2024
05 Mar 24	14-1	USCIGIE at old address 11 Jan 2024, returned to sender
08 Mar 24	15	Defendants' Motion to Dismiss
09 Mar 24	16	Date of Notice, USCIS, DHS OIG, SSA
10 Mar 24	17	Date of Notice, DoJ USATXN 12 Jan 23
28 Mar 24	18	Plaintiffs Response, Mtn For Prtl Summary Jdgmnt, Mtn Amend
28 Mar 24	18-1	Amended Complaint
28 Mar 24	18-2	Changes included in Amended Complaint
29 Mar 24	19	Plaintiffs' Response contained in ECF 18 (cfk)
05 Apr 24	20	Plaintiffs' Crtfct of Conference, Motion to Amend UNOPPOSED
08 Apr 24	21	Defendants' Crtfct of Conference, Motion to Amend UNOPPOSED
17 Apr 24	22	Dfndts Rspns to Pltfs Mtn for Prtl Smmry Jdmnt, 56(d) Mtn
17 Apr 24	23	Dfndts Affdvt Opposing Mtn for Plntfs Prtl Smmry Jdmnt Mtn
19 Apr 24	24	Plaintiffs' Motion to Seal ECF 20-1, improperly redacted
22 Apr 24	25	Plaintiffs' Crtfct of Conference for ECF 24,
22 Apr 24	26	Magistrate RR Order Resolving Pending Motions

Date	ECF	Contents
22 Apr 24	27	Defendants Substitution of Counsel, Owen for Padis
23 Apr 24	28	Plntff Reply to MfPSJ and Response to Defective 56(d) Mtn
23 Apr 24	29	Plaintiff First Amended Complaint
09 May 24	30	1st Motion for Sanctions for Defendants' Motion to Dismiss
09 May 24	30-3	Affirmation of Mr. Carr requesting creative sanctions
09 May 24	30-4	Affirmation about Mr. Padis' attempt to trick Plaintiffs
09 May 24	30-6	Affirmation sanctions for 'not precedent' cases citations
14 May 24	31	Defendants' Motion to Dismiss
14 May 24	31w	Proposed Order Granting Dfndnts' Mtn to Dismiss, word doc
14 May 24	32	Plaintiffs' Motion to Reconsider
14 May 24	32w	Proposed Order Granting Plntffs' Motion to Reconsider, docx
15 May 24	33	Plaintiffs' Motion for Partial Summary Judgment
15 May 24	33w	Proposed Order, Pltf Motion for Partial Summary Judgment
28 May 24	34	Plntff Rspns Opposing Dfndnts' 2nd Motion to Dismiss (31)
28 May 24	34-1	Affirmation of Mr. Carr requesting creative sanctions
28 May 24	34-2	Affirmation of Mr. Carr supporting Count 3, 4 and Count 5
28 May 24	34-3	Affirmation of Mr. Carr supporting Count 7 and Count 8
28 May 24	34-4	Affirmation of Mr. Carr supporting Count 6 and Count 9
28 May 24	34-5	Affirmation comparing Defendants Summary to Actual Summary
29 May 24	35	Defendants' Response Opposing Motion for Sanctions (ECF 30)
29 May 24	35w	Proposed Order, Pltf Motion for Partial Summary Judgment
04 Jun 24	36	Defendants' Response Opposing Motion To Reconsider (ECF 32)
05 Jun 24	37	Defendants' Motion to Strike, Response MfPSV(33)
05 Jun 24	38	Defendants' Affidavit Supporting Motion to Strike
07 Jun 24	39	Plaintiffs' Reply Supporting Motion for Sanctions (ECF 30)
07 Jun 24	39-2	Affirmation comparing Padis' Summary to Actual Summary
09 Jun 24	40	Plaintiffs' Response Opposing Motion to Strike (ECF 37)
		Plaintiffs' Reply MfPSJ (ECF 33)
11 Jun 24	41	Defendants' Reply Supporting Motion to Dismiss (ECF 31)
13 Jun 24	42	Plaintiffs' Reply Supporting Motion to Reconsider(ECF 32)
17 Jun 24	43	Order Mtn under Rule 56(d)(ECF 37) Denying MfPSJ (ECF 32)
01 Jul 24	44	Defendants' Mtn to Submit Supplemental Materials (ECF 34)
01 Jul 24	44w	Proposed Order Dfnd Mtn to Submit Supplemental Materials
01 Jul 24	44-1	Dfndnts' Spplmntal Materials, Department of State v. Munoz
01 Jul 24	44-2	Decision Department of State v. Munoz (S. Ct. 2024)
07 Jul 24	45	Pltnfs Rspns Oppsng Mtn to Sbmt Spplmntl Materials (ECF 44)
07 Jul 24	46	Dfndnts' Reply Supporting Supplemental Materials (ECF 44)
07 Aug 24	47	Order (RR) delaying decision on MTD (ECF 31)
09 Sep 24	48	Plntffs' Notice of Supplemental Authority
xx Nov 24	49	Plaintiffs' 2nd Motion to Amend Complaint
xx Nov 24	49-1	Plaintiffs' Proposed 2nd Amended Complaint
xx Nov 24	49-2	Plaintiffs' Proposed Changes for 2nd Amended Complaint

Other Documents

Date	ECF	Contents
Date	Doc	Contents
1855	45-3	CA "Greaser Act", vagrancy act which targets Greasers.
01 Dec 06	39-1	5th Circuit Court Removes Persuasive exception to LR 47.5.4
27 Oct 17	18-7	USPS OIG Audit, 1.9 million falsified times, DR-AR-18-001
29 Aug 18	12-3	Mr. Carr's I-29F affirmation available to DoS on 29 Aug 18
09 Oct 18	34-6	DoS OIG response to 20190052 referred to in ECF 29 para 128
10 Oct 18	10-4	DoS Heinbeck, verbal visa denial was not based on law

Date	ECF	Contents
13 Nov 18	20-1	Improperly Redacted, Sealed, Permanent Resident Card
13 Nov 18	24-1	Mrs. Carr Permanent Resident Card redacted, exprd 13 Nov 20
12 Aug 19	16-7	Flight tckts 13 Oct to 26 Oct, available to DoS on 9 Sep 19
28 Aug 19	13-1	Pltf's email invitation available to DoS on 9 Sep 19
29 Aug 19	12-4	Pltf's affirmations available to DoS on 9 Sep 19
25 Sep 19	17-5	Pltf's accomodations 14 Oct 19 to 19 Oct 19
27 Mar 21	18-5	USPS Priority Mail delivery, 11 day delay, no refund
09 Apr 21	18-3	USPS Rcpt, $26.35, Overnight Express, Guaranteed Delivery
15 Apr 21	18-4	USPS Tracking, falsified delivery, still at Post Office
05 May 21	18-8	USPS refund request status, 6006595, Dispute Paid
09 Jun 21	11-2	USPS Hooper, scan on 15 Apr 21 false, early, no refund
01 Aug 21	11-3	to USPS IG, requests crimes reported to DoJ
16 Sep 21	18-9	to USPS, USPS Scarpelli $26.35 refunded, no transaction ID
19 Oct 21	11-4	USPS FOI Hefley, OIG workers decide on case by case basis
17 Nov 21	11-5	to USPS IG, report malfeasance in USPS OIG, not report
12 Dec 21	18-6	USCIS 24 month extension letter, expired 13 Nov 2022
31 Jan 22	30-2	Texas Disciplinary Rules of Professional Conduct
07 Jun 22	10-1	USPS Delaney, OIG decides prosecution, no report to DoJ
03 Aug 22	10-2	Mr. Carr, notice to USPS BoG of USPS OIG Malfeasance
12 Dec 22	10-3	USPS BoG response, referred USPS OIG complaint to USCIGIE
13 Dec 22	45-1	Mrs. Carr non immigrant visa which expires 08Dec2032
13 Dec 22	45-2	Mrs. Von Kramer non immigrant visa which expires 08Dec2032
03 Jan 23	20-2	USCIS A-551, expired 2 Jan 24
23 Jan 23	48-2	USCIS announces new 48 month extension for I-751 applctns
30 Jan 23	16-4	USCIS FOIA NRC2023277190, unsigned interview results
31 Jan 23	10-5	USCIS, I-751 and N-400 approved, no green card provided
26 Feb 23	16-2	to USCIS FOIA, request for entire record including video
03 Mar 23	14-4	to DoJ: Notice / Request, cc: USPS, USPS BoG, USPS OIG
19 Apr 23	39-3	DoS OIG response to H20231749 2023, Complaint para 128
24 Apr 23	34-7	Complaint submitted online to DoS OIG
05 Jun 23	17-1	DoJ Request forwarded to USPIS, NRC2023277190
20 Jun 23	14-2	to DoS, DOS OIG, USCIGIE, DoJ: Notice / Request
24 Jul 23	12-5	DoS Stein FOIA response, no documents returned, INA 222(f)
09 Aug 23	14-3	USCIGIE close Case 23-083, no action taken
25 Aug 23	32-1	Status of Mrs. Carr I-751 and N-400 applications
25 Aug 23	32-2	Request to DHS OIG, USCIS Director, etc
01 Sep 23	10-6	USCIS, 30 Jan 23 interview did not occur
06 Sep 23	10-7	USCIS, interview scheduled for 10 Oct 23, no purpose stated
10 Sep 23	49-5	DHS OIG, USCIS, DoJ notice of falsified cancellation
15 Sep 23	16-1	USPS mail, ECF 10-7 mailed 12 Sep 23, arrived 15 Sep 23
19 Sep 23	10-8	USCIS, rqst to reschedule denied, entire record considered
24 Sep 23	30-5	USCIS G-28 request Mr. Carr as Mrs. Carr's representative
26 Sep 23	30-7	Justification for delaying interview of 10 Oct 2023
05 Oct 23	16-3	USCIS FOIA Panter response NRC2023277190
06 Oct 23	17-3	DoJ, DoS request, cc: DoS IG, USCIGIE, DoS BCA
06 Oct 23	17-4	DoJ, USCIS request, cc: DHS IG, USCIGIE
09 Oct 23	14-5	to DoJ, clarify USPS request, re: NM301959635
09 Oct 23	17-2	(duplicate) to DoJ, clarify USPS request, re: NM301959635
13 Oct 23	10-10	USCIS, N-400 denied, unexplained contradicts prior records
24 Oct 23	49-6	CIGIE, DOJ and USPS request for assistance
27 Oct 23	10-11	USCIS, green card denied, too late to appeal 31Jan23
31 Oct 23	10-9	to USCIS FOIA, request for entire record including video
1 Nov 23	14-6	USCIGIE close Case 24-010, no action taken
7 Nov 23	30-8	Notice of Intent to Contest Denial of N-400 sent to DoJ

13 Nov 23	34-6	Response letter from DoS OIG FOIA to 2023-P-022
13 Nov 23	34-8	Response documents from DoS OIG FOIA to 2023-P-022
12 Dec 23	16-6	to USCIS FOIA request, cumulative N-400 data
12 Dec 23	16-7	to USCIS FOIA request, cumulative I-751 data
20 Dec 23	13-2	to DoS FOIA request, cumulative visa data
21 Dec 23	13-3	DoS FOIA acknowledgment F-2023-13477 for 20 Dec 23
10 Feb 24	13-4	DoS FOIA request statuses 10 Feb 24
01 Mar 24	28-1	Redacted Email Thread 1 Mar 24 to 18 Apr 24
17 Apr 24	30-1	email thread from 17 Apr 2024 to 26 Apr 2024.
28 May 24	49-3	10 year Green Carr for Mrs. Carr, complaint3 para 209
10 Sep 24	49-4	Receipt for new N-400 application, complaint3 para 209

CERTIFICATION OF ELECTRONIC SIGNATURES

In accordance with TXND LR 11.1(d), on the recorded date I received permission from Mrs. Carr and Mrs. Von Kramer to sign this document electronically on their behalf after having provided them with the relevant sections of the document in English and translated into Thai (relying on Google Translate). We then discussed the documents in English (as Google Translate does not always provide meaningful translations) and the only concerns about accuracy was Mrs. Von Kramer's concern that the document specifies precise dates and times for the various visa interviews and she really does not remember that level of detail about those events (several years ago).

I assured Mrs. Von Kramer that the dates and times were established from the electronic records of the appointment (e.g. the official appointment document to allow applicant entry into the consulate) which I had retained. I explained that her signature does not indicate she remembers the interviews being on that date at that time but rather that she has no knowledge or recollection to the contrary. She does remember interviews of that nature in that time frame.

In turn, I must qualify that almost none of the details in this now sworn statement (no longer allegations) were based on my recollection but rather careful review of electronic records which I have retained and maintained and which I believe to be accurate.

/s *Brian P. Carr*

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Date: 19. Nov. 2024
Location: Irving, Texas

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 Amended COMPLAINT

The Plaintiffs, Brian P. Carr (hereafter referred to as Mr. Carr), Rueangrong Carr (hereafter referred to as Mrs. Carr) and Buakhao Von Kramer (hereafter Mrs. Von Kramer) appear pro se in this matter, as and for their complaint allege the following:

Introduction

1. This matter concerns the Defendants falsification of government records and, potentially, obstruction of justice through failure to report or correct federal crimes, and the Plaintiffs' Fifth Amendment right to due process of law.

Due Process Requirements

2. Almost all of the counts raised in this matter center around due process. Since the 70's the U.S. Supreme Court has expounded on the requirements of Due Process for administrative procedures such that it is not an obscure arcane right, but rather a central pillar of how the U.S. government must act when dealing with individuals. There is an excellent overview of 'due process' in Cornell Law LII Procedural Due Process which lists the ten key elements required for due process as:
   1. An unbiased tribunal.
   2. Notice of the proposed action and the grounds asserted for it.

3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented.
10. Requirement that the tribunal prepare written findings of fact and reasons for its decision

These elements are derived from Judge Henry Friendly's article titled "Some Kind of Hearing".

USPS Falsifies Delivery Record

3. In April of 2021, Mr. Carr purchased a guaranteed delivery Express Mail label from the United States Postal Service (hereafter USPS). The package was delivered late but a postal employee falsified the delivery record to indicate that package was delivered on time. As a result, Mr. Carr was unable to get the guaranteed refund of $26.35. Mr. Carr appealed administratively with USPS and later with USPS Office of the Inspector General (hereafter USPS OIG), the Council of the Inspectors General on Integrity and Efficiency (hereafter CIGIE), USPS Board of Governors, and Department of Justice (hereafter DoJ) to correct the falsified documents and get the requested refund. No refund has been received.

Department of State Denies Non-Immigrant Visa Without Due Process

4. In 2018 and 2019 Mrs. Carr and her sister, Mrs. Von Kramer, applied for non-immigrant visas which were denied by the Department of State (hereafter DoS) through the Bureau of Consular Affairs (hereafter BCA) without due process. In particular, the denial was a form letter with no reference to the actual evidence and which contradicted the verbal explanations of the denial by the interviewer. This could be construed as falsification of government records through omission of required information. Further, in each case the denial was based on a rationale that was not supported by the evidence or law in the matter. As there was no administrative appeal available, Mr. Carr sought correction of the injustice through the DoS OIG. CIGIE, and DoJ. Later non-immigrant visas for Mrs. Carr and Mrs. Von Kramer were

approved in 2022 but both sisters suffered financial harm from the delay in receipt of the visas.

Mrs. Von Kramer Receives Survivor Benefits

5. Mrs. Von Kramer is the widow of a deceased American veteran and was able to visit the U.S. in 2022 and commenced receiving survivors' benefits from Social Security in May of 2023, but she must return to the U.S. every six months as she was not able to establish her 'lawful presence' in the U.S. in 2019, 2020, and 2021 as she planned.

USCIS Denies Citizenship Application Based on Falsified Documents

6. On 31 Jan 2023 as a result of a joint interview held on 30 Jan 2023 for a permanent green card (I-751) and for citizenship (N-400), the United States Citizenship and Immigration Service (USCIS) approved Mrs. Carr's I-751 application for a permanent green card while not actually providing the green card as her N-400 citizenship application was also approved.
7. However, instead promptly providing Mrs. Carr with a Certificate of Naturalization, on 01 Sep 2023, USCIS updated her N-400 record to note that the interview of 30 Jan 2023 was canceled due to unforeseen circumstances.
8. Mr. Carr complained to USCIS, the Department of Homeland Security (DHS) OIG and DoJ of falsified records (the interview had been completed and the N-400 had been approved). Even so, USCIS scheduled a 'second' N-400 interview for 11 Oct 2023, a date when USCIS had been informed that Mrs. Carr would be out of the country. Mr. and Mrs. Carr made numerous efforts to reschedule the interview which were refused. USCIS denied Mrs. Carr's N-400 application on 14 Oct 2023 for 'failure to appear'. Mr. Carr has since complained to DHS OIG of 'whistleblower' retaliation for his previous reports of federal crimes and other malfeasance by USCIS.

Jurisdiction and Venue

9. This Court has subject matter jurisdiction over this action pursuant to 28 USC § 1331 and 28 USC § 1367, 42 USC Ch. 21B and the Administrative Procedure Act (APA, 5 USC §§ 551–559, 5 USC § 702), as a case arising under 18 USC § 1001, 18 USC § 1505, 18 USC §

1510, 18 USC § 201, 18 USC Ch 96 (RICO), 18 USC § 1038 18 USC § 10, 5a USC IG ACT 1978, 39 USC, (Postal Service), INA 8 USC Ch 12, 8 CFR § 216.4, 5 USC § 2302(b)(9)(D), 8 USC § 1184, 8 USC § 1146, 8 USC § 1447, 8 USC § 1421(c), 28 USC Part II - Department Of Justice as well as the Fifth Amendment of the U.S. Constitution right to due process.

10. Venue is proper in this district pursuant to 28 USC § 1391 (b) because a substantial part of the events or omissions giving rise to the claim have occurred or will occur in this district and Plaintiffs Mr. and Mrs. Carr reside in this District and Mrs. Von Kramer, as a foreign national, receives her U.S. mail care of Mr. Carr.

11. Mr. Brian P. Carr (hereafter Mr. Carr) is a U.S. citizen and resident of Dallas County in the State of Texas and a Plaintiff appearing Pro Se in this matter. Mr. Carr's contact information is:

Brian P. Carr
1201 Brady Dr
Irving, TX 75061
carrbp@gmail.com
518-227-0129

12. Mrs. Rueangrong Carr (hereafter Mrs. Carr) is a U.S. Permanent Resident and resident of Dallas County in the State of Texas and a Plaintiff appearing Pro Se in this matter. Mr. Carr is Mrs. Carr's spouse and to the degree that it is legally permissible, Mr. Carr will represent Mrs. Carr. Mrs. Carr's contact information is:

Rueangrong Carr
1201 Brady Dr
Irving, TX 75061
carrbp@gmail.com
518-227-0129

13. Mrs. Buakhao Von Kramer (hereafter Mrs. Von Kramer) is a citizen and resident of Thailand with a U.S. B-1 / B-2 non immigrant visa (business / tourist). Mrs. Von Kramer's U.S. mailing address is care of Mr. Carr, a resident of Dallas County in the State of Texas. Mrs.Von Kramer is a Plaintiff appearing Pro Se in this matter. Mrs. Von Kramer is the widow of Nikolaus Von Kramer, a German National, U.S. Army veteran (pre 1968), U.S. citizen, married to Mrs. Von Kramer on 12 January 2006, and died 26 April 2014. Mrs. Von

Kramer is also Mrs. Carr's sister. Mrs. Von Kramer has also requested that Mr. Carr represent Mrs. Von Kramer to the degree that it is legally permissible. Mrs. Von Kramer's contact information is:

Buakhao Von Kramer
c/o Brian Carr
1201 Brady Dr
Irving, TX 75061
carrbp@gmail.com
518-227-0129

14. Mrs. Von Kramer's legal residence is:

105 - 3 M 5 T YANGNERNG
SARAPEE, CHIANG MAI 50140
THAILAND

15. The United States government is the primary Defendant in this matter and is represented by the U.S. Attorney for the Northern District of Texas in her professional capacity with contact information:

United States Attorney
Northern District of Texas
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699

16. The U.S. Department of Justice (hereafter DoJ) is an agency of the United States, a Defendant in this matter and is represented by the Attorney General in his professional capacity with contact information:

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

17. The United States Postal Service (hereafter USPS) is an agency of the United States, a Defendant in this matter and is represented by the Postmaster General in his professional capacity with contact information:

Postmaster General
USPS Headquarters
475 L'Enfant Plaza SW
Washington DC 20260-0010

18. The USPS Office of the Inspector General (hereafter OIG) is an agency of the United States, a Defendant in this matter and is represented by the USPS Inspector General in her professional capacity with contact information:

USPS Inspector General
1735 North Lynn Street
Arlington, VA 22209-2005

19. The USPS Board of Governors (BoG) is the governing body of the USPS, an agency of the United States. The USPS BoG is a Defendant in this matter and is represented by the Chairman in his professional capacity with contact information:

USPS Board of Governors Chairman
475 L'Enfant Plaza SW
Washington DC 20260-0010

20. The U.S. Department of State (hereafter DoS) is an agency of the United States~~,~~ and a Defendant in this matter. Because of the unusual division of authority and responsibility in DoS, DoS ~~and~~ is represented by both the Secretary of State and the Assistant Secretary of State for Consular Affairs in their~~his~~ professional capacity~~ies~~ with contact information:

The Executive Office
Office of the Legal Adviser, Suite 5.600
600 19th Street Ste 5, Suite 5 600, NW
Washington, D.C. 20522

21. The DoS OIG is an agency of the United States, a Defendant in this matter and is represented by the DoS Inspector General in her professional capacity with contact information:

U.S. Department of State Inspector General
1700 North Moore Street (SA-39)
Arlington, VA 22209

22. The Council of the Inspectors General on Integrity and Efficiency (hereafter CIGIE) is an agency of the United States, a Defendant in this matter and is represented by the Executive Director in his professional capacity with contact information:

Executive Director
Council of the Inspectors General on Integrity and Efficiency
1750 H Street NW Suite 400

Washington, DC 20006

23. The U.S. Citizenship and Immigration Services (hereafter USCIS) is an agency of the United States, a Defendant in this matter and is represented by the USCIS Director in her professional capacity with contact information:

USCIS Director
20 Massachusetts Avenue, NW
Washington, DC 20529

24. The Department of Homeland Security (hereafter DHS) OIG is an agency of the United States which oversees USCIS, a Defendant in this matter and is represented by the DHS Inspector General in his professional capacity with contact information:

Department of Homeland Security Inspector General
245 Murray Dr.; Building 410;
Washington, DC 20528

25. The Social Security Administration (hereafter SSA) is an agency of the United States, a Defendant in this matter and is represented by the SSA Commissioner in her professional capacity with contact information:

Social Security Administration Commissioner
1300 D. Street SW
Washington, D.C. 20024

Count 1

USPS Falsifies Delivery Records, Refuses Credit

26. The Plaintiffs repeat and re-allege paragraphs 1 through 25, as if fully set forth herein.
27. On April 9, 2021 Mr. Carr purchased an 'Overnight Express' click'n'ship for $26.35 with tracking number 9470103699300057573507 with guaranteed delivery to return his passport from the Thai embassy to his home address (see ECF 18-3). The Thai embassy mailed his passport back and the shipment was accepted by USPS at 8:46PM on 13 April 2021 with guaranteed delivery by 12PM on 15 April 2021. This was longer than overnight as it was received late in the day.
28. However, the package did not arrive at the Irving Post Office until 11:18 AM 15 April 2021 and was 'out for delivery' at 11:29 AM. It was scanned as delivered at 11:35 while the driver

was almost certainly still at the Post Office, a common practice for improper 'Stop the Clock' scans (see ECF 18-4).

29. It is virtually impossible to make the drive from the Post Office to Mr. Carr's house in six minutes. Note that while improper 'Stop the Clock' scans have a relatively benign name, they are, in fact, crimes of falsifying government records as per 18 USC § 1001~~18 USC §U.S. Code Section 1001~~ (a) (1).
30. Mr. Carr was anxious to get his passport and checked for the package several times on the morning of 15 April, 2021. When Mr. Carr received notice of the delivery at 11:35 AM via email, both Mr. Carr and Mrs. Carr went out to look for the package but could not find it.
31. Mr. Carr also called the Post Office about the missing package and was advised to not worry as there had been vehicle problems that morning and that his package would arrive soon. Mr. Carr asked if the record of delivery time would be corrected but received a non-committal answer. Mr. Carr also took a time stamped photo of the front porch area with no package present after it had been recorded as delivered.
32. At 12:30PM the package was in Mr. Carr's mail box, delivered after the guaranteed delivery time (contrary to the improper 'Stop the Clock' delivery scan).
33. That afternoon Mr. Carr initiated an online request for a refund (refund request number 6006595) which was denied in minutes as the package was falsely reported as delivered on time.
34. Two weeks later Mr. Carr was permitted to appeal that arbitrary denial and explained about the illegal 'Stop the Clock' scan and on 5 May 2021 the status of the refund was changed to 'Dispute Paid' (see ECF 18-8). However, the credit card which Mr. Carr used for the online 'click n ship' never posted the refund.
35. On 9 June, 2021, Mr. Scott Hooper, District Manager, Dallas Customer Service and Sales, 951 W. Bethel Rd., Coppel, Texas, 75099-9998 replied to Mr. Carr's queries about the falsified delivery time via Congressman Veasey stating that Mr. Rodney Malone, Postmaster, Irving, TX found that "the guaranteed date and time for delivery of the Priority Express Mail was April 15, 2031, by noon. Mr. Malone retrieved data from the carrier's scanner and was able to confirm the package was scanned as delivered on April 15, 2021 at 11:35 a.m.. Mr. Malone states the carrier has been trained in the proper disposition and scanning of Priority Express Mail. The signature was waived; therefore, allowing delivery directly to Mr. Carr's

mailbox. Unfortunately, to be able to correct a scan in our system, it must be within the previous 21 calendar days." (see ECF 11-2)

36. Mr. Carr contacted USPS customer service on numerous occasions as there had not been any refund but was only told to wait longer for the refund even though he had already waited far longer than the suggested waiting time.
37. When Mr. Carr complained that the refund was due many months ago, the response was just a generic statement about submitting a new refund request (which would be denied as it was too late to initiate a new refund request). ~~See service request 28670242 on 19 July 2021.~~
38. On 3 September 2021, Ms. Scarpelli of the USPS responded to Congressman Veasey stating that Mr. Carr's refund was paid on 5 May 2021 but on further investigation by Mr. Carr there were no details of the refund.
39. After Mr. Carr made numerous attempts to find the transaction ID of the credit to his bank it became apparent that Ms. Scarpelli had been misled by the numerous falsified documents which resulted from the improper 'stop the clock' scan of his package and faulty USPS business processes to issue credits when a falsified delivery record indicates an 'on time' delivery. (See ECF 18-9)
40. It appears that the Accounting Service Center approved the refund and passed it off to Customer Service to make the actual refund. However, because the tracking record had a falsified delivery time via the improper 'Stop the Clock' scan which was not corrected by management (a potential crime itself), customer service could not give the refund but referred Mr. Carr back to accounting services or asked Mr. Carr to start a new claim for a refund (which was not permitted at that time due to the delay).
41. There are now numerous documents which are false due to the original falsified delivery time and thousands of others as documented by USPS OIG (see ECF 18-7), to include quality reports to Congress and the U.S. public, profitability reports for individual post offices and regions, and bonuses paid to management of said post offices and regions. This is a prime example of how one uncorrected falsified document multiplies until it becomes hard to find any truthful and correct documents. These problems were referred to USPS management as well other defendants on 3 Mar 2023 in ECF 14-4.

Count 2

USPS OIG Refuses to Investigate or Report Federal Crimes

42. The Plaintiffs repeat and re-allege paragraphs 1 through 41, as if fully set forth herein.

43. Mr. Carr visited the USPS OIG web hotline which stated "the USPS OIG Hotline CANNOT assist you with daily mail delivery and tracking problems" but also "the USPS OIG Hotline CAN assist you with ... Employee Misconduct".
44. Mr. Carr made several submissions to the Hotline which includes Submission 167800 on 18 May 2021, Submission 170675 on 27 May 2021, Submission 184761 on 19 July 2021, and Submission 209111 on 22 October 2021. However, even though he cited specific federal crimes of falsifying government records, defrauding postal customers and USPS management uniformly unable to make any corrections, in all cases the complaint was simply referred back to USPS local management and with no correction or action taken. However, each complaint was closed as successfully resolved even though no corrections or actions were taken.
45. On 1 August 2021 Mr. Carr wrote directly to the USPS Inspector General inquiring as to the origin of the policy preventing any USPS OIG investigation of certain crimes of falsifying government records, e.g. improper 'Stop the Clock' scans of packages as delivered prior to actual delivery and, amongst other things, defrauding postal customers (see ECF 11-3).
46. This letter seems to have been referred back to the USPS OIG Hotline where they suggested that Mr. Carr would need to file a Freedom of Information Act request to get the information he required.
47. Mr. Carr submitted the FOIA request ~~on 19 October 2021~~ and received a statement from Tanya Hefley on 19 October 2021 stating "However, we were advised, during processing, the OIG Hotline determines the best routing (OIG, Inspection Service, Postal Service, other agency, etc.) for an allegation on a case-by-case basis." (see ECF 11-4)
48. A 2017 USPS OIG audit found there were over 1.9 million improper 'stop the clock' scans out of the 25.5 millions which were analyzed. The result was that over 7 percent of the analyzed scans were improper. Extending this to the over 4 billion scanned packages during 2017, as many as 280 million of such scans defrauded customers by these improper scans preventing 'guaranteed delivery' refunds. Further, the USPS OIG listed over about 1.4 million customer complaints in FY 2017 related to delivery. (see ECF 18-7)

49. In a 2020 Blog report by USPS OIG, "Specifically, 38 percent of the more than 1,100 packages that were selected at these units and that were in the facility before the carriers arrived for the day had been improperly scanned."
50. When Mr. Carr reported the details of the falsified delivery time to OIG case workers, it was not only 'likely' that a federal crime had been committed, but,in light of USPS OIG reports on the problem (see ECF 18-7), it was 'beyond reasonable doubt.'
51. However, the reality is that improper 'Stop the Clock' scans are federal crimes and are not ever referred to the Attorney General as required by statute 5a USC IG Act 1978 Section 4.
52. On 1 August 2021 Mr. Carr wrote to the USPS IG directly complaining of an apparent illegal order preventing USPS OIG case workers from reporting known federal crimes (the well documented improper 'stop the clock scans' (a.k.a. falsified government records) to the Attorney General as required explicitly by the INSPECTOR GENERAL ACT OF 1978 , 5a USC § 4 which states in part that the 'Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law'. (see ECF 11-3)
53. The USPS IG made no response but via U.S. Representative Marc Veasey, Ms. Kelly Delaney, Senior Attorney, Government Relations, USPS OIG, replied on 7 June 2022 (see 10-1,~~in USPSoigRsps.pdf (~~an electronic document already sent to the relevant Defendants) and stated

> The OIG conducts investigations to determine whether evidence exists of misconduct or criminal activity by postal employees and, when appropriate, refers such matters for criminal prosecution. When employee conduct does not meet the threshold for prosecution, we typically refer such matters to Postal Service management officials for their determination of possible administrative action. … We did not identify a violation that warranted referral for criminal prosecution.

54. Thus, the OIG is claiming the authority to decide which cases should be prosecuted while it is clear from 1978 IG Statute that Congress intended that the decision to prosecute is reserved solely for the Attorney General (or the DoJ realistically).
55. It is apparent that the USPS OIG has decided to allow the USPS to commit certain federal crimes with impunity thereby defrauding thousands of postal customers each year.

56. On 3 August 2022, Mr. Carr wrote to the USPS Board of Governors (see ECF 10-2~~with USPSbdRqst.pdf~~ (previously provided to relevant Defendants) complaining of apparent illegal orders preventing the USPS IG from properly reporting federal crimes to the DoJ as required by statute, possibly a crime itself of obstruction of justice.
57. There was no response from USPS BoG but on 14 Dec 2022 from Andrew Jones, USPS Government Relations Representative replied via Representative Veasey (see ECF 10-3)~~with BrianCarr.USPSreply.12-12-22.pdf (previously provided to relevant Defendants) which~~ state~~s~~ing 'the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is responsible for investigating complaints about an Inspector General. CIGIE conducts its investigations independently, and it has requested that all inquiries related to its functional responsibilities be referred to CIGIE for reply.' It claims that the complaint was forwarded to CIGIE but no response was forthcoming.
58. There are anecdotal reports of widespread falsification of records of all types within USPS which is the likely result of USPS OIG unlawfully granting USPS the ability to falsify delivery records with impunity. These problems were referred to USPS IG as well other defendants on 3 Mar 2023 in ECF 14-4.

Count 3

DoS Denies Mrs. Carr Visa without Due Process

59. The Plaintiffs repeat and re-allege paragraphs 1 through 58, as if fully set forth herein.
60. Mr. and Mrs. Carr had married on 23 June 2018 in Thailand and applied for an immigration visa via an I-130 petition submitted to USCIS on 17 July 2018.
61. However, they learned that the I-130 petition normally takes over a year to be processed. They were concerned that his mother was over 90 years old and her health was failing. It was unlikely that she would survive for more than a year. The couple wanted Mrs. Carr to be able to meet Mr. Carr's mother so they decided to apply for a non-immigration visa.
62. As a result, Mr. Carr completed the application for a non-immigration visa DS-160 for Mrs. Carr with the $160 fee paid by Mr. Carr with his American credit card.
63. Mr. Carr requested that he be permitted to attend the interview as Mrs. Carr representative as he was more familiar with his mom's health and his finances. However, he was told that was

not possible due to security and space concerns at the consulate.

64. As an alternative, Mr. Carr completed an I-864 affidavit of support showing assets of $2,986,370.28 over 90% of which were in IRA accounts which could not be moved outside of the U.S. without complex and expensive tax implications. He also attached an affirmed statements attached to the I-29F supporting those assets and an explanation that the couple had sufficient assets to live wherever they chose and that it would be incredibly stupid for them to overstay their visa as it would preclude freedom to travel in the future. They were not stupid people. (see ECF 12-3)
65. On 29 Aug 2018 Mrs. Carr had an interview for a B-1 / B-2 non immigrant visa (business / tourist) at the Chiang Mai Consulate in Thailand with appointment AA00843QZW.
66. The interviewer did not review any of the papers which Mr. Carr had prepared but instead did a cursory review of Mrs. Carr visa application record and noted the I-130 application to immigrate. The interviewer then informed Mrs. Carr that she could not get a tourist visa because she had an outstanding immigration visa application. The only way she could get a tourist visa would be to rescind her immigration application first and then reapply for a tourist visa. This deeply upset Mrs. Carr, presenting her with a sort of Sophie's choice dilemma. Needless to say, the interviewer's verbal claim was totally contrary to the published requirements and the law in these matters.
67. The actual denial letter had no references to any evidence presented or reviewed but simply cited section 214(b) [of the INA] and 'you did not overcome the presumption of immigrant intent, required by law, by sufficiently demonstrating that you have strong ties to your home country that will compel you to leave the United States at the end of your temporary stay'.
68. Mr. and Mrs. Carr were unlawfully denied their ability to travel freely due to denial of Mrs. Carr's visa application.
69. Mr. Carr complained to the DoS OIG with complaint H20190052 citing the lack of due process through the denial of the right to representation (Mr. Carr could not attend the interview), the denial of the opportunity for Mrs. Carr to present evidence, and the denial of the right to a written decision based solely on the law and evidence presented. Mr. Carr explained that the requirement that Mrs. Carr rescind her immigration application was not supported by the law and, as such. was unlawful.
70. On 10 October 2018 ~~received a response via the~~ DoS OIG responded with ECF 10-4.~~in the~~

~~form of a PDF file which~~

71. The response was~~has been named DoSig2018rsps.pdf~~ signed by Cristin Heinbeck, Outreach and Inquiries Division, Visa Services of DoS which stated in part:

> there is no provision in U.S. law that specifically precludes issuance of a nonimmigrant visa to an applicant with a pending immigrant visa case. However, such an applicant must still demonstrate that he or she has clear ties to a continuing life overseas and evidence that he or she intends only a temporary visit to the United States. Such evidence is required to overcome the provisions of section 214(b) of the INA.

72. The DoS did not address the denial of the right to representation and the right to present evidence. Of course an applicant will not be able to overcome the provisions of section 214(b) if they are not permitted to present the evidence which is required by section 214(b).
73. As DoS OIG improperly abdicated its responsibility to oversee BCA and referred these serious violations of the Fifth Amendment rights of Due Process to BCA, Mr. Carr continued his efforts a just and lawful decision by writing several emails to the Chiang Mai Consulate General.
74. Mr. Carr was able to persuade USCIS to expedite the I-130 immigration petition process and it was approved within four months (likely a record for such petitions in Thailand at that time).
75. Mr. and Mrs. Carr were also subjected to unwarranted stress in getting the I-130 so quickly as was the staff at USCIS who had to deal with the constant concerns raised by Mr. Carr about every delay.
76. Mrs. Carr was able to meet Mr. Carr's mother and that was a source of joy for all parties. Mr. Carr's mother died within a week of their arrival so the desire to visit promptly was well founded.
77. Mr. and Mrs. Carr returned to Thailand after a roughly three month visit to the United States (so would not have 'overstayed' a tourist visa in any case).
78. However, four years later USCIS failed in meeting its statutory mandate to allow Mrs. Carr to work and travel freely (see 8 CFR Section 216.4 (b)) and left Mrs. Carr stranded in Thailand, unable to return to the U.S..
79. As a result, Mrs. Carr had to make a second application for a tourist visa with DoS BCA

with the interview on 12 Dec 2022 at the Chiang Mai Consulate with appointment AA00BCSFIT.

80. Mr. Carr sent an explanatory email to the Chiang Mai Consulate General citing the previous letter from DoS stating that Mrs. Carr's previous visa application was denied unlawfully and explaining that USCIS had unlawfully left Mrs. Carr stranded in Thailand, attaching the supporting documents for this conclusion. Mr. Carr asked that an adequately trained interviewer be assigned to review Mrs. Carr's visa application so that there would not be further unjust and unlawful decisions.
81. The Consulate General responded that all interviewers were properly trained and made their decisions independently of any input from the Consulate General but it is possible that an addendum was made to Mrs. Carr's file explaining the sensitivity of the application.
82. Mrs. Carr's second visa application was approved with no substantial input from Mrs. Carr, only an online review of the status of the application.
83. The cost of this second visa application fee was $160 which Mr. Carr attributes half to USCIS for leaving Mrs. Carr stranded in Thailand and half to DoS BCA for unlawfully denying the first visa application.

Count 4

DoS Denies Mrs. Von Kramer Visa without Due Process

84. The Plaintiffs repeat and re-allege paragraphs 1 through 83, as if fully set forth herein.
85. Mrs. Von Kramer is the widow of an American veteran who died on 26 April 2014 (born 19 Nov 1944). Mrs. Von Kramer had promptly notified the U.S. embassy and Social Security of his death.
86. A member of the embassy staff had kindly mentioned to Mrs. Von Kramer that if she visited the U.S. regularly she could get survivor benefits from Social Security. She also explained that if Mrs. Von Kramer did not have friends or family in the U.S. it would be prohibitively expensive and not really possible.
87. As a result, after Mrs. Carr (her sister) had become a Permanent Resident of the U.S., Mrs. Von Kramer's younger daughter Yui Montira Moongram submitted a DS-160 visa application for Mrs. Von Kramer and paid the $160 fee. Her first interview was held on 9 Sep 2019 at the Chiang Mai consulate.

88. Mrs. Von Kramer asked that Mr. Carr attend the interview. Mr. Carr inquired again and was told that only the applicant was permitted in the consulate due to security and space constraints.

89. Mr. Carr helped Mrs. Von Kramer prepare an extensive folder of papers (more than an inch thick) to demonstrate her financial resources and ties to Thailand. It started with dual affirmations for Mr. Carr and Mrs. Von Kramer (see ECF 12-4, affirmed under penalty of perjury) with descriptions of the other 'exhibits' which included:
    - Round trip tickets to the U.S. with the first flight on 13 Oct 2019 on the same flight to the U.S. as Mr. and Mrs. Carr were taking and return flights for Mrs. Von Kramer after a 14 day stay (longer than the 1 day minimum requirement and shorter than the 30 day / full month maximum for a 'lawful presence' visit as described in the affirmations). See ECF 16-7.
    - An email from Mr. Carr inviting Mrs. Von Kramer to stay at their house during her visit to the U.S.. See ECF 13-1,
    - Previously Mr. Carr had provided Mrs. Von Kramer with a statement from one of Mr. Carr's retirement accounts showing over $400,000 in assets (signed by Mr. Carr), but as this ran to over ten pages it was decided to not include it in the packet and rely on the substantial savings Mrs. Von Kramer demonstrated below. Instead the focus would be on the accommodations and opportunities for service and volunteering and other 'lawful presence' activities described in attachments to the invitation email. See ECF 13-1,
    - A signed copy of Mr. Carr's passport ID page.
    - A Thai bank statement showing a roughly $30,000 balance in Mrs. Von Kramer's name for the last six months (and certified at the bank).
    - Deeds to Mrs. Von Kramer's houses in Chiang Mai and Chiang Rai with pictures of the houses (they are nice houses) along with her and her dogs, two daughters, and other sister and brother (in different pictures).
    - Deeds to some of her farm land (prime rice paddies in Chiang Rai where Mrs. Von Kramer was born).
    - Title to her car along with pictures of her with the car and family members.
    - University diplomas for her two daughters.
    - Documentation of her daughters' long term employment as a nurse in Chiang Mai and

Network Engineer in Bangkok together with pay stubs.

- Documentation of her marriage to Mr. Von Kramer and his death.
- An explanation by Mr. Carr of the requirements to get social security survivors' benefits which include several 'lawful' visits to the U.S. over a five year period (and a stipulation that any overstays would disqualify her from any future benefits).

First Visa Application Denied

90. Surprisingly enough, the interviewer verbally denied Mrs. Von Kramer first visa application based on her not having firm travel plans. This was not based on any evidence as Mrs. Von Kramer had copies of her flight tickets and invitation as described above.
91. Further, the written denial letter was identical to the one Mrs. Carr had received with no references to any evidence presented or reviewed but simply cited section 214(b) and 'you did not overcome the presumption of immigrant intent, required by law, by sufficiently demonstrating that you have strong ties to your home country that will compel you to leave the United States at the end of your temporary stay'.
92. Mrs. Von Kramer apologized to Mr. Carr at the end of the interview for not presenting her case well, but the real problem was the denial of her right to Due Process and representation.
93. Mrs. Von Kramer was raised in a very poor family with nine children and a sharecropper father. She had a limited education of only four years before she needed to start working to help support the family.
94. As a girl from a poor family in Thailand she was taught to be polite and not speak out. She was not taught how to persuasively and clearly advocate for her position. However, Due Process is guaranteed to all persons who deal with the U.S. government and the right to representation is to insure that justice is not provided only to the rich and well educated.

Second Visa Application Denied

95. Mr. Carr completed a second DS-160 visa application for Mrs. Von Kramer with the interview on 30 Sep 2019 at the Chiang Mai Consulate (appointment AA009APPX1) and Mrs. Von Kramer paid the roughly $160 fee in Thai Baht.
96. Mrs. Von Kramer was able to mention to the interviewer that she wanted to apply for Social Security but the interviewer falsely claimed that she could have her social security claims handled in Manila in the Philippines and did not need a U.S. visa for that. It is unclear if the interviewer was ignorant of Social Security rules and regulation or maliciously told her false

information.

97. Mrs. Von Kramer mentioned her contact at the embassy who had explained the U.S. requirements for non citizens to receive Social Security benefits overseas to Mrs. Von Kramer, but the interviewer declined to call her.

98. The interviewer also did not read Mr. Carr's extensive explanation of Social Security rules and regulations applicable to Mrs. Von Kramer but instead denied her application based on the false claim that she could get her social security benefits in the Philippines.

99. The written denial letter was the same form letter as before with no mention of the actual evidence considered.

Third Visa Application Denied

100. Mrs. Von Kramer again apologized to Mr. Carr for not presenting her case well as she had not given the interviewer the extensive documentation which Mr. Carr had compiled.

101. Mr. Carr completed a third DS-160 visa application for Mrs. Von Kramer with the interview on 9 Oct 2019 at the Chiang Mai Consulate (appointment AA009BKKHR) and Mrs. Von Kramer paid the roughly $160 fee in Thai Baht.

102. Before the interview, Mrs. Von Kramer practiced handing the packet of documentation to the interviewer as she had not done that in previous interviews. Mr. Carr also ensured that she called attention to his affirmation which explained all the other attachments as well as the requirements for Social Security benefits paid to foreign nationals overseas.

103. In the actual interview, Mrs. Von Kramer did hand the packet to the interviewer and he did spend a few seconds reading the first few pages, before closing the packet and informing Mrs. Von Kramer that she could not get a visa as she was a widow and too old with insufficient ties to Thailand. If she were to remarry she could reapply and might be eligible for a visa.

104. Of course this verbal rationale is completely contrary to the published rules and laws for non-immigration visas.

105. The written denial letter was the same form letter as before with no mention of the actual evidence considered.

106. It should be noted that if Mrs. Von Kramer were to remarry, she would no longer be eligible for SSA survivors' benefits, the central focus of the first few pages of Mr. Carr's affirmation.

107. It is also apparent that the DoS BCA has unpublished unwritten unlawful policies which are

followed by interviewers such as:

- Immigration applicants should not be granted tourist visas irrelevant of the actual facts and circumstances.
- Widows of deceased American citizens (or more properly surviving spouses) should never be granted tourist / business visas irrelevant of the actual facts and circumstances

The last item may be intended to reduce drains on the overburdened social security system which could be considered an admirable goal, but it is up to Congress to balance the complex trade offs of such matters.

108. Mrs. Von Kramer suffered financial loss due to these unlawful denials of visa applications to include three application fees ($160 times 3, or $480) but also the flight tickets she was not able to use. Her round trip fare via Expedia on China Southern Airlines was $511.53 which was a bargain for non-refundable tickets, but Expedia was helpful in negotiating with China Southern Airlines due to the extenuating circumstances and was able to get a refund of the entire amount less the stated change fee of $134. See ECF 16-7.

109. Mrs. Von Kramer was also unable to establish a lawful presence in the United States during the years of 2019, 2020, and 2021 according to SSA policies concerning payments to non-citizens residing outside the United States. An exception is granted to surviving spouses who have established a 'lawful presence' in the United States with five years of legal visits to the United States which demonstrate enduring ties to the United States. The requirements for these lawful presence visits are also complex and ambiguous (to the Plaintiffs) with the unusual requirement that for a visit to count for 'lawful presence' it must be longer than one day and shorter than 30 days (and not a full calendar month). A stay for an entire year also counts. See SSA POM RS 02610.025 5-Year Residency Requirement for Alien Dependents/Survivors Outside the United States (U.S.). [1]

Fourth Visa Application Approved

110. Mrs. Von Kramer made a fourth application for a tourist visa with DoS BCA with the interview on 12 Dec 2022 at the Chiang Mai Consulate with appointment AA00BCSFIT.

[1] In 2023 Mr. Carr expressed an interest in the 'lawful presence' requirements with some SSA employees and after minimally including SSA in this suit, SSA has substantially improved and clarified the governing rules in SSA POM RS 02610.025 with an increased focus on 'sincere effort to establish enduring ties to the U.S..'

111. Mrs. Van Kramer was able to schedule her interview to be 15 minutes after Mrs. Carr time slot so that the two sisters went in together. It happened that Mrs. Carr was able to introduce Mrs. Von Kramer to Mrs. Von Kramer's interviewer with the statement 'She is my sister' before Mrs. Carr went on to her interview.
112. Mrs. Von Kramer was prepared with a more extensive folder of papers and had practiced presenting the papers with simple and brief explanations (e.g. "Here is an invitation letter from my brother-in-law, here is a picture of me with my sister and brother-in-law, here is a copy of my brother-in-law's passport page which he has signed for me, …")
113. However, before Mrs. Von Kramer could start her presentation, the interviewer asked if she would be traveling with others. She answered that she would be traveling with her sister and brother-in-law and the interviewer replied 'Let me look into the status of the other members of your group'. He then briefly looked at records on his computer before telling Mrs. Von Kramer that her visa application was approved.
114. It is possible that Mrs. Von Kramer's interviewer may have read any notes or concerns about Mrs. Carr's visa application made by the Chiang Mai Consulate General in response to Mr. Carr's previous email.

SSA Conditionally Grants Survivors' Benefits

115. As a result, Mrs. Von Kramer was able to visit the United States briefly in 2022 and 2023, possibly establishing a lawful presence for those years according to SSA standards. See SSA POM RS 02610.025 5-Year Residency Requirement for Alien Dependents/Survivors Outside the United States (U.S.)
116. After a weekend trip to Cancun Mexico in January of 2023, Mrs. Von Kramer continued the process of applying for SSA survivors' benefits which started in May of 2023 and have continued with the requirement that Mrs. Von Kramer can not continue to receive benefits outside the U.S. if she is outside the U.S. for more than six months.
117. Mrs. Von Kramer has met SSA's requirements for payments and intends to continue her regular visits to the U.S. until SSA determines that she has established a lawful presence in the U.S. for five years.

DoS Refuses FOIA Requests

118. On 11 May 2023 via the DoS FOIA request web page Mr. Carr submitted two FOIA requests along with emails to FOIARequest@state.gov with required release forms for Mrs.

Von Kramer and Mrs. Carr seeking all records related to the visa applications cited herein..

119. On 24 July 2023 responding to Case Number: F-2023-08493 Laura Stein, Deputy Director, Office of Domestic Operations, Directorate for Visa Services (DoS) stated that even with authorizations for release of FOIA information from Mrs. Carr and Mrs. Von Kramer, the DoS would still be required by section 222(f) of the Immigration and Nationality Act (8 USC § 1202~~8 US section 1202(f)~~(f) to keep confidential any visa records that were not previously received from or sent to the subject of the request. See ECF 12-5.

120. This misconstrues 8 USC §~~US section~~ 1202(f) which states:

> (f) Confidential nature of records shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States,

121. However, the Fifth Amendment guarantees to all persons (including foreign nationals) the right to Due Process which certainly includes access to all the evidence presented against them. All such information must be released to the applicant in order to administer the immigration laws and the applicants' due process rights so 222(f) does not apply to applicants seeking access to records applicable to their case.

122. These requirements on administrative procedures even extend to properly classified information covered by the Classified Information Procedures Act (CIPA) which provides uniform procedures for prosecutions involving classified information.

123. In Kiareldeen v. Reno~~, see~~ 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. On 20 Jun 2023 Mr. Carr notified DoS and other defendants of these crimes and other problems in ECF 14-2.

Count 5

DoS OIG Refuses to Investigate or Report Federal Crimes

124. The Plaintiffs repeat and re-allege paragraphs 1 through 123, as if fully set forth herein.

125. In early October 2018 Mr. Carr submitted a complaint via the DoS OIG hotline (a web page) concerning malfeasance in the processing of visa applications as the DoS BCA did not

provide due process, particularly the right to representation, lack of a written decision based on the evidence and the law, and right to appeal.

126. On 10 October 2018 he was assigned reference number H20190052 and a response which included 'We have reviewed your complaint and determined that the appropriate office to address your concerns is the Bureau of Consular Affairs, Executive Office. Your information has been forwarded to that office.' See ECF 10-4.

127. This was consistent with The DoS OIG hotline web page at https://www.stateoig.gov/hotline which states 'Please note: OIG does not investigate complaints about the denial of U.S. visas.'

128. In April of 2023 Mr. Carr again complained about the lack of due process in processing visa applications and explicitly cited the plausible allegation of falsifying government records (see ECF 34-7) but~~and~~ received the same response (apparently a form email) with H20231749 on 2~~0~~4 April 2023 for Mrs. Carr (see ECF 34-7) and H20231753 on 1~~8~~9 April 2023 for Mrs. Von Kramer where~~. On 19 Apr 2023,~~ DoS OIG stated that it was forwarding the matter to DoS BCA without taking any action (ECF 39-3).

129. However, in the 2023 complaints Mr. Carr explicitly made a plausible allegation of falsifying government records (a federal crime) from omitting required information from the denial notices as required by Due Process. Specifically there was no reference to any of the actual evidence presented or considered. See ECF 34-7.

130. The right to a written decision well founded on the evidence is particularly important (perhaps the foundation of due process) and 18 USC §~~U.S. Code Section~~ 1001 defines a federal crime (falsification of government records) as:

> (a) ... whoever, in any matter within the jurisdiction of the executive... branch of the Government of the United States, knowingly and willfully --
>
> (1) falsifies, conceals, or covers up ... a material fact;

131. This has been held to include the omission of required facts which would include the rationale for a particular visa denial. It would also include having contradictory records, e.g. the video recording which included absurd conclusions such as that Mrs. Carr could not receive a non-immigration visa while she had an outstanding immigration application and a written decision which has no explanation at all.

132. Mr. Carr asked that the matter be forwarded to the DoJ as DoS OIG was required to report all plausible allegations of federal crimes to the Attorney General by statute, i.e. the INSPECTOR GENERAL ACT OF 1978, 5a USC § 4 which states in part that the 'Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law'

133. Mr. Carr explained that if the DoS OIG did not have sufficient resources to investigate every plausible allegation of a federal crime, it was acceptable to forward the complaints to another department for resolution (perhaps even local management) as long as the complaint was also forwarded to the DoJ. See ECF 34-7, ECF 17-3.

134. Further, on 20 June 2023, Mr. Carr reported this malfeasance and, potentially, obstruction of justice within the DoS OIG to the DoS IG, Secretary Blinken (DoS), DoJ (cc) and CIGIE,. ECF 14-2, ECF 34-7, ECF 17-3.

Count 6

CIGIE Takes No Action to Insure Lawful IG Compliance

135. The Plaintiffs repeat and re-allege paragraphs 1 through 135, as if fully set forth herein.

136. On 20 June 2023, Mr. Carr complained to the CIGIE about DoS IG not reporting federal crimes to the DoJ as required by statute, ECF 14-2.

137. On 9 August 2023 the CIGIE responded that it was closing the case IC23-083 with no action taken (a standard form letter email with no reference other than the date of complaint and case number), ECF 14-3.

138. On 9 Oct 2023, Mr. Carr complained to the CIGIE about USPS IG not reporting federal crimes to the DoJ as required by statute, ECF 14-5.

139. On 1 Nov 2023 the CIGIE responded that it was closing the case IC24-010 with no action taken (a standard form letter email with no reference other than the date of complaint and case number), ECF 14-6.

140. ~~46~~Mr. Carr was seeking that the council abide by its charter and insure that all Inspector Generals (IG) and staff under the different IGs are aware of the requirement to report all federal crimes to the Attorney General (AG) or, logically, the Department of Justice (DoJ), whenever they believe a federal crime has been committed within their purview /

department(s) which they monitor. See the INSPECTOR GENERAL ACT OF 1978, Section 4, 5a USC § 4 which states in part that the "Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law." See ECF 17-3.

141. It appears the United States Postal Service (USPS), Department of State (DoS) and Department of Homeland Security (DHS) IG's have each decided that they can choose not to prosecute certain federal crimes, particularly those crimes which have been integrated into the monitored departments normal procedures and which would be greatly disruptive to the monitored department to correct. They do this by refusing to report these crimes to the DoJ.

142. However, just because criminally illegal processes are integrated into the monitored department does not make them immune from prosecution. The decision to prosecute resides solely with the DoJ and failure of the IG to report federal crimes is at least malfeasance and could be construed to be obstruction of justice (another federal crime).

143. Mr. Carr was not asking for prosecution of any crime but only a directive from the CIGIE that all OIG personnel report all plausible allegations of federal crimes to DoJ even if they do not have sufficient resources to investigate the allegation and can not confirm that the crime is likely, much less prosecutable.

144. Further, it appears that the CIIGE has gone from a council which was intended to develop and enforce the highest standards and adherence to the law to instead become a group that supports and encourages criminal behavior in their monitored departments and shares ideas and methods for supporting the criminal behavior. This could be construed as going beyond simple obstruction of justice to violating federal RICO criminal statutes, e.g. collusion between the illegal orders of the USPS BoG, USPS senior management, USPS IG, and CIGIE.

18 USC § 1505 - Obstructions of proceedings (OIG Case)

18 USC § 1510 - Obstruction of criminal investigations

Bribery to prevent communication with investigator

18 USC § 201 - Bribery of public officials and witnesses

Illegal order to OIG case worker to not report federal crimes to DoJ,

Case worker (or IG) gets to keep job if they do not report federal crimes to DoJ

18 USC Ch 96 (RICO) -

145. Of course Mr. Carr is not arguing that the RICO charges would be prosecutable or even recommending / asking the DoJ to prosecute any party, only that DoJ insures that all agencies of the U.S. government endeavor to obey all lawful statutes to include reporting all plausible allegations of federal crimes to the DoJ. On 24 Oct 2023 Mr. Carr asked that CIGIE, DoJ and other defendants correct these deficiencies in ECF 49-4.

Count 7

USCIS Denies Citizenship After Approval

Initial Applications

146. The Plaintiffs repeat and re-allege paragraphs 1 through 145, as if fully set forth herein.

147. On 04 Aug 2020, USCIS received Mrs. Carr's I-751 application for a permanent green card (remove two year conditions) with receipt MSC2091582908. However, there was no interview with Mrs. Carr receieving an 18 month extension letter and later a 24 month extension letter (thus extending the original expiration of her 'green card' from 13 Nov 2020 to 13 Nov 2022). See ECF 18-6, 12 Dec 2021. This delay in scheduling the I-751 interview is a direct violation of 8 CFR Section 216.4(b)(1) which states:

> … The 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.

148. On July 11, 2022, Mrs. Carr submitted her N-400 application for naturalization as USCIS timetables suggested her I-751 interview was imminent and there was a 9 month delay for N-400 interviews. This would allow her to complete her I-751 interview and get her permanent green card about six months before her N-400 interview. This would allow time for her to study for the English and civics exams without concerns about having an expired green card.

Mrs. Carr's emphatic desire for a permanent green card before citizenship

149. It is important to understand that Mrs. Carr was absolutely terrified of USCIS. As an older immigrant from a poor family with extremely limited education, only 4 years of schooling,

and no formal exposure to English in her childhood, Mrs. Carr feared arbitrary, capricious and unjust actions by USCIS such as deporting her without cause or notice if she failed her citizenship test or leaving her stranded overseas, not able to return to the U.S..

150. Mr. Carr also came from a relatively poor family, but he was born in the U.S. and was very fortunate. Mr. Carr graduated from West Point and later received a graduate degree from M.I.T.. Mr. Carr could not believe that USCIS would take unlawful and illegal actions such as leaving Mrs. Carr stranded overseas unable to return to the U.S.. It turns out in retrospect that Mrs. Carr was more correct than Mr. Carr.

Unlawful Restrictions on Travel by USCIS, Stranded in Thailand

151. In September of 2022, Mrs. Carr returned to Thailand on an emergency basis as her mother's health was failing. Sadly Mrs. Carr arrived just after her mother's death but was able to participate in the funeral ceremonies which extended until December of 2022 as Thai traditions has the ashes from the cremation waiting 100 days before being taken back by the family.

152. Her green card and extensions expired on 13 Nov 2023 while Mrs. Carr was in Thailand on an emergency basis (see ECF 24-1 and 18-6). Even though 8 CFR Section 216.4 states ... 'Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director [of USCIS] has adjudicated the petition.', USCIS refused to provide Mrs. Carr with any documentation to allow her return to the United States. This is contrary to the above statute.

153. USCIS's suggestion for how Mrs. Carr was to return to the US was via an I-131A (for travelers who have 'lost' their documents to get a one time document allowing their return for a $575 fee), see ECF 18-6. Instead Mrs. Carr got a $160 multiple entry B1 / B2, business / tourist visa and was able to return to the USA in late Dec 2022, ECF 45-1.

Rescheduling Original Interview

154. Further, USCIS scheduled Mrs. Carr's N-400 interview for 14 Dec 2022. Mr. Carr explained to USCIS that Mrs. Carr would be unable to attend as she was out of the country and could not return due to USCIS's refusal to provide her with proof of valid permanent resident status. On 21 Nov 2022 USCIS canceled the 14 Dec 2022 interview and later scheduled her joint interview for I-751 and N-400 for 30 Jan 2023.

A-551 Passport Stamp Instead of Green Card

155. Mrs. Carr was also able to come into a USCIS office on 3 Jan 2023 to get an A-551 stamp in her passport which was valid for one year but does not provide the full ability to travel and work freely of a traditional green card. See ECF 20-2.

Improper Application of English Requirement to Older and Poor,
Discriminates Against Buddhist and Islamic Cultures

156. Prior to the interview on 30 January 2032, Mr Carr initiated a complaint with the DHS OIG that the English requirements for naturalization were discriminatory based on religion, income, age and culture.

157. It is well established that the appropriate time to learn the sounds of English is soon after birth. Further the appropriate time to learn to recognize the shapes of English characters is before adolescence.

158. For example, in Thai language there is no 'th' sound and~~. Further,~~ the pair of plosive sounds d and t are not in the Thai language. The Thai language includes only the consonant that is between d and t. As an adult, Mr Carr cannot hear the sound that is between d and t nor can he pronounce it. Similarly, as~~because~~ Mrs. Carr was not exposed to English at an early age, she is unable to hear or pronounce the 'th' sound.

159. ~~Similarly~~Further, the time to learn to recognize the characters of the English alphabet is before adolescence. While it is possible to learn to recognize a foreign alphabet during~~at~~ later years, the recognition will never be as quick, accurate or comfortable as if it was learned before adolescence.

160. The actual effect of the English requirement for citizenship is to discriminate against older individuals from poor families from Buddhist and Islamic countries.

Joint I-751 and N-400 Interview of 30 Jan 2023

161. There was a joint I-751 and N-400 application on 30 Jan 2023. The informal results were that Mrs. Carr failed the English and civics tests (ECF 16-4). The interviewer also canceled the 'final' portion of the I-751 interview which was an undocumented and possibly unlawful review of the 'criminal background' questions from some previous forms (not part of the I-751 application itself) as Mrs. Carr did not understand English and so could not personally answer those questions.

162. The results of the interview were given verbally and informally at the time of the interview. There was also a poorly written and ambiguous form letter with check boxes concerning the N-400 results (similar to ECF 16-4 though the provided copy was hand written).

163. However, the next day (31 Jan 2023) USCIS entered a formal written decision for the I-751 application (ECF 16-4, previously provided to relevant Defendants ~~as I797forMSC2091582908-ioe9752855294.pdf.~~) which stated in part:

> We have approved your I-751, Petition to Remove Conditions on Residence. Our records also indicate we have approved your Form N-400 Application for Naturalization. Because we also approved your N-400, you will not receive a new Permanent Resident Card (also known as a Green Card). Instead, once you have taken the Oath of Allegiance, you will receive a Certificate of Naturalization, which will be proof of your U.S. citizenship. If you have questions regarding this process, please contact the USCIS contact center at 800-375-5283.

164. Mr. and Mrs. Carr were elated at this change in fortune as it was a complete reversal of the informal verbal results. They relied on the formal written decision as a final findings of facts, decision, and order (to borrow from judicial terminology which is appropriate for a serious due process matter concerning the ability to vote and work and travel freely).

USCIS Denied I-751 Through False Statements

165. Within a couple of weeks Mr. and Mrs. Carr inquired at the specified contact number as to when the Oath of Allegiance would be scheduled and were told that the normal processing time for such matters was 4 or 5 months and that they should call back after that.

166. Mr. and Mrs. Carr would later learn that her I-751 was actually denied. USCIS would later deny her N-400 in a sham hearing and continue to refuse to provide her with a 10 year green card until after this suit was filed. ~~(no green card would ever be issued on that application based on the statement that Mrs. Carr's N-400 was approved).~~ As more than thirty days have passed since this effective denial based on statements which USCIS believed to be false, there wea~~r~~e no avenues within USCIS to actually get the permanent green card.

USCIS Unlawful Policies Justified as 'Enforcement'

167. The US government has had a long history of discriminating against foreign nationals with USCIS and its counterpart for visas in the Department of State each contributing through an

unlawful disregard for due process.

168. However, during the Trump era with the appointment of Director Francis Cissna, confirmed 5 Oct 2017, USCIS went to new heights of illegally mistreating foreign nationals.

169. Specifically, USCIS stopped waiving of the interview for an I-751 application even though these waivers were mandatory in accordance with 8 CFR Section 216.4 (b) which states:

> "The 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."

The unlawful elimination of waivers (previously about 90% had been waived) created an explosion in the unlawful queue for I-7~~17~~51 interviews for USCIS which already had an illegal 1-year backlog of applications. Further, the interviewer was now required to verbally confirm the prior criminal background questions.

170. As most I-751 applicants do not speak English and most USCIS interviewers speak only English, USCIS effectively stopped conducting interviews for I-751 applications. Instead of adding more resources to conduct the expanded interviews with the collected fees, USCIS just illegally stopped conducting interviews which, along with the illegal termination of the mandated waivers, added to the explosion of the illegal queue for I-751 interviews. Executive Discretion gives wide latitude to the executive branch but this does not extend to explicitly prohibited behavior when there are legal options available such as using the collected fees for their specified purpose of granting waivers and conducting interviews. As cited above, USCIS was explicitly required to grant a waiver or schedule the interview and adjudicate the I-751 within 90 days of the acceptance date of the I-751 in 8 CFR Section 216.4(b)(1).

171. Instead USCIS simply waited until the applicant later filed an N-400 application for citizenship, though not all applicants later filed N-400 applications. Then the interviews were combined with the verbal review of the criminal background questions conducted in English, assuming the applicant was able to pass the English test. Further, the criminal background questions were already part of the N-400 interview in any case.

172. However, if the applicant was unable to pass the English test, then USCIS was in a bind for

the I-751 new criminal background portion of the joint interview. USCIS had to find a creative solution to process this case.

173. It appears that USCIS chose to effectively deny the I-751 application by claiming it was approved along with the N-400 so that no permanent resident card was provided. However, USCIS would then refuse to provide either a permanent resident card or certificate of naturalization by later claiming in future case updates that the N-400 application had not been approved.

174. This meets the criteria of a federal crime because the effective denial of the I-751 application was based on a claim that USCIS believed was false. For future reference, this will be called 'effective denial based on false premises'.

USCIS Provides Incomplete or False Estimates of Interview Dates

175. When USCIS effectively ceased providing separate I-751 interviews, they did not provide notice to applicants nor did they provide accurate estimates for the dates when interviews would be scheduled. The actual scheduling of I-751 interviews was **never** unless the applicant submitted an N-400 application (citizenship) in which case both interviews were scheduled together almost immediately irrelevant of the normal queue for N-400 interviews.

176. This caused great uncertainty and fear for those applicants who were poorly educated with limited English ability and poor understanding of US government procedures such as Mrs. Carr.

177. The phone number provided by USCIS for questions and concerns was answered by an automated phone system which was distinctly unresponsive and would routinely hang up on applicants if they were not able to correctly formulate a request or question which the automated could respond to.

178. For most of the time when the I-751 application was pending scheduling an interview (and in a queue over two years long and growing), there were no requests or questions which the automated system could respond to. It was certain that the automated system would hang up on the applicant after about five minutes of struggling to find a way to speak to an actual person where they could explain their concern. This phone number was the only point of contact for applicants attempting to get information about the status of their application.

See ECF 18-6.

Criminal Background Questions Unlawful

179. Just after the interview of 30 January 2023, Mr Carr also initiated an IG complaint concerning the criminal background questions which were routinely included as part of the USCIS application policy.

180. In particular, there are no exceptions provided about classified information which cannot be released to the interviewer or records sealed by a lawful court order.

181. Further, it is overly broad to not restrict the questions to actual convictions for serious crimes. As stated the questions would include every minor traffic or even parking violation in the state of Texas where such violations are considered crimes. The truth is, no one remembers all the situations where they may have gone over the speed limit or parked a few inches too close or too far from the curb.

182. In fact, the only accurate answer to any of the criminal background questions is 'yes' with an explanation of 'I can neither affirm nor deny the existence of information relating to this question.'. Any other answer could risk violations of the law by providing either classified or sealed information. Further, no one remembers or ~~even~~ knows all the circumstances where they may have violated some minor traffic, parking, or zoning regulation.

USCIS Informed of Upcoming Travel Plans

183. In August, Mr. and Mrs. Carr contacted USCIS about scheduling a new A-551 stamp for Mrs. Carr's passport to preserve her limited ability to work and travel based on their travel plans to be out of the country from 10 Oct 2023 to 25 Dec 2023. They were told that they could not get a replacement A-551 stamp as they can only be issued within 30 days of expiration and the applicant must be in the US to get the stamp.

184. In August Mr. Carr also contacted his congressman, Representative Veasey, seeking assistance in getting the Oath of Allegiance scheduled as no action had been taken in the matter.

N-400 Interview of 30 Jan 2023 Canceled

185. However, on 01 Sep 2023 USCIS sent a notice ~~(USCIScancel20230901-20230130.pdf previously provided to relevant Defendants)~~ which states that "the interview of 30 Jan 2023 was canceled due to unforeseen circumstances" (sent under the N-400 receipt, see ECF

10-6). Of course this is a completely false document (and hence a federal crime) as the N-400 interview was completed and this document contradicts several previous documents and verbal statements as well as the final decision in the I-751 case and later activity in the N-400 case.

186. On 5 Sep 2023 Mr. Carr and Mrs. Carr called USCIS at the prescribed number and spoke with Destiny, ID G010590.

They asked that Destiny send an email to the appropriate party to promptly schedule Mrs. Carr's Oath of Allegiance as stated in the cited I-751 approval notice and, in the alternative, if an N-400 was not actually approved, that Mrs. Carr be sent a new 10 year Permanent Resident Card.

Destiny explained that **it is not uncommon for additional interviews to be required even after the I-751 and N-400 are approved** and that Mrs. Carr could not be sent the approved Permanent Resident card. Implicitly her statement indicates that such formal approvals were actually effective denials based on false premises.

At that time Mr. Carr asked that Destiny take notes for details to include in the email she would send on their behalf.

Mr. Carr cited 18 USC § 1001~~18 USC §U.S. Code Section 1001~~ which is one of many criminal codes for falsification of government records and states in part:

(a) ... whoever, in any matter within the jurisdiction of the executive... branch of the Government of the United States, knowingly and willfully --

(1) falsifies, conceals, or covers up ... a material fact; ... or

(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

(3) prohibits taking any action based on a false document with the implicit exceptions that actions may be taken to: correct the false document or, if the individual is not

authorized to correct the false document, to report the false document to their supervisor and / or the relevant OIG explaining that there is an existing false document and a possible federal crime when the document was created.

N-400 Interview Scheduled for 11 Oct 2023, Insufficient Notice

187. On 06 Sep 2023 USCIS scheduled an interview for 11 Oct 2023 as shown in ECF 10-7~~UscisI797intrvw20231011.pdf (document previously provided to relevant Defendants)~~, but the actual notice was not received until 15 Sep 2023 when it was too late to respond until the next week as Mrs. Carr work~~s~~ed Tuesday to Sunday and wa~~s~~is not able to respond while she wa~~s~~is working.

188. The arrival date of this notice is a critical issue as there must have been timely notice of the interview in order to justify the denial of the N-400 application for failure to appear. In ECF 16-1~~ USCISuspsMailArrivals20230915.pdf (previously provided to relevant Defendants)~~ is an email from USPS which shows the mail which arrived at their address on 15 Sep 2023. The notice of 06 Sep 2023 seems to have been mailed on 12 Sep 2023 according to the postmark shown in the USPS email. As 30 days notice is required for such interviews, the notice on 15 Sep 2023 was not timely for an 11 Oct 2023 interview and the denial of the N-400 application for failure to appear must be overturned due to lack of notice.

189. In the contested decision (see ECF 10-10, N-400 denied for failure to appear) there is no claim of any notice at all and it appears that USCIS routinely delays mailing documents a few days after the date of the 'notice'. In cases of mailed documents they adjust the 30 days to 33 days to allow for time in the mail, but there is no adjustment for delay in printing and actually mailing the notice. Given that this document took 9 days to arrive, a more realistic adjustment for mailing would be 45 days if mailed without the normal proof of mailing.

Complaint of Falsified Records, 01 Sep 2023 Cancellation

190. On 10 Sep 2023, Mr. Carr contacted the USCIS director, DoJ and DHS IG reporting the contradictory records (was the interview held on 30 Jan 2023 which approved the I-751 and N-400 or was it canceled with no results), ECF 49-3. With contradictory records, one or more of them must be false, the foundation of the federal crime of falsification of government records.

191. Mr. Carr also asked for acknowledgement of the report within 7 days. No such

acknowledgement has been received to date.

192. On 0~~7~~6 Oct 2023, Mr. Carr asked that DoJ assist in correcting these serious defects in USCIS and DHS IG, ECF 17-4. The reports of the crime and request for assistance have previously been provided to relevant Defendants. (Note: Mr. Carr was unaware of the scheduling of the interview for 11 Oct 2021 on 06 Sep 2023 when he first reported the crime).

193. On 12 Sep 2023 Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Umika, ID G20028112.

They complained of the 1 Sep 2023 I-797 Notice of the canceling of the 30 Jan 2023 N-400 interview due to unforeseen circumstances (described previously). They explained that the interview was held on that date and the 01 Sep 2023 document is a false record (and federal crime) which also contradicts the I-751 final decision of 31 Jan 2023 which stated that the N-400 application was approved at that interview. They advised Umika that she must either correct the false record or, if she did not have the authority to correct the record, she must contact either her supervisor or the IG or both to report the crime. Failure to do so on her part would itself be a crime under 18 USC § 1001~~18 USC §U.S. Code Section 1001~~, part 3, which Mr. Carr read to her after asking her to take notes.

Mr. and Mrs. Carr also asked that Mrs. Carr immediately be sent the new 48 month extension letter which was publicly authorized by USCIS on 23 Jan 2023, one week before the interview (so USCIS was required to have mailed her a copy of the extension letter before the interview). The USCIS announcement was also about two months after they had complained to USCIS and the DHS OIG that USCIS had unlawfully left Mrs. Carr stranded in Thailand due to the absence of such a 48 month extension letter.

They also asked that USCIS send Mrs. Carr a permanent green card as soon as possible as there was now a record in the N-400 case indicating that her N-400 application had not been approved and so there was no basis for withholding the approved green card.

They also asked that the local representative contact the USCIS director in order to get copies of the emails which properly explained their complaints to date as that was the only method of sending written documents to USCIS for their consideration.

They also asked that the local representative call them back on Monday 18 Sep 2023 at 9AM as Mrs. Carr would be working during normal business hours on Tuesday through Sunday and unable to take calls. No such callback was made. (Note: At this time, Mr. Carr was unaware of the scheduling of the interview for 11 Oct 2021 on 06 Sep 2023 and did not receive notice until 15 Sep 2023.)

First Request to Reschedule Interview

194. On 19 Sep 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with David, ID G009845. (Note: this request was timely as Mr. Carr only learned of the scheduled interview date on 15 Sep 2023)

They requested that the interview scheduled for 11 Oct 2023 be rescheduled as they had prior plans to be out of the country from 10 Oct 2023 to 25 Dec 2023.

Mrs. Carr asked if the interview could be scheduled for only a day or two earlier but they were told that it could not be scheduled earlier.

Their request to reschedule the interview was assigned ID T1B2622391513DAL.

Upon a lengthy description of the purpose of the ten week trip, David incorrectly summarized the reason for the trip as 'leisure' which raised concerns for Mr. Carr that their trip was not being given appropriate gravity. They asked that David request that USCIS reschedule for after the completion of their trip on 25 Dec 2023. It turned out that David was restricted to 80 characters in his request and so described the reason for rescheduling as Mrs. Carr will be out of the country from 10 Oct 2023 to 25 Dec 2023 to increase the likelihood that the individual who responded would be aware of the duration of their trip.

They also asked that Mrs. Carr be provided with a 12 month extension letter as her A-551 stamp would expire on 03 Jan 2023 and if there were health or other problems which delayed their return, she would no longer have proof that she was authorized to work and travel freely. David assigned sn 30214416 to a request that a local USCIS representative call Mrs. Carr from 2028382104 to discuss the extension letter.

Unsuccessful Call Back on 21 Sep 2023

195. The call back by the local USCIS representative was made on 21 Sep 2023 in the morning. Mrs. Carr was not home (as she was working) but it was rescheduled for later that evening at 7:30PM when Mrs. Carr was likely to be home. Mr. Carr called Mrs. Carr and she came home a little early and was home by 7PM but the USCIS representative did not return the call as agreed upon. No further return calls were made for this request.

Request that Mr. Carr be Mrs. Carr's Authorized Representative

196. Due to the confusion of not being able to get any response from USCIS, on 25 Sep 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Martha, ID G029811.

They asked about how to submit a G-28 appointment of Mr. Carr as the representative in this matter. They were told to mail the application to:

ATTN: N-400, G28 submission
850 NW Chipman Rd, Suite 5000
Lees Summit, MO 64063

An online G-28 request had been submitted on 24 Sep 2023 and the hard copy request was mailed on 26 Sep 2023. Martha also explained how to submit a document directly to USCIS on their web site and an electronic copy of the G-28 was submitted on 28 Sep 2023. See ECF 30-5.

Martha also explained that USCIS responds to G-28 requests within 30 days. No response has been received to date on this G-28 request.

Denial of Reschedule Request, Not Sent to Authorized Email

197. While speaking with Martha on 25 Sep 2023, Mr. and Mrs. Carr also learned that on 19 Sep

2023, USCIS had denied their request to reschedule the interview and sent an email to airpk1961@gmail.com, an email address that is rarely monitored. See ECF 10-8.

198. This was not proper. Before they were married Mrs. Carr had used that email and Mr. Carr had used carrbp@gmail.com. However, since their marriage they have shared their emails with both parties having full access to both email addresses. As they have a legal union, they are not required to maintain separate personal email addresses and now reference all emails to carrbp@gmail.com which is regularly monitored. In rare cases when businesses insist on separate email addresses for separate persons, they provide Mrs. Carr's old email address, but that address is not regularly monitored. At no time have they agreed that USCIS should direct email notices to Mrs. Carr's old email address and none of the submissions to USCIS have authorized the use of that email address. The actual email from USCIS was previously provided to relevant Defendants as USCISnotReschedule20230919.pdf. It stated in part: "Type of service requested: -- Appointment Reschedule ... USCIS has reviewed your request for a rescheduled appointment, and we regret to inform you that your request has been denied based on the information provided. Failure to comply with your appointment notice or to appear for your scheduled interview may result in adjudication of your application based on the available information."

New request to Reschedule Interview

199. Due to the delay in their receipt of the denial of their request to reschedule the interview (sent on 19 Sep 2023, found on 25 Sep 2023), Mr. Carr uploaded a timely explanation of the reasons for rescheduling the interview on 27 Sep 2023 (see ECF 30-7)~~which has been previously provided to relevant Defendants as PostponeIntervieUntilAfter25Dec2023.pdf~~ along with copies of the flight tickets, date restricted European visas, hotel reservations, required medical insurance coverage and European bus tour tickets, all of which are non-refundable. The document explains that the purpose of the trip is religious obligations, family obligations, business promotion, business training and education, and leisure. Planning for the trip was started in Feb 2023 and the leisure portion of the trip was to celebrate the approval of Mrs. Carr's N-400 application for naturalization as USCIS stated in the USCIS approval of I-751 and N-400 in ECF

10-5I797forMSC2091582908-ioe9752855294.pdf on 31 Jan 2023.

200. On 2 Oct 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Crystal, ID G027432.

Mr. and Mrs. Carr asked that Crystal submit a new request to reschedule the interview based on the documents submitted on 27 Sep 2023. Crystal explained that they could not make a new request to reschedule the interview until 15 days after the previous denial on 19 Sep 2023, i.e. 04 Oct 2023 (after the start of Mrs. Carr work week).

They explained that they had provided additional justification for rescheduling the interview which has been uploaded for USCIS to consider.

They asked that USCIS review the uploaded G-28, separately filed online and sent via mail and submitted electronically 28 Sep 2023 (ECF 30-5). Crystal explained that USCIS has 30 days to act on G-28 requests.

201. On 10 Oct 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Antoinette, ID G0023588.

Mr. and Mrs. Carr asked that Antoinette submit a new request to reschedule the interview explaining that it was more than 15 days after the previous denial of the request to reschedule and explained that they had submitted additional documentation.

Antoinette contradicted the previous representative, Crystal, and stated that new requests to reschedule can only be made more than 30 days after a previous denial. As interviews are scheduled with the nominal 30 days notice (33 days if notice is by mailing), this would ensure that USCIS never reconsiders any denial of rescheduling no matter what the extenuating circumstances. As this claim also contradicts the previous representative it is likely that Antoinette's and possibly Crystal's claims are false and, hence, federal crimes.

Access to Case Records Unlawfully Denied

202. On 01 Sep 2023, Mr. Carr submitted a request for the entire record in the I-751 and N-400 cases via an online submission of a G-639 FOIA request. Mr. Carr asked for every email,

message, or other records which reference the two receipts in this matter (MSC2091582908 and IOE9752855294) including both audio and video recordings. The request was assigned request ID NRC2023277190 and the response was made on 05 Oct 2023.

203. However, the response was only 32 pages and was only the original I-751 and N-400 applications. On 31 Oct 2023 a new FOIA request was submitted via email a copy of which is ECF 10-9~~was previously provided to relevant Defendants as USCISfoiRqst.pdf~~. Note that this is a violation of the applicant's due process right to have access to the evidence against the applicant. Mr. Carr had requested access to every record which the tribunal relied on to deny the N-400 application, but was denied access to all such records. It is also possible that the claim that there were only two responsive documents was a federal crime of falsifying government records as it is clear that more records were requested and there was no justification for withholding the other documents.

USCIS Denies N-400 Citizenship Application for Failure to Appear

204. The Decision from USCIS dated 13 October 2023 previously provided to relevant Defendants as ECF 10-8~~USCISdeny20231013.pdf~~ states:

> On July 11, 2022, you filed a Form N-400, Application for Naturalization, with U.S. Citizenship and Immigration Services (USCIS) under section 319 of the Immigration and Nationality Act (INA). After a thorough review of the information provided in your application for naturalization, the documents supporting your application, and your testimony during your naturalization interview, USCIS has determined that you are not eligible for naturalization. Accordingly, USCIS must deny your application for naturalization. ...
>
> On November 13, 2018, you obtained conditional permanent resident status through your spouse and your conditions were removed on January 30, 2023. USCIS received your Form N-400 on July 11, 2022, and on January 30, 2023, you appeared for an interview to determine your eligibility for naturalization.
>
> At the beginning of your naturalization interview, an Immigration Services Officer placed you under oath and then administered the naturalization test. At that time you were unable

to write a sentence in ordinary usage of the English language, and answer 6 of 10 U.S. Government and history (civics) questions correctly. Since you did not achieve a passing score on the English or civics portions of the naturalization test, on October 11, 2023, you were scheduled for a second interview to retake these portions of the naturalization test. On October 11, 2023, you did not appear as requested. Further, you have not provided USCIS with a good reason for your absence. Your failure to appear at the second interview means you have not passed the English or civics testing requirements for naturalization. As a result, you are ineligible for naturalization since you have not demonstrated your ability to pass the English or civics requirements for naturalization. Therefore, USCIS must deny your application for naturalization. See INA 312 and Title 8, Code of Federal Regulations (8 CFR) section 312.5(a) and (b).

If you believe that you can overcome the grounds for this denial, you may submit a request for a hearing on Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, within 30 calendar days of service of this decision (33 days if this decision was mailed). See attached 8 CFR 336.2 (a) and 103.8(b). Without a properly filed Form N-336, this decision will become final. See INA 336.

USCIS Refuses to Provide New Green Card

205. On 19 Oct 2023, Mr. and Mrs. Carr called USCIS at the proscribed number and requested that Mrs. Carr be sent a new Green Card as her I-751 was approved on 31 Jan 2023 but the Green Card was withheld as her N-400 was also approved and her Certificate of Naturalization was imminent. However, the purported Decision of 14 Oct 2023, ECF 10-8, clearly indicates that USCIS does not intend to provide Mrs. Carr with the promised Certificate of Naturalization in the foreseeable future.

206. This request resulted in a referral of T1B2922301353MSC which concerned 'Non Delivery of Permanent Resident Card'. It was answered on 27 Oct 2023 with the document previously provided to relevant Defendants as ~~USCISnoGreenCard20231027.pdf~~ ECF 10-11 which listed 'Type of service requested: -- Non-Delivery of Permanent Resident Card' but answered with: "You ... contacted U.S. Citizenship and Immigration Services (USCIS) because you have not received your denial, termination or revocation notice. **We have**

enclosed a copy of the notice for your reference. Please note that we are not able to extend the period for you to file an appeal from this decision. Therefore, follow the instructions on your notice carefully and submit accordingly."

207. **There was no notice attached** and the text does not make sense with respect to the request for a green card from an approved application. It appears to be the standard form letter message supporting ~~fo~~r a denial of a request. However, the actual notice (ECF 10-5) was in the form of an approval which was actually an 'effective denial based on false premises'. As such, it did not include the normal (and required) verbiage of notice of appeal requirements.

208. The form letter does mention the requirement to contest an unfavorable decision within 30 days and, of course, pay the $700 fee first. However, as this decision referred to was an approval which was illegally contorted by false pretenses to be an effective denial, the text of the response is not responsive to actual request.

209. It appears that when USCIS attempts to effectively deny an application by claiming approval based on false pretenses, there is no way to appeal or correct the error other than the federal district courts.

In late May 2024, Mrs. Carr received her requested 10 year 'green card' (see ECF 49-1) from USCIS without any explanation. This was several months after the denied request of 19 Oct 2023 to USCIS as described above as well as the filing of this suit, the first USATXN Motion to Dismiss (ECF 15, 08 Mar 2024) and the second USATXN Motion to Dismiss (ECF 33, 09 May 2024).

It is possible that USCIS had concluded that some of the relief sought in Plaintiff's Motion for Partial Summary Judgment (ECF 18, 28 Mar 2024) was well justified and USCIS provided the requested relief rather than waiting for this court to order it.

As Mrs. Carr had her 10 year green card her fears of being deported without cause or notice if she failed her citizenship test (para 149) were reduced and it appeared that further relief was not forthcoming, the Carr's submitted a new N-400 application on 10 Sep 2024 (receipt

is ECF 49-2) with an application fee of $710 and an estimated first interview date in May of 2025.

Legal Arguments

Lack of Jurisdiction

210. Of primary importance is the lack of jurisdiction for USCIS to revise or ignore a prior final decision.

211. It is well understood that in the interest of justice to all parties in an action, there must be some final closure of arguments and litigation. Final decisions are intended to provide that relief to all parties with the caveat that each party has 30 days to notify all other parties of any pending disagreements. This is normally done through a notice of appeal requirement, generally within 30 days after proof of service of the decision by the prevailing party.

212. If USCIS had any complaints or concerns with the findings of facts in the I-751 decision of 31 Jan 2023, they should have raised the concerns within 30 days of publication of the decision.

213. As there is no avenue for USCIS to submit a motion for reconsideration of a matter which was decided by USCIS, the only forum where USCIS can seek redress is a new action in the federal district courts.

214. To provide otherwise is to deny all applicants to USCIS from the justice of having any final decision.

Lack of Notice to Support Failure to Appear

215. Another fundamental principle of due process is that all participants must be given adequate and sufficient notice of any action. It is clearly a travesty of justice to deny an application because of failure to appear when there is no evidence of notice.

216. In particular, in this case there is compelling evidence showing that Mr. Carr did not receive notice of the upcoming interview until less than 30 days before the interview, i.e. 15 Sep 2023 for a hearing on 11 Oct 2023. As such, the improper denial must be overturned.

Lack of an Independent and Impartial Tribunal

217. One of the fundamental premises of due process is to have matters decided by an

independent and impartial tribunal. It is important to recognize that Mr. Carr had filed numerous complaints with the DHS OIG concerning malfeasance and other unlawful activities by USCIS. His final complaints were for the federal crimes of falsifying government records by several employees who reported directly or indirectly to the director who made the final decision.

218. It is absurd to even consider that the Field Office Director, Ms. Montgomery, could be unbiased in resolving a matter in which several of her employees were accused of federal crimes which would surely reflect poorly on her own performance and future career opportunities.

Additional Federal Crimes by Ms Montgomery

219. One of the foundations of any government of law is to have accurate written records of all proceedings. That is almost certainly why Congress has decided to make it a serious federal crime to falsify any government record.

220. When Director Montgomery cited the approval of the I-751 application without mentioning the finding of an approval of the N-400 application, she falsified the record by omitting required facts..

221. When Director Montgomery stated 'Further, you have not provided USCIS with a good reason for your absence.' without mentioning the original request to reschedule she committed the crime of falsifying the record by failing to include required facts. Further, Director Montgomery does not mention the extensive documentation of substantial financial and personal impact required to change long standing plans in order to attend the interview. This evidence was provided to USCIS, and she falsified the record by omitting critical facts.

222. The entirety of her decision is based on timely notice and lack of response but she fails to discuss any of the factors which are critical elements of her decision.

Right of Appeal Prohibitive / Denied

223. The contested decision continues with the following text in ECF 10-10:

> If you believe that you can overcome the grounds for this denial, you may submit a request for a hearing on Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, within 30 calendar days of service of this decision (33 days if this decision was mailed). See attached 8 CFR 336.2 (a) and 103.8(b). Without a properly

filed Form N-336, this decision will become final. See INA 336.[2]

224. An initial reading of this paragraph suggests that there are administrative procedures for appealing such bad decisions. However, while USCIS borrows heavily from judicial terminology in describing their processes and procedures creating the semblance of 'due process', the reality is USCIS does not provide any of the elements of due process.

225. In particular, the required fee to file N-336, request for a hearing, was a hefty $700 (now $780) while the fee for filing a new N-400 is only $625. Similarly, the filing fee for a motion to reconsider is also $700 as is the fee for filing a 'Notice of Appeal'. For a budget minded applicant, the filing fees with federal district courts are a much more affordable $350 (admittedly heavily subsidized) so that applicants with limited assets may only be able to afford to file with the district courts rather than pursue the absurdly expensive administrative alternatives.

226. The likely reason that federal district courts are heavily subsidized is that justice should be provided to all persons and should not be restricted to the wealthy who can afford substantial fees.

Automated Phone System Prevents Applicants from Being Heard

227. It is a violation of due process for USCIS to restrict applicants to an automated phone system for all questions, concerns, requests, and evidence.

228. First of all, USCIS can not require all applicants to have phone access. They must provide a physical address where applicants and their representative or interpreter can ask questions and present concerns, requests, issues, and evidence. Appointments can not be required though substantial waits may be required without an appointment.

229. This in person access is required as each applicant must be permitted to be heard whether they have access to a phone or are technically savvy.

230. Further, it is a violation of due process when the automated phone system hangs up on applicants who are not able to correctly state their needs. The system must instead pass the request on to a human representative to hear the issues of the applicant though this option may be deferred during non-business hours and holidays.

231. While providing this human access can be a significant expense, it is required for the due

[2] INA 336 is 8 USC § 1447

process opportunity to be heard.

232. If USCIS chooses it can also provide online secure messaging to applicants and their representatives as a cost effective way of providing a reliable and less expensive method raising concerns and getting responses.

Difficult Appointment of Spouse as Representative

233. It is a violation of the due process for USCIS to restrict the ability of an I-751 applicant's spouse to represent the applicant.

234. Due process requires the right to representation though not necessarily by an attorney. As the spouse is an American citizen, they almost certainly have better English and U.S. government skills. As such they are ideal representatives for their immigrant spouses.

235. In fact it is completely legal and proper for a spouse to represent the other party as needed in a real legal union (a.k.a. marriage). In truth, one of the signs of a fake marriage would be the absence of the citizen spouse to represent the immigrant spouse.

Inclusive Assumptions for Freedom of Information Act Requests

236. As due process requires that the applicant have full access to all of the evidence presented against him or her, the FOIA default must be to provide all records including audio and video recordings which the tribunal has access to.

Plaintiffs Were Damaged by USCIS's Unlawful Decisions and Actions

237. The refusal of USCIS to provide Mrs. Carr with her Certificate of Naturalization harmed Mrs. Carr by limiting her ability to vote and enjoy other privileges of citizenship. Also, Mrs. Carr has close family members (which includes two sons. a brother, and two sisters including Mrs. Von Kramer) who have been denied their right to apply for immigration and be placed in the queue for Permanent Residence (Green Card) as well as, potentially, citizenship.

Count 8

DHS OIG Takes No Action To Address Criminal Behavior

238. The Plaintiffs repeat and re-allege paragraphs 1 through 237, as if fully set forth herein.

239. On 4 Dec 2022, Mr. Carr complained via DHS OIG Hotline that Mrs. Carr had been stranded in Thailand through the unlawful, knowing failure of USCIS to abide by the statutory mandates of 8 CFR Section 216.4 ... "Upon receipt of a properly filed Form I-751,

the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition."

240. Mr. Carr was assigned case number HLCN1670132157186 but has not received any further response from DHS OIG.

241. On 5 Dec 2022 expanded on his complaint against USCIS and received case number HLCN1670226793068 but has not received any further response.

242. It is possible that the announcement on 23 Jan 2023 of a new 48 month extension letter (ECF 48-2) was based on Mr. Carr's complaint on 4 Dec 2022 that Mrs. Carr was stranded in Thailand due to the expiration of her 24 month extension letter.

243. However, Mrs. Carr's freedom to work and travel freely was never restored as she never received the 48 month extension letter.

244. On 10 Sep 2023, Mr. Carr notified the DHS OIG directly through the IG of the federal crimes committed by USCIS (ECF 49-3). He also opened a complaint via DHS OIG Hotline and was assigned case number HLCN1694292030038.

245. On 13 Nov 2023, Mr. Carr notified the DHS OIG ~~directly~~ through an ~~the IG~~online hotline complaint~~request~~ of the additional federal crimes committed by USCIS as previously reported to the DHS IG in ECF 30-8 as well as the 'whistleblower' retaliation taken by USCIS against Mrs. Carr for Mr. Carr's widespread reports of federal crimes. The~~Mr. Carr also opened another~~ complaint via DHS OIG Hotline ~~and~~ was assigned case number HLCN1699850033209.

246. It is the DHS OIG's responsibility to not only insure that such serious malfeasance and deprivation of a person's constitutionally guaranteed rights do not happen but also that the harm from failures is redressed to the degree possible by the monitored agency (USCIS in this case).

Count ~~9~~8

DoJ Takes No Action To Address Criminal Behavior

247. The Plaintiffs repeat and re-allege paragraphs 1 through 246, as if fully set forth herein.

248. On 3 Mar 2023 Mr. Carr notified the DoJ Attorney General via mail of the allegations raised against the USPS, USPS OIG, and USPS BoG (ECF 14-4). The DoJ had previously been copied on the allegations as they were raised to the relevant agencies.

249. The DoJ opened reference NM301959635 for the matter with email contact of criminal.division@usdoj.gov, referring the matter to the Postal Inspection Service.

250. On 20 June 2023 Mr Carr notified the DoJ and other defendants via mail of federal crimes and malfeasance in the DoS and related agencies and asking assistance in correcting the unlawful actions (see ECF 14-2). Mr. Carr did not request the prosecution of any party. The DoJ had previously been copied on the various complaints with the DoS agencies.

251. On 108 Sep 2023 Mr. Carr asked for the assistance of the DoJ with respect to the USCIS and related agencies, ECF 49-3. The DoJ had previously been copied on the various complaints with the USCIS agencies. On 7 Nov 2023 an expanded notice of intent to contest the unwarranted denial of the N-400 application was sent to DoJ and the USCIS Director which is ECF 30-8. The request for assistance to the USCIS Director could be construed as a 8 USC § 1447(a) request for a hearing before an immigration officer due to the exorbitant cost of N-336 applications (para 223-253 and relief 38).

252. On 9 Oct 2023, Mr. Carr again asked the DoJ and other defendants for assistance with the USPS problems clarifying that he was not seeking prosecution of any party but instead seeking to end the federal crimes and other unlawful practices, ECF 14-5.

253. On 25 Oct 2023, Mr. Carr again asked the DoJ for assistance in correcting the unlawful practices by CIGIE with respect to failing to maintain proper standards for IG's and OIG employees. He did not request the prosecution of any party, only assistance in preventing unlawful conduct. ECF 49-4.

Relief Soughts

PRAYER FOR RELIEF

WHEREFORE, The Plaintiffs ask this Court to enter Orders:

USPS, OIG and DoJ Corrections

1. Directing USPS to provide a credit for future services for $26.35 to Mr. and Mrs. Carr; In the alternative, USPS can provide a credit to Mr. Carr's credit card (the same card which was charged initially) or a check in that amount to Mr. Carr in the event that USPS finds it too

cumbersome to add support for credits for future services to its online web services.

2. Directing USPS to update its dispute / credit process so that postal customers can get guaranteed refunds for late deliveries with a single visit / web form with the presumption that the delivery was late as attested by the customer (and notice that falsifying a government record is a federal crime).
3. Directing USPS OIG to do a preliminary investigation whenever USPS delivery records conflict with the customer's attestation. USPS OIG must refer the matter to DoJ in all cases where there is clear evidence that either the customer or the delivery driver falsified a government record. Due to the automated nature of many USPS records, this determination could be automated to a substantial degree so that USPS OIG staff only need to get involved with cases where there are clear indications of falsification of government records.
4. Directing USPS to promptly correct all incorrect delivery records, certainly before they are accumulated and reported to Congress and the U.S. public or used for computing management bonuses.
5. Directing USPS OIG, DoS OIG, and DHS OIG to expeditiously investigate all plausible allegations of federal crimes. In the event that an OIG does not have sufficient resources to expeditiously investigate all plausible allegations of a federal crime sufficiently to determine if a federal crime is likely, it can refer the matter to local management or other parties for resolution, but it must report all such plausible allegations of federal crimes to DoJ which it does not investigate itself. If an OIG finds that any allegation of a federal crime is likely it must expeditiously report the matter to DoJ whether or not the crime is deemed to be worthy of prosecution. The determination of prosecution is reserved solely to DoJ.
6. Directing DoJ to investigate USPS BoG, USPS management, USPS IG, and USPS OIG management to determine if there were illegal orders preventing USPS OIG staff from reporting federal crimes to the DoJ. If there is evidence of such illegal orders, all such orders must be properly rescinded. Any penalties or prosecution is solely at the discretion of DoJ.
7. Directing DoJ to investigate USPS BoG and USPS management to determine if there were illegal orders encouraging falsifying delivery records (a.k.a. improper 'Stop the Clock' scans). If there is evidence of such illegal orders, all such orders must be properly rescinded. Any penalties or prosecution is solely at the discretion of DoJ.

Department of State Corrections

8. Directing DoS to provide a credit for future services of $80.00 to Mr. and Mrs. Carr and $624 to Mrs. Von Kramer. These credits can be used by the parties themselves, their family, or their friends. In the alternative, the DoS can provide checks in those amounts to the Plaintiffs in the event that DoS finds it too cumbersome to support these credits in their otherwise automated payment system.
9. Directing DoS to ensure that all visa denials include clear and specific references to the evidence considered and rationale for denial. All visa denials must be reviewed by supervisors and corrected if there is not clear and specific references to the evidence considered and the rationale for denial. The applicant must be promptly informed of the rationale for the rejection in writing in any case. Any visa denials which are not corrected in this fashion should be referred to the DoS OIG and reported to the DoJ for any such omissions for decisions on prosecution for falsification of government records through omission of required facts.
10. Directing DoJ to work with DoS to ensure that all the elements of Due Process are properly implemented in the visa application review process with particular attention to the right to representation and the right to access all the evidence presented against the applicant.
11. The European Schengen visas could be considered as a starting point as they are able to provide fair and consistent visitor visas at an affordable rate, often relying on global firms who handle much of the burden of collecting and reviewing the required paperwork.
12. Directing DoS OIG to investigate whether there were unpublished unlawful policies or guidance provided to interviewers such as denying non immigrant visas to older widows of deceased American citizens or applicants with concurrent immigration applications. All such policies must be rescinded and any decisions on prosecution is reserved to the DoJ.
13. Directing DoS to evaluate all non-immigrant visa applications since 1 Jan 2018 to the present on a per country basis to determine the denial rate for applications where according the applicant was over 57 years old and marital status listed in the application would be indicative of eligibility for SSA survivors' benefits, specifically deceased spouse who was an American citizen or permanent resident with more than ten years residence and not remarried.
14. DoS is further directed that if the denial rate for the identified applicants is more than one

standard deviation higher than all applicants for the specific country, then all identified applicants must be contacted and offered a credit for the prior denied visa application(s), adjusted for any increases in the application fees. Further, the prior applicant must also be provided with the SSA's preliminary determination of current eligibility for survivors' benefits based on the deceased spouse's work history and other dates provided by DoS from the visa application.

SSA Order

15. Directing SSA to reconsider the finding that Mrs. Von Kramer's does not have five years of lawful presence in the United States. As Mrs. Von Kramer was unlawfully prevented from visiting the United States in 2019, 2020 and 2021 with the stated goal of, among other things, establishing a lawful presence, the SSA is directed to credit her with having met the requirements of lawful presence for those three years. If her actions in 2022 and 2023 or later years meet the requirements for lawful presence, then Mrs. Von Kramer must be held to have established a lawful presence in the United States and granted the benefits thereof.
16. Any DoS identified applicants whose previous non-immigrant visas may have been improperly denied as determined above and who later are granted non-immigrant visas should also be given letters from the DoS stating that the applicant may have been denied prior visa applications unlawfully and asking that SSA credit the applicant with 'lawful presence' for the years when they may have been unlawfully denied the ability to visit the U.S. with the letter identifying the date of the first improper denial and the date of the first approved visa.

CIGIE Corrections

17. CIGIE must review its standards and policies to ensure that all IG's and OIG employees are aware of the requirements to expeditiously investigate and report federal crimes. In the event that a particular OIG does not have sufficient resources to expeditiously investigate all plausible allegations of a federal crime sufficiently to determine if a federal crime is likely, it can refer the matter to local management or other parties for resolution, but it must report all such plausible allegations of federal crimes to DoJ which it does not investigate itself. If a particular OIG finds that any allegation of a federal crime is likely it must expeditiously report the matter to DoJ whether or not the crime is deemed to be worthy of prosecution.

The determination of prosecution is reserved solely to DoJ.

18. Directing the DOJ to investigate the failure of CIGIE to itself promptly investigate and report federal crimes. All such practices and policies which led to past failures must be rescinded. The decision on penalties and prosecution are reserved solely to the DoJ.

USCIS Corrections

Credit for Visa Fees when Stranded Overseas

19. Directing USCIS to provide a credit for future services with USCIS to Mr. and Mrs. Carr for $80 for use on their behalf as well as their family members and friends. This credit is half of the business / tourist visa application fee which was required in order for Mrs. Carr to return to the U.S. when she was stranded in Thailand in 2022. The fee was $160, but DoS has been requested to provide the other half for their unlawful denial of such a visa to Mrs. Carr in 2017. In the alternative USCIS may choose to provide checks to all injured parties as an alternative to credits for future services in this and other reparations, but this is solely at the option of USCIS. It is possible that the total reparations requested may justify handling them as credits for future services.

Right to work and travel freely as well as right to vote

20. The primary relief sought is for Mrs. Carr to receive her Certificate of Naturalization as soon as possible. However, specific relief sought include orders directing:

A. Mrs Carr should receive her 48 month extension letter or a 1 year extension letter as soon as possible, specifically within one week of the date of issuance of the court's order.

B. Mrs Carr should receive her 10-year Permanent Resident Card as soon as possible. Specifically within one month of the court's order. *This relief and the 48 month extension letter above are no longer required as Mrs. Carr was unexpectedly provided with her 10 year Permanent Resident Card by USCIS in late May 2024 after this suit was filed negating the need for the court to order this relief or the relief in A.*

C. Mrs. Carr should have her Oath of Allegiance ceremony scheduled and completed within 1 month and her Certificate of Naturalization issued within 2 months of the court's order.

In the event that this court determines that it does not have jurisdiction to fully order the implementation of the Final Decision of 31 Jan 2023 approving both of Mrs. Carr's I-751

and N-400 applications, the court is asked review the Denial of Mrs. Carr's N-400 application on 14 Oct 2024 'de novo' per 8 USC §~~USC section~~ 1421(c).

Credit for Delay in Granting Citizenship

21. Directing USCIS to credit Mrs. Carr with additional credits for the deprivation of the rights of citizenship to include the rights for close family members to seek immigration authorizations as well as the right to vote and such. As it is not possible retroactively grant Mrs. Carr the right to vote and others rights of being a U.S. citizen (such as the right to visit Europe without a European visa) the family members should be credited with twice the delay in her citizenship, i.e. their position in the queue for immigration visas should be adjusted as if their application was received earlier. The doubling of their credit in queue position corrects not only the delay in their application but also they get their citizenship rights (e.g. voting) earlier in compensation for the deprivation of Mrs. Carr's citizenship rights (e.g. voting). For Mrs. Carr the computation of the credit for family members immigration should be based on the delay in citizenship which should be from 13 Nov 2021 to the date when her Certificate of Citizenship is actually given to her. The 2021 is used because that is the earliest date that Mrs. Carr was eligible to become a citizen and is in recognition of the unwarranted challenges and barriers USCIS placed on her citizenship. Indeed Mrs. Carr would have become a citizen on that date had USCIS permitted it.

Credit for Extraneous I-751 Fees

22. Directing that Mrs. Carr be given a credit for future services with USCIS for the extraneous I-751 application fees of $680 which were duplicated with N-400 services (interview and biometrics). Mrs. Carr never received any I-751 specific services and should not have been charged for the services.

In addition, Mrs. Carr should be given an additional credit for $710 for the additional N-400 application (ECF 49-2) as described in para 209.

~~-~~Th~~i~~ese credits can be used for future services with USCIS for herself, her family, Mr. Carr's family, or Mr. or Mrs. Carr's friends.

Review of Other I-751 and N-400 Records

23. Directing that USCIS databases should be queried for all I-751 records processed since 1

Jan 2018 to determine how many other records were similarly falsified. In particular, how many I-751 applications by quarter were approved but with no permanent resident card or Certificate of Naturalization issued within 90 days.

24. If the identified applicants are found to have a statement in the I-751 approval that the corresponding N-400 had been approved then these applicants should be issued a Certificate of Naturalization as soon as possible if they have not already been issued said certificate.
25. All such applicants should be similarly credited for future services with USCIS for their use, their families use, or their friends use for the cost of the I-751 application fee. In addition, any relatives who apply for immigration visas based on their citizenship status should be credited with double the time of the original applicant's delay. The delay is computed to be from the date of the I-751 claim of N-400 approval to the actual date of issuance of a Certificate of Naturalization.
26. If the number of applicants and immigration credits are so large as to substantially impact current immigration queue members, USCIS is directed to apply to Congress to get sufficient additional slots for each country so as to preserve the integrity of the queue for that country.

Falsified Records Must Be Corrected

27. Further, all falsified records should be deleted (actually hidden to avoid potential database corruption) with new records of a falsified record being inserted at the same date and time of the deleted/hidden record. There should be an additional corresponding record at the current date and time which includes the content of the falsified record for later review.
28. All reports to Congress and other entities which relied on these falsified completion records must be revised to note the number of records which were previously recorded as processed, but were actually pending correction of the false resolution. The corrected resolutions should be added to current reports as approvals from previously denied falsified records (a new category).

Adjustments for Language / Cultural Differences

29. Just as USCIS has added exemptions for people with medical impairments, as well as exemptions based on age, USCIS is directed to extend these exemptions to consider the education opportunities presented to a particular individual before they were 21. They should also be extended to consider the difficulty in mastering English based on the nation

of birth.

30. For example, there could be an annual review by country of the rate of application for citizenship as well as the rate of granting citizenship. Exemptions should be granted to individuals from countries like Thailand where mastering English is extremely difficult for those who are older and poorly educated. The exemptions should be granted based on age less years of formal training in English before they were 21 and sufficient to correct the rate of citizenship approvals to match those of countries such as Canada or the United Kingdom where the rate of granting citizenship is, presumably, highest.
31. The approval rate would be the number of approvals from a particular country divided by the number of permanent residents from that country who are eligible to apply for citizenship, not the number who actually apply. It is expected that there will be a large backlog of residents from~~form~~ Buddhist / Muslim countries who would like to be citizens but did not apply because the English and Civics test was too difficult for them to pass based on their lack of exposure to English in their youth.
32. For countries such as Thailand and other Buddhist / Muslim countries, this would likely mean eliminating the English and civics test for all N-400 applicants for a few years until the rate of granting citizenship matches that of Canada or the United Kingdom. This would be a valuable correction to eliminate the past unlawful discrimination against certain groups based on religion, race, culture, and age.

USCIS Must Correct Time For Legal Notice

33. USCIS be directed to allow more time for timely notices of actions. If USCIS wishes to update its notice process to record and publish accurate records of the actual date of mailing of notices, 7 days could be added to the actual date of mailing for notices. Three days for first class mail is insufficient to be confident of prompt receipt.
34. As it generally takes USCIS 6 days to print a notice and prepare it for mailing, this would normally be 45 days after the date of the decision itself to allow for unforeseen delays in processing before and after mailing.
35. Of course, any denials based on assumed notice without an accurate record of delivery (signature required mailing or process server), would be conditional and must be easily contestable in the event that there was not actual timely delivery. The applicant must be able to contest the denial without any additional fees by explaining any extenuating

circumstances which prevented timely notice or appearance (e.g. applicant was in the hospital and did not receive the notice or was not able to appear or answer while hospitalized).

36. For all cases where USCIS denied an application for failure to appear and there was not 45 days notice nor any record of the actual date of mailing, all such actions since 1 Jan 2018 must be remanded to USCIS for proper processing overturning all denials where there was not proof of timely notice.
37. The applicant must be given a credit for the filing fees for the original application as well as having the application opened again for proper consideration. All denial records must be updated to note the denial was overturned due to lack of notice. All reports to Congress and others which were based on the improper denial (showing an application was processed) must be corrected to show that the application was incorrectly denied and has been returned to an active status.

Adjustment of USCIS Fees for Appeal, Reconsideration

38. USCIS fees for N-336 requests to review, motions to reconsider, notice of appeal, and actual appeal filing must be reduced so that they are not prohibitive. It is suggested that no motion to argue or motion to reconsider should cost more than 5% of the federal district court filing fee (now $350, hence no more than $17.50). Actual appeal filing fees should not exceed half the district court filing fees, e.g. $175. There must be no fee for N-336 and other motions to reconsider when the applicant is contesting presumptive / conditional denials for failure to appear as the applicant must be provided the opportunity to explain failures in actual notice or extenuating circumstances which prevented appearance or answering (e.g. hospitalization).
39. The justification for this is to encourage applicants to seek redress with the USCIS rather than going directly to the district courts. It also furthers due process by making the proceedings fair and providing opportunities for applicants to be heard / argue their cases as necessary.

USCIS Must Restore Interview Waivers and
Cease Criminal Background Reviews for I-751 Applications

40. The administrative policies implemented by the prior USCIS director in the 2018 time frame must be rescinded. They do not provide any improvement in enforcement and greatly harm

applicants' rights in these matters. They are also in direct violation of the waiver or interview within 90 days requirement explicitly stated in 8 CFR Section 216.4(b)(1) and cited above.

41. Mrs. Carr is requesting that interview waivers be resumed at an accelerated rate so that at least 2 months of backlog are eliminated each month. Realistically that means that three months of applications must be granted their permanent resident card each month without the optional interview and without further delay.
42. This should eliminate the current illegal four year backlog within two years.
43. Once the backlog is reduced to three months the accelerated approvals can be eliminated and mandatory approvals without interview will only be for those applications which have languished in the queue for up to three months and the total number of pending applications exceeds the number of new applications.
44. If there are concerns about applicants not understanding the criminal background questions in English, USCIS can provide written copies of the criminal background questions translated into all the appropriate languages. However, these questions should only be applied to new applicants for immigration visas, not approved permanent residents.
45. USCIS should immediately begin with interview waivers for the oldest applications, but if USCIS wishes, it can send out new forms to potential waiver recipients asking for authorization to access all of their social media, mobile and credit rating records for both spouses. Failure to provide authorization or the appropriate accounts and addresses would result in a delay of any interview waivers. All applicants who authorized full electronic access to their records could be granted waivers before applicants who did not provide such access though the delay in the scheduling of an interview is restricted to 90 days in 8 CFR Section 216.4(b)(1) in all cases.
46. Over time, USCIS could develop AI programs which very accurately identify fake marriages based on the contents or lack of social media and other records. Given the vast amount of information available through phone records (e.g. Google's timeline which could show the location of each spouse for every day and night of their purported marriage), social media and credit histories, the interview itself appears to be a highly ineffective and very expensive method of identifying fake marriages. A well trained AI program could identify fake marriages with substantially greater accuracy at a fraction of the cost of interviews.

Required Access Provided to Applicants

47. USCIS must immediately disable hang ups by the automated phone system and instead fail over to a human representative. Further, USCIS must send notices to all active applicants of the address where they can go without any appointment to ask questions and raise concerns. USCIS must respond to in person questions, concerns and requests.
48. Secure messaging systems are now relatively routine technology and should be offered as an addition to the MyUSCIS web page to provide a more reliable and cost effective alternative for those applicants who choose to use this option. It is absurd to require technically savvy applicants or their representatives to navigate the lengthy automated phone system to get to speak to a person who will reduce their input to 80 characters at great expense to USCIS and great information loss from incomplete or inaccurate transcription.

USCIS Must Guarantee Applicants' Right to Representation

49. USCIS must grant immediate approval to any spouse who files to become an applicant's representative. Further, the application form itself must be adjusted to allow that option on the application itself.
50. Pending I-751 applicants must be notified immediately of their ability to add their spouse as a representative via a simple phone call.

More Expansive FOIA Responses

51. USCIS must change its defaults for FOIA requests to provide access to every record including audio and video recordings which reference the requested receipt number.

DHS OIG Corrections

52. Directing DHS OIG to ensure that it promptly investigates and reports all federal crimes as described above. Further, while the decision to prosecute resides solely with the DoJ, the DHS OIG needs to ensure that serious malfeasance such as depriving foreign nationals of their constitutional rights is promptly investigated and corrected. Further, the DHS OIG must ensure that appropriate and timely redress is provided to injured parties.
53. For example, if a foreign national is unlawfully stranded overseas, the DHS OIG must ensure that the offending agency corrects the defect promptly, perhaps sending a PDF file with the required extension letter via email to the stranded party in time to not hinder their travel plans. The 23 Jan 2023 approval of a 48 month extension letters was too late and was

not provided to the injured party in this case.

DoJ Corrections

54. Directing the DoJ to investigate and track all plausible allegations of federal crimes as necessary to insure that the criminal behavior is not repeated and that injured parties receive appropriate redress. It is acceptable for local OIG's or even local management to complete the bulk of the investigations as long as the DoJ monitors the results and does not forego the option of criminal prosecution until adequate remediation is put in place to prevent future crimes and redress is provided to all injured parties.
55. Directing the DoJ to investigate all failures of OIG's to expeditiously report plausible federal crimes to the DoJ as described above. Any failures to report federal crimes must be investigated as potential 'obstruction of justice' crimes though prosecution remains the purview of the DoJ and the threat of prosecution should be used as a cudgel to insure future adherence as well as redress when appropriate.
56. Granting the Plaintiffs such additional relief as the interests of justice may require, together with their costs and disbursements in maintaining this action.

Respectfully submitted,

Verification of Complaint

We the undersigned Plaintiffs hereby affirm under penalty of perjury in both the United States and Thailand that as individuals:

1. I have reviewed the allegations and believe all of the allegations 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 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* /s *Air Carr*

Brian P. Carr
1201 Brady Dr
Irving, TX 75061
Date: 27 Mar 2024
Location: Irving, TX

Rueangrong Carr
1201 Brady Dr
Irving, TX 75061
Date: 27 Mar 2024
Location: Irving, TX

/s Buakhao Von Kramer

Buakhao Von Kramer
105 - 3 M 5 T YANGNERNG
SARAPEE, CHIANG MAI 50140 THAILAND
Date: 27 Mar 2024
Location: Irving, TX

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*

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

CERTIFICATION OF ELECTRONIC SIGNATURES

In accordance with TXND LR 11.1(d), on the recorded date I received permission from Mrs. Carr and Mrs. Von Kramer to sign this document electronically on their behalf after having provided them with the relevant sections of the document in English and translated into Thai (relying on Google Translate). We then discussed the documents in English (as Google Translate does always provide meaningful translations) and the only concerns about accuracy was Mrs. Von Kramer's concern that the document specifies precise dates and times for the various visa interviews and she really does not remember that level of detail about those events (several years ago).

I assured Mrs. Von Kramer that the dates and times were established from the electronic records of the appointment (e.g. the official appointment document to allow applicant entry into the consulate) which I had retained. I explained that her signature does not indicate she remembers the interviews being on that date at that time but rather that she has no knowledge or recollection to the contrary. She does remember interviews of that nature in that time frame.

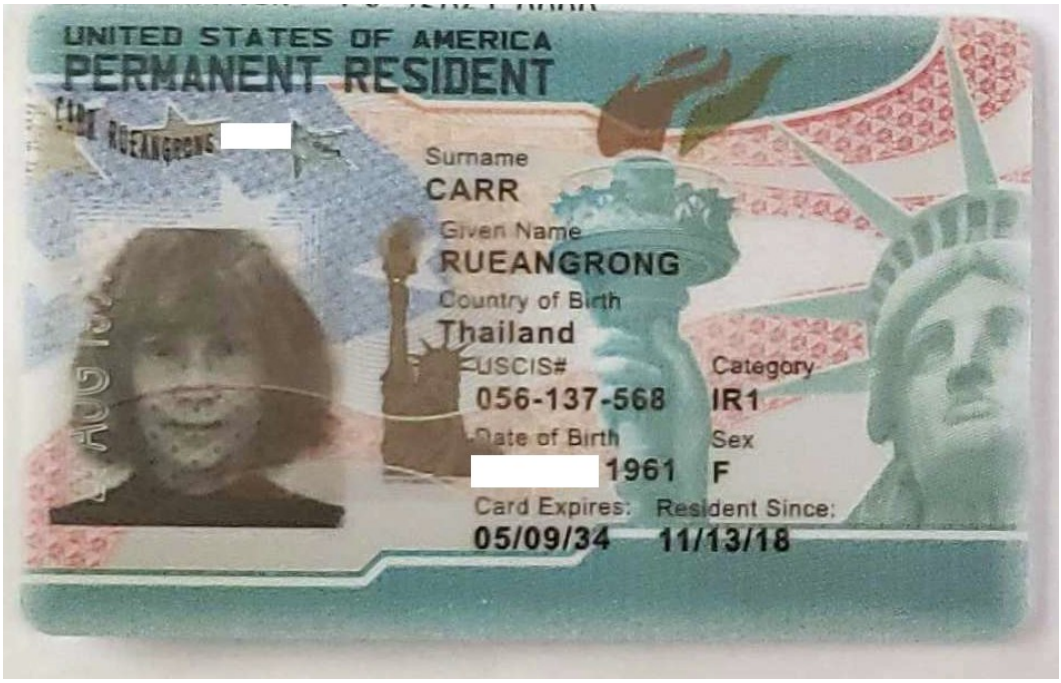
In turn, I must qualify that almost none of the details in this now sworn statement (no longer allegations) were based on my recollection but rather careful review of electronic records which I have retained and maintained and which I believe to be accurate.

/s *Brian P. Carr*

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Date: 28 Mar 2024
Location: Irving, Texas


UNITED STATES OF AMERICA
PERMANENT RESIDENT
Surname
CARR
Given Name
RUEANGRONG
Country of Birth
Thailand
USCIS#
056-137-568
Category
IR1
Date of Birth
1961
Sex
F
Card Expires:
05/09/34
Resident Since:
11/13/18

I-797 | NOTICE OF ACTION

DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Receipt Number	USCIS Online Account Number	Case Type
IOE9444005983	024798809175	N400 - APPLICATION FOR NATURALIZATION
Received Date	**Priority Date**	**Applicant** A056 137 568
09/10/2024		CARR, RUEANGRON
Notice Date	**Page**	
09/10/2024	1 of 1	

CARR, RUEANGRON
1201 BRADY DR
IRVING TX 75061-4749

Notice Type: Receipt Notice
Received Amount: $ 710.00 U.S.
Paid

Thank you for submitting your application, petition, or request. Our office is currently processing it.

Please verify your personal information listed above. If you need to make any changes, immediately notify the USCIS Contact Center using the phone number below.

Next Steps:

- We will schedule you for an appointment at a USCIS Application Support Center (ASC) for you to provide your fingerprints, photograph and/or signature.
- We will mail you a separate biometrics appointment notice with the specific date, time, and ASC location. Please wait until you receive your appointment notice before going to the ASC.

Be advised that this notice does **NOT** serve as notification of your biometrics appointment.

Filing the Form N-400 provides an automatic extension of your Form I-551, Permanent Resident Card (also known as a Green Card). This notice, presented along with your expired Permanent Resident Card, is evidence of your lawful permanent resident status for 24 months from the "Card Expires" date indicated on your Permanent Resident Card.

If you have any questions or comments regarding this notice or the status of your case, please contact the USCIS Contact Center toll free at 1-800-375-5283. If you are hearing impaired, please call the Contact Center TDD at 1-800-767-1833.

If you have questions about immigration benefits, services, filing information, or forms, please visit our website at www.uscis.gov or call the NCSC. If your mailing address changes while your case is pending, please update it through your USCIS Online Account or by calling the USCIS Contact Center.

Please note that if a priority date appears on this notice, it does not reflect any earlier retained priority dates.

For more information and to find study materials for the naturalization test, visit the Citizenship Resource Center at uscis.gov/citizenship.

Please see the additional information on the back. We will notify you separately about any other cases you have filed.

USCIS encourages you to sign up for a USCIS online account. To learn more about creating an account and the benefits, go to https://www.uscis.gov/file-online.

National Benefits Center
U.S. CITIZENSHIP & IMMIGRATION SVC
P.O. BOX 25920
Overland Park KS 66225

USCIS Contact Center: www.uscis.gov/contactcenter

26-10025.1337

FORM I-797 [REV. 08/01/16]

Gmail **Brian Carr <carrbp@gmail.com>**

URGENT: Report of Federal Crime in USCIS,, DHS OIG Complaint HLCN1694292030038, Re: CIS Ombudsman Request Number 2022056241

1 message

Brian Carr <carrbp@gmail.com> Sun, Sep 10, 2023 at 10:39 AM
To: Joseph Cuffari <joseph.cuffari@oig.dhs.gov>
Cc: Director USCIS Jaddou <Ur.M.Jaddou@uscis.dhs.gov>, cisombudsman <cisombudsman@hq.dhs.gov>, "Ward, Jennifer" <Jennifer.Ward@mail.house.gov>, criminal.division@usdoj.gov

Brian Carr
1201 Brady Drive
Irving, TX 75061
carrbp@gmail.com
518-227-0129

The Honorable Joseph Cuffari
Department of Homeland Security Inspector General
245 Murray Dr.; Building 410;
Washington, DC 20528
(202) 981-6000

Dear Honorable Cuffari,

Overview

I am writing to report a federal crime of falsification of government records (and possibly many others) by the staff in United States Citizenship and Immigration Services (USCIS). I ask that you investigate the complaint and, on confirmation that there are reasonable grounds to support the allegation, direct USCIS to take corrective action and refer the matter to the Department of Justice.

In the event that this email is first screened by a person other the Honorable Cuffari, I ask that this matter promptly be called to his attention as it contains a report of federal crimes within USCIS (his purview). Further, if this report is not forwarded to him for his review, it could be construed as another federal crime of Obstruction of Justice (which is clearly within the purview of the Department of Justice (DoJ), also copied on this email).

As this email contains a notice of a plausible federal crime, I ask the Honorable Cuffari acknowledge receipt of this email within seven days (preferably via email to carrbp@gmail.com) as well as provide an initial response within thirty days as to intended actions.

Details of the Crime

The essence of the crime is documents provided by USCIS with contradictory facts, clearly one or both is false. The first document is the official notice that my wife's I-751 petition (for permanent Green Card) and N-400 petition (for citizenship) were approved (see I797forMSC2091582908-ioe9752855294.pdf) in Jan 2023 but the promised Oath of Allegiance was not scheduled. After numerous requests to have it scheduled no action was taken by USCIS until Sep 2023 with T1E2412301031DAL where her petitions were put back in the queue for a second interview (a redo of the original interview where her petitions were purportedly approved) indicating that her petitions were not approved but are still pending.

There are several federal criminal statutes concerning falsification of government records one of which is 18 U.S. Code Section 1001 (cited below) which is broadly applicable and paragraphs 1) and 3) both seem to apply to this matter.

Given the plausible federal crime being alleged, the Department of Homeland Security (DHS) Office of the Inspector General (OIG) is required to investigate the allegation and report all likely federal crimes, e.g. INSPECTOR GENERAL ACT OF 1978 which states in part that the 'Inspector General shall report expeditiously to the Attorney General

whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law'. A cursory review of the documents in this case should verify that there are contradictory facts in the record and that any competent employee would identify the contradictions.

You are requested to promptly (i.e. expeditiously) report this matter to the DoJ so that they can make the decisions as whether these matters should be further investigated and prosecuted.

Serious Deprivation of Constitutional Rights

Further, the apparent widespread nature of these crimes (discussed below) raises interesting questions of Due Process as guaranteed to all persons (including foreign nationals) in the Fifth Amendment. There were many updates to the procedures for foreign nationals in the Trump era and it is possible that some of these updates were not legal and in accordance with the Fifth Amendment requirements of Due Process.

In order to comply with the Fifth Amendment as defined by the the Supreme Court, all persons must be provided with 'due process' even in administrative proceedings. There is an excellent overview of 'due process' in
https://www.law.cornell.edu/wex/procedural_due_process
citing
https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=5317&context=penn_law_review
in Judge Henry Friendly's article titled "Some Kind of Hearing"

> "procedures that due process requires....
> ...
> 7. A decision based exclusively on the evidence presented.
> 8. Opportunity to be represented by counsel.
> 9. Requirement that the tribunal prepare a record of the evidence presented.
> 10. Requirement that the tribunal prepare written findings of fact and reasons for its decision.

As discussed in the article, the Supreme Court has interpreted the Fifth Amendment due process requirement to cover virtually all administrative procedures which impact a person's life, but with less prohibitive requirements for less significant matters. The right to work and travel freely are most significant and the rights of citizenship (e.g. voting) are even more significant so that the requirements of Due Process are equally significant for USCIS and its concerns.

This particular situation is problematic as USCIS seems to provide final official 'orders' and 'findings of facts' from their tribunal (borrowing from judicial terminology) and then ignore these results with later interlocutory actions (e.g. email putting the petitions into the queue for a second interview). USCIS seems to simply ignore final decisions without any notice or justification.

I would argue that once a final decision is issued, USCIS can not do anything but follow through with the final decision and then turn to the courts if there are any problems which would warrant revoking the citizenship. Of course this is a complex issue and the DoJ should be consulted as there are certainly contrary arguments about USCIS's options after approving petitions.

The actual relief that I am seeking is similarly complex and is listed below in the preceding emails copied below.

Your prompt attention to this matter is appreciated along with acknowledgment of receipt of this email (7 days) and status of the various requests (30 days).

Brian P. Carr

-------- Forwarded Message --------
Subject: URGENT: Report of Federal Crime in USCIS, Re: CIS Ombudsman Request Number 2022056241
Date: Fri, 8 Sep 2023 11:52:25 -0500
From: Brian Carr <carrbp@gmail.com>
To: Director USCIS Jaddou <Ur.M.Jaddou@uscis.dhs.gov>
CC: cisombudsman <cisombudsman@hq.dhs.gov>, Ward, Jennifer <Jennifer.Ward@mail.house.gov>, criminal.division@usdoj.gov

Dear Honorable Jaddou,

Overview

I am seeking assistance in scheduling the Oath of Allegiance for my wife's Naturalization. I am also seeking damages

for the unwarranted delays in processing her I-751, Petition to Remove Conditions on Residence, and N-400 Petition for Citizenship. Finally I am asking that USCIS cease its illegal denial of 'due process' rights to foreign nationals as well as federal crimes such as falsification of government records.

In the event that this email is first screened by a person other the Honorable Jaddou, I ask that this matter promptly be called to her attention as it contains a report of federal crimes within USCIS (her purview). Further, if this report is not forwarded to her for her review, it could be construed as another federal crime of Obstruction of Justice (which is clearly within the purview of the Department of Justice (DoJ), also copied on this email).

As this email contains a notice of a plausible federal crime, I ask the Honorable Jaddou acknowledge receipt of this email within seven days (preferably via email to carrbp@gmail.com) as well as provide an initial response within thirty days as to intended actions.

As I have added a new cc recipient (DoJ), I have attached the previous attachments for their convenience.

Federal Crimes, Falsification of Government Records

In response to the notice that USCIS was scheduling new interviews for my wife (email from USCIS dated 1 Sep 2023 shown below in blue) rather than scheduling the Oath of Allegiance as required in the official formal approval of her two outstanding matters (see attached files and email from myself dated 25 Aug 2023 shown at the end of this email), I called USCIS to correct the matter.

On 5 Sep 2023 I called 800-375-5283 and spoke with Destiny, ID G010590, and asked that she send an email to the appropriate party to promptly schedule my wife's Oath of Allegiance as stated in the cited approval notice and, in the alternative, if an N-400 was not actually approved, that my wife be sent a new 10 year Permanent Resident Card.

Destiny, ID G010590, explained that it is not uncommon for additional interviews to be required even after the I-751 and N-400 are approved and that I could not be sent the approved Permanent Resident card (this is my recollection of what she said, though in future FOIA requests we should be able to determine the precise wording of her statement from the audio recordings). Implicitly her statement indicates that such formal approvals are not really approvals but instead delaying tactics used by USCIS to create confusion and delays.

At that time I asked that Destiny, ID G010590, take notes for details to include in the email she would send on my behalf.

I cited 18 U.S. Code Section 1001 which is one of many criminal codes for falsification of government records and states in part:

> (a) ... whoever, in any matter within the jurisdiction of the executive... branch of the Government of the United States, knowingly and willfully --
> (1) falsifies, conceals, or covers up ... a material fact; ... or
> (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

(3) prohibits taking any action based on a false document with the implicit exceptions that actions may be taken to: correct the false document or, if the individual is not authorized to correct the false document, to report the false document to their supervisor and / or the relevant OIG explaining that it there is an existing false document and a possible federal crime when the document was created.

Whoever entered the final approval apparently knew that neither request was actually approved and entered the false approval with the intent of serious deprivation of due process rights (unwarranted delays and confusion) as well as criminal falsification of government records under 18 U.S. Code Section 1001. I ask that the Honorable Jaddou also refer this report of federal crimes to the Department of Homeland Security (DHS) OIG (Office of the Inspector General) as well as the DoJ if she feels that is appropriate. I will shortly be filing an additional complaint with the DHS OIG as well and will copy the recipients of this email as well.

I am asking that the outstanding I-751 and N-400 requests be immediately fulfilled and my wife promptly receive her 10 year Permanent Resident Card as well as her Certificate of Naturalization. Further I request that all similar applicants with falsified approvals (approval with no Oath of Allegiance scheduled from the approval) be promptly sent their 10 year Permanent Resident Card as well as their Certificate of Naturalization. If there are pending problems with the new citizens, they should be addressed through the courts as is USCIS's option with any citizen who was not properly eligible for citizenship. Further I am asking for credits for future services with USCIS as well as doubled

compensatory time for delays in providing the benefits of U.S. citizenship.

Fraudulent Delays in Removing Remove Conditions on Residence

Since 2017 the delay in processing I-751 requests to remove conditions on permanent residents has increased dramatically because of administrative rule changes on waivers of interviews and increased requirements on the interview itself. The effect of these changes is that delays in actually issuing Permanent Resident cards (without conditions) have increased to four years and almost no Permanent Resident cards are issued. There are virtually no interviews scheduled for I-751 requests (even though applicants pay $680 (proposed to be $1,195) for such an interview) and instead the interviews are only scheduled in conjunction with the N-400 citizenship applications which have a separate $725 fee (proposed to be $750).

As there was never any separate biometrics or interview for the I-751, we should receive a credit for future USCIS services for the $680 we were charged. Further, all I-751 applicants since 1 Jan 2017 (the beginning of the Trump era restrictions on foreign nationals) who did not receive any separate biometrics or interview (not shared with a corresponding N-400 request) should receive a similar credit.

Corrected A-551 Validity Dates and Restrictions on Replacement for Old A-551

8 CFR Section 216.4 states ... 'Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director [of USCIS] has adjudicated the petition.',
The extension letter fails in this regard as it places a unwarranted demands on the resident, travel providers, and employers. It is a lengthy document which does not clearly state the revised expiration date. Even CBP officers (at the airport) were not clear whether the 24 (now 48) months started from the receipt date (too early) or date of notice (too late). It must declare the precise date of expiration so that all parties will know the precise duration of the extension.

However, even beyond the confusing date of expiration, the letter itself puts an undue burden on the resident, travel providers and employers. The resident must carry the rather bulky letter as well as the green card and all travel providers and employers have to spend the time to try to understand the confusing terms including the misdirections about applying for stay outside the U.S. for longer than a year and 'lost document' applications.

The A-551 stamp in the passport is even worse as it requires the resident carry their passport and is only issued on request (not automatic). As such stamps are uncommon and simple, they also invite fraud as the stamp can be trivially duplicated. Further the expiration dates directly restrict the residents ability to travel freely. Permanent residents can leave the United States for up to a year and return without hindrance. However, the A-551 is only valid for 12 months and can not be extended until 60 days before expiration. As such A-551 residents can only leave the United States for 60 days on the 61st day before expiration, a significant restriction on the residents ability to travel freely. As such the expiration date on the A-551 stamp must be a minimum of 13 months with the ability to get a new stamp whenever there is less than a full 13 months remaining. Realistically it would be better to have a 24 or 48 month expiration date with the ability to request a new stamp whenever there is less than 13 months remaining.

I request that a new 48 month extension letter be sent to my wife immediately. Further, as she has received proper notice of approval of her I-751 application, she must be sent a 10 year permanent resident card ('green card') to allow her to work and travel freely as required by law as soon as possible. There is no legislation which prevents permanent residents from having a 'green card' even after they are citizens and it is, in fact, and expensive, arduous, and lengthy process to get a passport for new citizens.

Additional Relief Sought

In addition to the comparatively minor relief of credits for future services with USCIS sought with the original IG complaints, I am seeking additional credits for the deprivation of the rights of citizenship to include the rights for close family members to seek immigration authorizations as well as the right to vote and such. As it is not possible retroactively grant my wife the right to vote and others rights of being a U.S. citizen (such as the right to visit Europe without a European visa) the family members should be credited with twice the delay in her citizenship, i.e. their position in the queue for immigration visas should be adjusted as if their application was received earlier. The doubling of their credit in queue position corrects not only the delay in their application but also they get their citizenship rights (e.g. voting) earlier in compensation for the deprivation of my wife's citizenship rights (e.g. voting).

Conclusion

I ask that my wife be granted the rights of U.S. citizenship as soon as practicable as well as twice the current delay

credited for the immigration applications of close relatives. Further, this specific correction should be applied to other N-400 applicants whose citizenship has been similarly delayed.

As there appear to be a significant number of N-400 applications which have been similarly delayed in approval by the false approvals, all such applicants should be similarly credited with twice the delay time for their relatives as well. If these queue disruptions have a significant impact to current queue members, USCIS should apply to Congress for relief of additional slots in each category of delayed immigrants.

The criminal falsification of government records through formal approval notices which are not treated as proper approvals must be investigated and stopped. The collection of fees for services which are never provided (interviews and biometrics) must also be investigated and stopped. Credits for future services must be provided for those who were fraudulently charged for the services which were not provided. In addition the individuals who were deprived of the rights of citizenship through illegal delays and interviews after their formal approval must be credited with twice the period of delay for any relatives who later apply (or applied) for immigration.

Your prompt attention to this matter is appreciated along with acknowledgment of receipt of this email (7 days) and status of the various requests (30 days).

Brian P. Carr

On Fri, Sep 1, 2023 at 10:33 AM USCIS <USCIS-CaseStatus@dhs.gov> wrote:
U.S. Department of Homeland Security
USCIS
6500 Campus Circle Drive East
Irving, TX 75063

U.S. Citizenship and Immigration Services
Friday, September 1, 2023

Emailed to carrbp@gmail.com

Dear Rueangrong Carr:

On 08/29/2023, you or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

...

Case type:
-- N400

Filing date:
-- 07/11/2022

Receipt #:
-- IOE-97-528-55294

Referral ID:
T1E2412301031DAL

...

Type of service requested:
-- Outside Normal Processing Times

The status of this service request is:

Thank you for contacting USCIS concerning the above-referenced application. Below is a summary of what we have found.

We have placed your application back in queue for a second interview to be scheduled at a USCIS field office. Once an appointment is available, your interview will be rescheduled, and an appointment notice will be mailed to your current address of record on file with USCIS. If you have not received a new interview notice in 60-days, please feel

free to submit a new request to the USCIS contact center.

We hope this information is helpful to you.
...

On 8/25/2023 3:23 PM, Brian Carr wrote:

> Dear Ombudsman, Honorable Jaddou,
>
> On 6 Dec 2022 I asked for assistance with my wife's I-751, Petition to Remove Conditions on Residence, from the Honorable Jaddou and, in the same time frame, from the USCIS Ombudsman.
>
> On 29 Jan 2023 my wife and I had a combined interview for the I-751 and N-400 (petition for citizenship). In early February we received the results which are attached as I797forMSC2091582908-ioe9752855294.pdf. For your convenience, the text of the response is:
>
> > We have approved your I-751, Petition to Remove Conditions on Residence. Our records also indicate we have approved your Form N-400 Application for Naturalization. Because we also approved your N-400, you will not receive a new Permanent Resident Card (also known as a Green Card). Instead, once you have taken the *Oath of Allegiance*, you will receive a Certificate of Naturalization, which will be proof of your U.S. citizenship. If you have questions regarding this process, please contact the USCIS contact center at 800-375-5283.
>
> However, when I check the status of our petitions it appears that we are still pending our dual interview or awaiting a decision from the interview (see attached file USCISstatusRC20230825.pdf). When we call the 800 number above we are unable to schedule the Oath of Allegiance or get a Permanent Resident Card even though we are well past the 5 month expected delay to schedule the Oath of Allegiance (most petitioners are able to complete that step in a few days).
>
> Can you please schedule the Oath of Allegiance as my wife is being denied many rights of citizenship by these unreasonable delays? I am copying Ms. Ward on the staff of my U.S. representative, Congressman Veasey, as she may also be asked to expedite the scheduling of the Oath of Allegiance.
>
> Thanks for your prompt attention to this matter.
>
> Brian P Carr

On Mon, Jan 23, 2023 at 7:40 AM cisombudsman <cisombudsman@hq.dhs.gov> wrote:

> Dear Rueangrong Carr,
>
> The CIS Ombudsman's Office has determined that U.S. Citizenship and Immigration Services (USCIS) has reviewed your case and scheduled you for an interview.
>
> You should receive your interview notice by mail at the address USCIS has on file. If you do not receive your notice within 15 days, please contact USCIS at 1-800-375-5283 or through one of the customer service options offered by the agency. Please visit USCIS Tools and Resources | USCIS to obtain additional information and explore the agency's Customer Service Tools and Resources.

Because USCIS has acted, our office will be closing this matter.

Thank you for giving the CIS Ombudsman's Office the opportunity to assist you.

Please take our customer satisfaction survey. Your feedback is important to us.

Sincerely,

Office of the Citizenship and Immigration Services Ombudsman
U.S. Department of Homeland Security
Washington, D.C.
www.dhs.gov/cisombudsman
/dl
*The Office of the Citizenship and Immigration Services Ombudsman is an **independent**, **impartial**, and **confidential** resource. We advocate for a **fair** and **efficient** immigration process.*

2 attachments

USCISstatusRC20230825.pdf
122K

I797forMSC2091582908-ioe9752855294.pdf
237K

26-10025.1344

Gmail **Brian Carr <carrbp@gmail.com>**

Request for assistance with CIGIE, Fwd: IC23-083 Closing - Complainant

1 message

Brian Carr <carrbp@gmail.com> Tue, Oct 24, 2023 at 11:13 PM
To: criminal.division@usdoj.gov
Cc: Integrity-Complaint <Integrity-Complaint@cigie.gov>, "Ward, Jennifer" <Jennifer.Ward@mail.house.gov>, Joseph Cuffari <joseph.cuffari@oig.dhs.gov>, hotline@stateoig.gov, Rena Bitter <BitterR@state.gov>, Tammy Whitcomb <twhitcomb@uspsoig.gov>

Dear Sir / Madam:

I am writing to request your assistance in correcting malfeasance in the Council of the Inspectors General on Integrity and Efficiency (CIGIE). I am forwarding an email from the CIGIE with attachment which states they will taking no action in one of the two requests I had sent to them.

I am seeking that the council abide by its charter and insure that all Inspector Generals (IG) and staff under the different IGs are aware of the requirement to report all federal crimes to the Attorney General (AG) or logically, the Department of Justice (DoJ), whenever they believe a federal crime has been committed within their purview / department(s) which they monitor. See the INSPECTOR GENERAL ACT OF 1978, Section 4, which states in part that the "Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law."

It appears the United States Postal Service (USPS), Department of State (DoS) and Department of Homeland Security (DHS) IG's have each concluded that they can decide not to prosecute certain federal crimes, particularly those crimes which have been integrated into the monitored departments normal procedures and which would be greatly disruptive to the monitored department to correct. They do this by refusing to report these crimes to the DoJ.

However, just because criminally illegal processes are integrated into the monitored department does not make them immune from prosecution. The decision to prosecute resides solely with the DoJ and failure of the IG to report federal crimes is at least malfeasance and could be construed to be obstruction of justice (another federal crime). Of course I am only asking that DoJ direct the departments to report all plausible allegations of federal crimes to DoJ even if they do not have sufficient resources to investigate the allegation and can not confirm that the crime is likely, much less prosecutable.

Further, it appears that the IGCIE has gone from a council which was intended to develop and enforce the highest standards adherence to the law to become a group that supports and encourages criminal behavior in their monitored departments and shares ideas and methods for supporting the criminal behavior. This could be construed as going beyond simple obstruction of justice to violating federal RICO criminal statutes.

The enforcement of lawful statutes and constitutional rights is at the discretion of the Department of Justice (DoJ) based on available resources, but this discretion is secondary to the federal courts and their ability to provide relief to injured parties. However, I believe that the best resolution can be reached by DoJ working directly with the agencies. If federal courts are brought into this matter, it is almost certain the DoJ will be called on to assist but the time table and direction of the corrections will be set by the courts for better or worse.

I ask that you route this request to the appropriate department for the requested assistance and provide me contact information to get the status of the request. As stated above, there are no requirements that you provide the requested assistance, but it is my hope that these issues can be resolved without involving the courts. Needless to say, if the DoJ chooses not to address my concerns, my only avenue for relief will be through the courts.

I have already copied the DoJ on the previous complaints referred to the CIGIE and am also copying the other recipients of the previous emails.

Your attention to this matter is appreciated.

Brian Carr

26-10025.1345

---------- Forwarded message ---------
From: **Integrity-Complaint** <Integrity-Complaint@cigie.gov>
Date: Wed, Aug 9, 2023, 7:00 PM
Subject: IC23-083 Closing - Complainant
To: carrbp@gmail.com <carrbp@gmail.com>
Cc: Integrity-Complaint <Integrity-Complaint@cigie.gov>

Please see the attached letter from the Integrity Committee.

Thank you.

Sincerely,

Integrity Committee Working Group

2023-08-09 IC23-083 Closing - Complainant.pdf
161K

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,

LEIGHA SIMONTON
UNITED STATES ATTORNEY

/s/ Emily H. Owen
Emily H. Owen
Assistant United States Attorney
Texas Bar No. 24116865
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Telephone: 214-659-8600
Fax: 214-695-8807
emily.owen@usdoj.gov

Attorneys for Defendants

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

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 2nd Motion to Amend (ECF 49)

Reply in Support of 2nd Motion For Leave to Amend

Table of Contents

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 Reviewabilty (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 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*
Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Case, Statute, and Other Index

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 Request to Expedite Decision on Second Motion to Amend (ECF 49) Certificate of Conference - OPPOSED

The prior five motions pending before this court have been pending since 13 Jun 2024, over six months ago while the original Complaint was filed on 29 Dec 2023, almost a year ago. The Plaintiffs understand that this court has a full case load and that this is a complex case that warrants careful consideration.

However, the Defendants did not raise any serious concerns or injustices against the Second Motion to Amend (MTA2, ECF 49) of 19 Nov 2024. In fact the MTA2 makes the court's task easier by correcting simple errors like two count 8's and no count 9, adding a table of contents, and adjusting the relief sought to note relief which has already been provided (10 year green card provided by USCIS in ECF 49-3).

Further, it is plausible that Mrs. Carr could receive her Certificate of Naturalization in the next couple of months (ECF 49-4) so that another Motion to Amend would be necessary to alleviate the court’s obligation to decide issues which have become

moot (see Relief 20, ECF 49-1)

For these reasons the court is asked to expedite any decision on the MTA2.

Respectfully submitted,

Verification of Motion

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: 27. Dec. 2024

Location: Chiang Rai, Thailand

Certificate of Conference

The foregoing Motion is OPPOSED

In accordance with Local Civil Rule LR 7.1 on 26 Dec 2024 I sent an email to opposing counsel concerning this motion and on the same date I received a response that the motion is OPPOSED.

/s Brian P. Carr

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

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

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

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, et al., Defendants.	Civil Action No. 3:23-CV-02875-S-BT

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants submit as supplemental authority the attached opinion of the Supreme Court of the United States in *Dep't. of State v. Muñoz*, 602 U.S. ---, No. 23–334, 2024 WL 3074425 (U.S. June 21, 2024). There, in reversing the Ninth Circuit's denial of consular nonreviewability, the Supreme Court analyzed several issues pertinent to the controversy between the parties here. And on each issue, the Supreme Court's analysis supports the position advanced by Defendants. *See* Doc. 31, at 7-8.

Particularly, the court reaffirmed the validity of the doctrine of consular nonreviewability, noting that "[v]isa denials are insulated from judicial review by the doctrine of consular nonreviewability." *Muñoz*, at *5. As acknowledged by the court, the doctrine is subject to a "narrow exception" when "the denial of a visa allegedly burdens the constitutional rights of a U.S. citizen." *Id*. at *7. Resolving an open question of constitutional law, the court held that "a citizen does not have a fundamental liberty

interest in [his] noncitizen spouse being admitted to the country." *Id*. at *8. And, relatedly, the court made clear that a citizen's independent constitutional rights do not entitle him "to a 'facially legitimate and bona fide reason' for why someone else's visa was denied." *Id*. at *18.

Respectfully submitted,

LEIGHA SIMONTON
UNITED STATES ATTORNEY

/s/ Emily H. Owen
Emily H. Owen
Assistant United States Attorney
Texas Bar No. 24116865
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Telephone: 214-659-8600
Fax: 214-695-8807
emily.owen@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

On July 1, 2024, I electronically filed the above response with the clerk of court for the U.S. District Court, Northern District of Texas. I 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

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DEPARTMENT OF STATE ET AL. *v.* MUÑOZ ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23–334. Argued April 23, 2024—Decided June 21, 2024

Respondent Sandra Muñoz is an American citizen. In 2010, she married Luis Asencio-Cordero, a citizen of El Salvador. The couple eventually sought to obtain an immigrant visa for Asencio-Cordero so that they could live together in the United States. Muñoz filed a petition with U. S. Citizenship and Immigration Services to have Asencio-Cordero classified as an immediate relative. See 8 U. S. C. §§1151(b)(2)(A)(i), 1154(a)(1)(A). USCIS granted Muñoz's petition, and Asencio-Cordero traveled to the consulate in San Salvador to apply for a visa. See §§1154(b), 1202. After conducting several interviews with Asencio-Cordero, a consular officer denied his application, citing §1182(a)(3)(A)(ii), a provision that renders inadmissible a noncitizen whom the officer "knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in" certain specified offenses or "any other unlawful activity."

Asencio-Cordero guessed that he was denied a visa based on a finding that he was a member of MS–13, a transnational criminal gang. So he disavowed any gang membership, and he and Muñoz pressed the consulate to reconsider the officer's finding. When the consulate refused, they appealed to the Department of State, which agreed with the consulate's determination. Asencio-Cordero and Muñoz then sued the Department of State and others (collectively, State Department), claiming that it had abridged Muñoz's constitutional liberty interest in her husband's visa application by failing to give a sufficient reason why Asencio-Cordero is inadmissible under the "unlawful activity" bar. The District Court granted summary judgment to the State Department, but the Ninth Circuit vacated the judgment, holding that Muñoz had a constitutionally protected liberty interest in her husband's visa application. Because of that interest, the court said, the

Syllabus

Due Process Clause required the State Department to give Muñoz a reason for denying her husband's visa. The court further held that by declining to give Muñoz more information earlier in the process, the State Department had forfeited its entitlement to insulate its decision from judicial review under the doctrine of consular nonreviewability.

Held: A citizen does not have a fundamental liberty interest in her noncitizen spouse being admitted to the country. Pp. 5–18.

(a) Under the doctrine of consular nonreviewability, an executive officer's decision "to admit or to exclude an alien" "is final and conclusive," *United States ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537, 547, and not subject to judicial review in federal court. This Court has assumed a narrow exception in cases "when the denial of a visa allegedly burdens the constitutional rights of a U. S. citizen." *Trump* v. *Hawaii*, 585 U. S. 667, 703. In that event, the Court has considered whether the executive official gave a "facially legitimate and bona fide reason" for denying the visa. *Kerry* v. *Din*, 576 U. S. 86, 103–104.

Asencio-Cordero cannot invoke the exception himself, thus Muñoz must assert that the denial of her husband's visa violated *her* constitutional rights, thereby enabling judicial review. She argues that the State Department abridged her fundamental right to live with her spouse in her country of citizenship without affording her due process. Pp. 5–8.

(b) Among other things, the Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington* v. *Glucksberg*, 521 U. S. 702, 720. When a fundamental right is at stake, the government can act only by narrowly tailored means that serve a compelling state interest. To identify an unenumerated right, the Court follows the two-step inquiry in *Glucksberg*. That inquiry first insists on a "careful description of the asserted fundamental liberty interest." *Id.,* at 721 (internal quotation marks omitted). Second, the inquiry stresses that "the Due Process Clause specially protects" only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Id.,* at 720–721 (same).

Here, Muñoz invokes the "fundamental right to marriage," but she actually claims something more distinct: the right to *reside with her noncitizen spouse in the United States*. That involves more than marriage and more than spousal cohabitation—it includes the right to have her noncitizen husband enter (and remain in) the United States. As Muñoz asserts it, she claims "a marital right . . . sufficiently important that it cannot be unduly burdened without procedural due process as to an inadmissibility finding that would block her from residing with her spouse in her country of citizenship." Brief for Respondent 19, n. 10. So described, the asserted right is fundamental enough to

be implicit in "liberty;" but, unlike other implied fundamental rights, its deprivation does not trigger strict scrutiny.

Because Muñoz cannot clear the second step of *Glucksberg*, the Court need not decide whether such a category of implied rights protected by the Due Process Clause exists. *Glucksberg* requires a demonstration that the asserted right be "deeply rooted in this Nation's history and tradition." 521 U. S., at 721. This Nation's history and tradition recognizes the Government's sovereign authority to set the terms governing the admission and exclusion of noncitizens, and Muñoz points to no subsidiary tradition that curbs this authority in the case of noncitizen spouses.

From this Nation's beginnings, the admission of noncitizens into the country was characterized as "of favor [and] not of right." J. Madison, Report of 1800. And when Congress began to restrict immigration in the late 19th century, the laws it enacted provided no exceptions for citizens' spouses. See, *e.g.,* Page Act of 1875, 18 Stat. 477–478; Immigration Act of 1882, 22 Stat. 214; Immigration Act of 1891, 26 Stat. 1084. And while Congress has, on occasion, extended special immigration treatment to marriage, see, *e.g.,* War Brides Act of 1945, 59 Stat. 659, it has never made spousal immigration a matter of *right*.

This Court has not interfered with such policy choices, despite their interference with the spousal relationship. Thus in *United States ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537, the Court reaffirmed, in the case of a noncitizen spouse who was denied admission for confidential security reasons, the longstanding principle "that the United States can, as a matter of public policy . . . forbid aliens or classes of aliens from coming within [its] borders," and "[n]o limits can be put by the courts upon" that power. *Wong Wing* v. *United States*, 163 U. S. 228, 237. Pp. 8–15.

(c) Muñoz's claim to a procedural due process right in *someone else*'s legal proceeding would have unsettling collateral consequences. Her position would usher in a new strain of constitutional law—one that prevents the government from taking actions that "indirectly or incidentally" burden a citizen's legal rights. *Castle Rock* v. *Gonzales*, 545 U. S. 748, 767. See, *e.g., O'Bannon* v. *Town Court Nursing Center*, 447 U. S. 773, 788. To be sure, Muñoz has suffered harm from the denial of Asencio-Cordero's visa application, but that harm does not give her a constitutional right to participate in his consular proceeding. Pp. 15–18.

50 F. 4th 906, reversed and remanded.

BARRETT, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, and KAVANAUGH, JJ., joined. GORSUCH, J.,

filed an opinion concurring in the judgment. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN and JACKSON, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 23–334

DEPARTMENT OF STATE, ET AL., PETITIONERS *v.* SANDRA MUÑOZ, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 21, 2024]

JUSTICE BARRETT delivered the opinion of the Court.

Luis Asencio-Cordero seeks to enter the United States to live with Sandra Muñoz, his wife. To obtain the necessary visa, he submitted an application at the United States consulate in San Salvador. A consular officer denied his application, however, after finding that Asencio-Cordero is affiliated with MS–13, a transnational criminal gang. Because of national security concerns, the consular officer did not disclose the basis for his decision. And because Asencio-Cordero, as a noncitizen, has no constitutional right to enter the United States, he cannot elicit that information or challenge the denial of his visa.

Muñoz, on the other hand, is a citizen, and she filed her own challenge to the consular officer's decision. She reasons as follows: The right to live with her noncitizen spouse in the United States is implicit in the "liberty" protected by the Fifth Amendment; the denial of her husband's visa deprived her of this interest, thereby triggering her right to due process; the consular officer violated her right to due process by declining to disclose the basis for finding Asencio-Cordero inadmissible; and this, in turn, enables judicial review, even though visa denials are

ordinarily unreviewable by courts.

Muñoz's argument fails at the threshold. Her argument is built on the premise that the right to bring her noncitizen spouse to the United States is an unenumerated constitutional right. To establish this premise, she must show that the asserted right is "'deeply rooted in this Nation's history and tradition.'" *Washington* v. *Glucksberg*, 521 U. S. 702, 720–721 (1997). She cannot make that showing. In fact, Congress's longstanding regulation of spousal immigration—including through bars on admissibility—cuts the other way.

I

A

To be admitted to the United States, a noncitizen typically needs a visa. 66 Stat. 181, 8 U. S. C. §1181(a). Visa decisions are made by the political branches. *Trump* v. *Hawaii*, 585 U. S. 667, 702–703 (2018); see also *Oceanic Steam Nav. Co.* v. *Stranahan*, 214 U. S. 320, 339 (1909) (explaining that "over no conceivable subject is the legislative power of Congress more complete"). As a general matter, Congress sets the terms for entry, and the Department of State implements those requirements at United States Embassies and consulates in foreign countries.[1]

Congress has streamlined the visa process for noncitizens with immediate relatives in the United States. The citizen-relative must first file a petition with U. S. Citizenship and Immigration Services (USCIS), an agency housed within the Department of Homeland Security, to have the noncitizen classified as an immediate relative. See *Scialabba* v.

[1] We describe the process for noncitizens who, like Asencio-Cordero, have not yet been lawfully admitted to the United States and must therefore apply from abroad. Compare 8 U. S. C. §1255(a) (adjustment of status to lawful permanent resident for noncitizens already admitted into the United States) with 22 CFR §§42.61, 42.62 (2023) (noncitizens applying for immigrant visa must appear in person before consular officer in consular district of residence).

Cuellar de Osorio, 573 U. S. 41, 46–47 (2014) (plurality opinion); §§1151(b)(2)(A)(i), 1154(a)(1)(A). If USCIS approves the petition, then the noncitizen may apply for a visa. §§1201(a), 1202(a). As part of this process, the noncitizen submits written materials and interviews with a consular officer abroad. §§1201(a)(1), 1202.

Ordinarily, a consular officer who denies a visa application "because the officer determines the alien to be inadmissible" must "provide the alien with a timely written notice that . . . (A) states the determination, and (B) lists the specific provision or provisions of law under which the alien is inadmissible." §1182(b)(1). The statute requires no explanation, however, "to any alien inadmissible" on certain grounds related to crime and national security. §1182(b)(3). This case involves a noncitizen to whom this statutory exception applies.

B

Sandra Muñoz, an American citizen, married Luis Asencio-Cordero, a Salvadoran citizen, in 2010. Several years later, the couple began taking steps to obtain an immigrant visa for Asencio-Cordero. Muñoz filed a petition to classify her husband as an immediate relative, which USCIS granted. §§1151(b)(2)(A)(i), 1154(a)(1)(A). Because Asencio-Cordero had entered the United States unlawfully, he was required to return to El Salvador and submit his visa application at a consulate there. See §§1154(b), 1202; 22 CFR §42. He met with a consular officer in San Salvador and underwent several interviews.

In December 2015, the officer denied Asencio-Cordero's application, citing 8 U. S. C. §1182(a)(3)(A)(ii). That provision renders inadmissible a noncitizen whom the officer "knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in" certain specified offenses or "any other unlawful activity." *Ibid*. The officer provided no additional

details—but, given the reason for the visa denial, even the statutory citation was more information than Asencio-Cordero was entitled to receive. §1182(b)(3).

Asencio-Cordero guessed (as it turns out, accurately) that he was denied a visa based on a finding that he was a member of MS–13, a transnational criminal gang. He also guessed (again, accurately) that this finding was based at least in part on the conclusion that his tattoos signified gang membership. Asencio-Cordero and Muñoz denied that Asencio-Cordero was affiliated with MS–13 or any other gang, and they pressed the consulate to reconsider the officer's finding. When the consulate held firm, they appealed to the Department of State, submitting evidence that the tattoos were innocent. A Department official informed Asencio-Cordero and Muñoz that the Department agreed with the consulate's determination. The next day, the consul in San Salvador notified them that Asencio-Cordero's application had gone through multiple rounds of review—including by the consular officer, consular supervisors, the consul himself, the Bureau of Consular Affairs, and the State Department's Immigration Visa Unit—and none of these reviews had "'revealed any grounds to change the finding of inadmissibilty.'" App. 7.

Asencio-Cordero and Muñoz sued the Department of State, the Secretary of State, and the United States consul in San Salvador. (For simplicity's sake, we will refer to the defendants collectively as the State Department.) They alleged, among other things, that the State Department had abridged Muñoz's constitutional liberty interest in her husband's visa application by failing to give a sufficient reason why Asencio-Cordero is inadmissible under the "unlawful activity" bar.

The District Court agreed and ordered discovery. In a sworn declaration, an attorney adviser from the State Department explained that Asencio-Cordero was deemed inadmissible because he belonged to MS–13. The finding

was "based on the in-person interview, a criminal review of . . . Asencio[-]Cordero, and a review of [his] tattoos." App. to Pet. for Cert. 124a. In addition to the affidavit, the State Department provided the District Court with confidential law enforcement information, which it reviewed *in camera*, identifying Ascencio-Cordero as a member of MS–13. Satisfied, the District Court granted summary judgment to the State Department.

The Ninth Circuit vacated the judgment and remanded the case. Consistent with circuit precedent, it held that Muñoz, as a citizen, had a constitutionally protected liberty interest in her husband's visa application. Because of that interest, the Ninth Circuit said, the Due Process Clause required the State Department to give Muñoz a "'facially legitimate and bona fide reason'" for denying her husband's visa. 50 F. 4th 906, 916 (2022) (quoting *Kleindienst* v. *Mandel*, 408 U. S. 753, 766–770 (1972)). The initial statutory citation did not qualify, 50 F. 4th, at 917–918, and the later affidavit was untimely, *id.*, at 921–922. Delay carried a serious consequence for the State Department. Visa denials are insulated from judicial review by the doctrine of consular nonreviewability. But the Ninth Circuit held that by declining to give Muñoz more information earlier in the process, the State Department had forfeited its entitlement "to shield its visa decision from judicial review." *Id.*, at 924. The panel remanded for the District Court to consider the merits of Muñoz's suit, which include a request for a declaration invalidating the finding that Asencio-Cordero is inadmissible and an order demanding that the State Department readjudicate Asencio-Cordero's application.[2]

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[2] At oral argument in this Court, Muñoz suggested that she is asserting a constitutional entitlement only to information—a "facially legitimate and bona fide reason" why the consular officer deemed her husband inadmissible under the "unlawful activity" bar. Tr. of Oral Arg. 59–64. Elsewhere, though, she suggests that the Due Process Clause entitles

The Ninth Circuit denied en banc review over the dissent of 10 judges, and we granted the State Department's petition for certiorari. 601 U. S. ___ (2024).[3]

II

"For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'" *Trump*, 585 U. S., at 702 (quoting *Fiallo* v. *Bell*, 430 U. S. 787, 792 (1977)). Congress may delegate to executive officials the discretionary authority to admit noncitizens "immune from judicial inquiry or interference." *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–591 (1952). When it does so, the action of an executive officer "to admit or to exclude an alien" "is final and conclusive." *United States ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537, 543 (1950); see also *Dept. of Homeland Security* v. *Thuraissigiam*, 591 U. S. 103, 138–139 (2020); *Mandel*, 408 U. S., at 765–766; *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 659–660 (1892). The Judicial Branch has no role

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her to both the information and "a meaningful opportunity to respond." Brief for Respondents 11. If appeal is no longer available under State Department regulations (and the Ninth Circuit said it was not), Muñoz presumably seeks what she sought below: judicial review of the inadmissibility finding and a court order requiring the State Department to reconsider Asencio-Cordero's visa application. 50 F. 4th, at 912, n. 14. This level of judicial involvement in the visa process would be a significant extension of our precedent. The dissent, however, would remand to the Ninth Circuit for consideration of this relief. *Post*, at 10, n. 2 (opinion of SOTOMAYOR, J.).

[3] Inexplicably, the dissent claims that the Court is reaching out improperly to settle this issue. *Post*, at 2. We granted certiorari on this very question to resolve a longstanding circuit split. 601 U. S. ___ (2024). And we did so at the request of the Solicitor General, who emphasized both the Government's need for uniformity in the administration of immigration law and the importance of this issue to national security. Pet. for Cert. 27–28, 31–33.

to play "unless expressly authorized by law." *Knauff*, 338 U. S., at 543. The Immigration and Nationality Act (INA) does not authorize judicial review of a consular officer's denial of a visa; thus, as a rule, the federal courts cannot review those decisions.[4] This principle is known as the doctrine of consular nonreviewability.

We have assumed that a narrow exception to this bar exists "when the denial of a visa allegedly burdens the constitutional rights of a U. S. citizen." *Trump*, 585 U. S., at 703. In that event, the Court has considered whether the Executive gave a "'facially legitimate and bona fide reason'" for denying the visa. *Kerry* v. *Din*, 576 U. S. 86, 103–104 (2015) (Kennedy, J., concurring in judgment) (quoting *Mandel*, 408 U. S., at 770). If so, the inquiry is at an end—the Court has disclaimed the authority to "'look behind the exercise of that discretion,'" much less to balance the reason given against the asserted constitutional right. *Din*, 576 U. S., at 104.

Asencio-Cordero cannot invoke the exception himself, because he has no "constitutional right of entry to this country as a nonimmigrant or otherwise." *Mandel*, 408 U. S., at 762. Thus, so far as Asencio-Cordero is concerned, the doctrine of consular nonreviewability applies. Muñoz, however, is an American citizen, and she asserts that the denial of her husband's visa violated *her* constitutional rights, thereby enabling judicial review. Specifically, she argues that the State Department abridged her fundamental right to live with her spouse in her country of citizenship—and that it did so without affording her the fair

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[4] In *Trump* v. *Hawaii*, the plaintiffs argued that a proclamation excluding certain classes of noncitizens from entering the United States exceeded the President's authority under the Immigration and Nationality Act. 585 U. S. 667, 681–682 (2018). The Court explained that the doctrine of consular nonreviewability is not jurisdictional and "assume[d] without deciding that [the] plaintiffs' statutory claims [were] reviewable." *Id.*, at 682–683.

procedure guaranteed by the Fifth Amendment.

The Ninth Circuit is the only Court of Appeals to have embraced this asserted right—every other Circuit to consider the issue has rejected it.[5] See *Colindres* v. *U. S. Dept. of State*, 71 F. 4th 1018, 1021 (CADC 2023); *Baaghil* v. *Miller*, 1 F. 4th 427, 433 (CA6 2021); *Bakran* v. *Secretary, U. S. Dept. of Homeland Security*, 894 F. 3d 557, 564 (CA3 2018); *Bright* v. *Parra*, 919 F. 2d 31, 34 (CA5 1990) (*per curiam*); *Burrafato* v. *U. S. Dept. of State*, 523 F. 2d 554, 554–557 (CA2 1975); *Silverman* v. *Rogers*, 437 F. 2d 102, 107 (CA1 1970). In *Din*, this Court considered but did not resolve the question. A plurality concluded that a citizen does not have a fundamental right to bring her noncitizen spouse to the United States. 576 U. S., at 96. Two Justices chose not to reach the issue, explaining that even if the right existed, the statutory citation provided by the Executive qualified as a facially legitimate and bona fide reason. *Id.,* at 105 (opinion of Kennedy, J.). Since *Din*, the existence of the right has continued to divide the Circuits.

Today, we resolve the open question. Like the *Din* plurality, we hold that a citizen does not have a fundamental liberty interest in her noncitizen spouse being admitted to the country.

III

The Due Process Clause of the Fifth Amendment requires the Government to provide due process of law before it deprives someone of "life, liberty, or property." Under our precedent, the Clause promises more than fair process: It also "provides heightened protection against government interference with certain fundamental rights and liberty

[5] The dissent characterizes our decision today as extreme, *post*, at 14, but it is the dissent who embraces the outlier position: Our opinion is in line with the vast majority of Circuits that have decided this question. The dissent aligns itself with the lone Circuit going the other way.

interests." *Glucksberg*, 521 U. S., at 720. When a fundamental right is at stake, the Government can act only by narrowly tailored means that serve a compelling state interest. *Id.*, at 721. Identifying unenumerated rights carries a serious risk of judicial overreach, so this Court "exercise[s] the utmost care whenever we are asked to break new ground in this field." *Id.*, at 720 (internal quotation marks omitted). To that end, *Glucksberg*'s two-step inquiry disciplines the substantive due process analysis. First, it insists on a "careful description of the asserted fundamental liberty interest." *Id.*, at 721 (internal quotation marks omitted). Second, it stresses that "the Due Process Clause specially protects" only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Id.*, at 720–721 (internal quotation marks omitted).

We start with a "careful description of the asserted fundamental liberty interest." *Id.*, at 721 (internal quotation marks omitted). Muñoz invokes the "fundamental right of marriage," but the State Department does not deny that Muñoz (who is already married) has a fundamental right to marriage. Muñoz claims something distinct: the right to *reside with her noncitizen spouse in the United States*. That involves more than marriage and more than spousal cohabitation—it includes the right to have her noncitizen husband enter (and remain in) the United States.

It is difficult to pin down the nature of the right Muñoz claims. The logic of her position suggests an entitlement to bring Asencio-Cordero to the United States—how else could Muñoz enjoy the asserted right to live with her noncitizen husband in her country of citizenship? See also Brief for Petitioners 23, n. 8 (characterizing Muñoz's claim as an "entitle[ment] to the visa itself"). Yet Muñoz disclaims that characterization, insisting that "[she] does not advance a substantive right to immigrate one's spouse." Brief for

Respondents 19, n. 10. This concession is wise, because such a claim would ordinarily trigger strict scrutiny—and it would be remarkable to put the Government to the most demanding test in constitutional law in the field of immigration, an area unsuited to rigorous judicial oversight. *Fiallo*, 430 U. S., at 792 ("Our cases 'have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control'").

Though understandable, Muñoz's concession makes characterizing the asserted right a conceptually harder task. Here is her formulation: a "marital right . . . sufficiently important that it cannot be unduly burdened without procedural due process as to an inadmissibility finding that would block her from residing with her spouse in her country of citizenship." Brief for Respondents 19, n. 10. So described, the asserted right is neither fish nor fowl. It is fundamental enough to be implicit in "liberty;" but, unlike other implied fundamental rights, its deprivation does not trigger strict scrutiny. See *Din*, 576 U. S., at 99 (plurality opinion) (observing that this argument posits "two categories of implied rights protected by the Due Process Clause: really fundamental rights, which cannot be taken away at all absent a compelling state interest; and not-so-fundamental rights, which can be taken away so long as procedural due process is observed"). This right would be in a category of one: a substantive due process right that gets only procedural due process protection. *Ibid.*

We need not decide whether such a category exists, because Muñoz cannot clear the second step of *Glucksberg*'s test: demonstrating that the right to bring a noncitizen spouse to the United States is "'deeply rooted in this Nation's history and tradition.'" 521 U. S., at 721. On the contrary, the through line of history is recognition of the Government's sovereign authority to set the terms

governing the admission and exclusion of noncitizens. And Muñoz points to no subsidiary tradition that curbs this authority in the case of noncitizen spouses.

From the beginning, the admission of noncitizens into the country was characterized as "of favor [and] *not of right*." J. Madison, Report of 1800 (Jan. 7, 1800), in 17 Papers of James Madison 319 (D. Mattern, J. Stagg, J. Cross, & S. Perdue eds. 1991) (emphasis added); see also 2 Records of the Federal Convention of 1787, p. 238 (M. Farrand ed. 1911) (recounting Gouverneur Morris's observation that "every Society from a great nation down to a club ha[s] the right of declaring the conditions on which new members should be admitted"); Debate on Virginia Resolutions, in The Virginia Report of 1799–1800, p. 31 (1850) ("[B]y the law of nations, it is left in the power of all states to take such measures about the admission of strangers as they think convenient"). Consistent with this view, the 1798 Act Concerning Aliens gave the President complete discretion to remove "all such aliens as he shall judge dangerous to the peace and safety of the United States." 1 Stat. 571 (emphasis deleted). The Act made no exception for spouses—or, for that matter, other family members.

The United States had relatively open borders until the late 19th century. But once Congress began to restrict immigration, "it enacted a complicated web of regulations that erected serious impediments to a person's ability to bring a spouse into the United States." *Din*, 576 U. S., at 96 (plurality opinion). One of the first federal immigration statutes, the Immigration Act of 1882, required executive officials to "examine" noncitizens and deny "permi[ssion] to land" to "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge." 22 Stat. 214. The Act provided no exception for citizens' spouses. And when Congress drafted a successor statute that expanded the grounds of inadmissibility, it again gave no special treatment to the marital relationship.

Immigration Act of 1891, ch. 551, 26 Stat. 1084.

There are other examples. The Page Act of 1875, which functioned as a restriction on Chinese female immigration, contained no exception for wives. 18 Stat. 477–478; see *Colindres*, 71 F. 4th, at 1023. Or consider the Emergency Quota Act of 1921, which capped the number of immigrants permitted to enter the country each year. 42 Stat. 5–6. Although the Act gave preferential treatment to citizens' wives, "once all the quota spots were filled for the year, the spouse was barred without exception." *Din*, 576 U. S., at 97 (plurality opinion).[6] See also C. Bredbenner, A Nationality of Her Own: Women, Marriage, and the Law of Citizenship 115 (1998) ("[C]itizens' wives were still quota immigrants, and immigration officials could regulate their entry closely if economic or other circumstances prompted a general tightening of admission"). In 1924, Congress, showing favor to men rather than marriage, lifted the quotas for male citizens with noncitizen wives, but did not similarly clear the way for female citizens with noncitizen husbands. Abrams 12. This gender disparity did not change until 1952. *Id.*, at 13–14.

That is not to say that Congress has not extended special treatment to marriage—it has. For instance, the War Brides Act of 1945 provided that the noncitizen spouses of World War II veterans would be exempt from certain admissibility bars and documentary requirements. Ch. 591, 59 Stat. 659. Closer to home, Asencio-Cordero's visa

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[6] Given the then-existing law of coverture, the Act was only relevant to noncitizen wives—a citizen wife with a noncitizen husband was forced to assume her husband's nationality. K. Abrams, What Makes the Family Special? 80 U. Chi. L. Rev. 7, 11 (2013) (Abrams). ("Giving wives the opportunity to sponsor their husbands would have been nonsensical; under the Expatriation Act of 1907, a wife automatically *lost* her US citizenship upon marrying a foreigner, so there could be no such thing as a US citizen wife with an immigrant husband" (footnotes omitted)). This changed in 1922, when the Cable Act "largely undid derivative citizenship for married women." *Ibid.*

application rested on his marriage to Muñoz, which made him eligible for immigrant status. §1154. But while Congress has made it easier for spouses to immigrate, it has never made spousal immigration a matter of right. On the contrary, qualifications and restrictions have long been the norm. See, *e.g.*, Act of Aug. 9, 1946, ch. 945, 60 Stat. 975 (granting nonquota status to Chinese wives of American citizens, but only for those with longstanding marriages).

Of particular relevance to Muñoz, Congress has not exempted spouses from inadmissibility restrictions like the INA's unlawful-activity bar. Precusors to that bar have existed since the early 20th century. For example, the Immigration Act of 1917 provided for the exclusion of "persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude." Ch. 29, 39 Stat. 875. Consular officers applied this bar to spouses, and courts refused to review those visa denials, citing the doctrine of consular nonreviewability. See, *e.g.*, *United States ex rel. Ulrich* v. *Kellogg*, 30 F. 2d 984, 985–986 (CADC 1929).

United States ex rel. Knauff v. *Shaughnessy* is a striking example from this Court. In *Knauff*, a United States citizen (and World War II veteran) found himself similarly situated to Muñoz: His noncitizen wife was denied admission for security reasons, based on "information of a confidential nature, the disclosure of which would be prejudicial to the public interest." 338 U. S., at 541, 544. We held that the War Brides Act did not supersede the statute on which the Attorney General had relied. *Id.*, at 546–547 ("There is nothing in the War Brides Act . . . to indicate that it was the purpose of Congress, by partially suspending compliance with certain requirements and quota provisions of the immigration laws, to relax the security provisions of the immigration laws"). So, "[a]s all other aliens, petitioner had to stand the test of security." *Id.*, at 547. Nor was she entitled to a hearing, because "[w]hatever the procedure

authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Id.*, at 544. The Attorney General's decision was "final and conclusive," and he did not have to divulge the reason for it. *Id.*, at 543.[7]

Knauff thus reaffirmed the longstanding principle "that the United States can, as a matter of public policy . . . forbid aliens or classes of aliens from coming within their borders," and "[n]o limits can be put by the courts upon" that power. *Wong Wing* v. *United States*, 163 U. S. 228, 237 (1896). Congress's authority to "formulat[e] . . . policies" concerning the entry of noncitizens "has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government," representing "not merely 'a page of history,' but a whole volume." *Galvan* v. *Press*, 347 U. S. 522, 531 (1954) (citation omitted). "[T]he Court's general reaffirmations of this principle have been legion." *Mandel*, 408 U. S., at 765–766; see also *id.*, at 765 ("[T]he power to exclude aliens is 'inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers—a power to be exercised exclusively by the political branches of government'").[8] While "families of

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[7] The dissent criticizes *Knauff* because the Attorney General, under pressure from Congress, ultimately revisited his decision and admitted Knauff as a lawful permanent resident. *Post*, at 19. But the history of the case does not establish that the Court was wrong to decline to review the Attorney General's decision. It reflects a decision that was made by the political branches and reversed through the political process. Moreover, *Knauff* remains good law that we have repeatedly reaffirmed. *Dept. of Homeland Security* v. *Thuraissigiam*, 591 U. S. 103, 138–139 (2020).

[8] The dissent barely acknowledges that any of this precedent exists. In fact, rather than recognizing the prerogatives of the political branches in this area, the dissent criticizes the United States' immigration policy, *post*, at 4–5, as well as the competence of the Executive Branch officials who make difficult, high-stakes decisions about which noncitizens seeking entry to the United States pose a threat to national security, *post*, at 6–7. Perhaps our dissenting colleagues are well-equipped to set immigration policy and manage border security, but the Constitution entrusts

putative immigrants certainly have an interest in their admission," it is a "fallacy" to leap from that premise to the conclusion that United States citizens have a "'fundamental right'" that can limit how Congress exercises "the Nation's sovereign power to admit or exclude foreigners." *Fiallo*, 430 U. S., at 795, n. 6.

To be sure, Congress can use its authority over immigration to prioritize the unity of the immigrant family. *Din*, 576 U. S., at 97 (plurality opinion). See, *e.g.*, §1151(b)(2)(A)(i) (exempting "immediate relatives" from certain numerical quotas). It has frequently done just that. But the Constitution does not *require* this result; moreover, Congress's generosity with respect to spousal immigration has always been subject to restrictions, including bars on admissibility. This is an area in which more than family unity is at play: Other issues, including national security and foreign policy, matter too. Thus, while Congress may show special solicitude to noncitizen spouses, such solicitude is "a matter of legislative grace rather than fundamental right." *Din*, 576 U. S., at 97 (plurality opinion). Muñoz has pointed to no evidence suggesting otherwise.[9]

IV

As the State Department observes, Muñoz's claim to a procedural due process right in *someone else's* legal

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those tasks to the political branches.

[9]The dissent never addresses the actual issue in this case, which is whether the Judiciary has any authority to review visa determinations made by the State Department. Instead, the dissent chooses the rhetorically easier path of charging the Court with endangering the fundamental right to marriage. See *post*, at 11–14. To be clear: Today's decision does not remotely call into question any precedent of this Court, including those protecting marriage as a fundamental right. By contrast, the dissent would upend more than a century's worth of this Court's precedent regarding the doctrine of consular nonreviewability, not to mention equally longstanding congressional and Executive Branch practice. *Ibid.*

proceeding would have unsettling collateral consequences. Consider where her logic leads: Could a wife challenge her husband's "assignment to a remote prison or to an overseas military deployment, even though prisoners and service members themselves cannot bring such challenges"? Reply Brief 13. Could a citizen assert procedural rights in the removal proceeding of her spouse? Brief for Petitioners 30. Muñoz's position would usher in a new strain of constitutional law, for the Constitution does not ordinarily prevent the government from taking actions that "indirectly or incidentally" burden a citizen's legal rights. *Castle Rock* v. *Gonzales*, 545 U. S. 748, 767 (2005) (quoting *O'Bannon* v. *Town Court Nursing Center*, 447 U. S. 773, 788 (1980)).

Our decision in *O'Bannon* is illustrative. There, a group of nursing-home residents alleged that the government had violated their liberty interests when it decertified their nursing home without providing them a hearing. 447 U. S., at 777–781, 784. We acknowledged that the residents would suffer harm from the government's decision. *Id.*, at 784, and n. 16. But we held that absent a "direct restraint on [their liberty]," the decision did not implicate their due process rights. *Id.*, at 788. The decertification decision imposed only an *indirect* harm. We explained that the residents were akin to "members of a family who have been dependent on an errant father." *Ibid.* Although "they may suffer serious trauma if he is deprived of his liberty or property as a consequence of criminal proceedings," such family members "surely . . . have no constitutional right to participate in his trial or sentencing procedures." *Ibid.* The same principle governs here. Muñoz has suffered harm from the denial of Asencio-Cordero's visa application, but that harm does not give her a constitutional right to participate in his consular process.

Lest there be any doubt, *Mandel* does *not* hold that citizens have procedural due process rights in the visa

proceedings of others. The Ninth Circuit seems to have read *Mandel* that way, but that is a misreading.

In *Mandel,* the Attorney General refused to waive inadmissibility and grant Ernest Mandel, a self-described "'revolutionary Marxist,'" a temporary visa to attend academic conferences in the United States. 408 U. S., at 756. A group of professors sued on the ground that the Executive's discretion to grant a waiver was limited by their First Amendment right to hear Mandel speak; they insisted that "the First Amendment claim should prevail, at least where no justification is advanced for denial of a waiver." *Id.*, at 769. In response, the Attorney General asserted that "Congress has delegated the waiver decision to the Executive in its sole and unfettered discretion, and any reason or no reason may be given." *Ibid.*

But because "the Attorney General *did* inform Mandel's counsel of the reason for refusing him a waiver," the Court chose not to resolve this statutory argument. *Ibid.* (emphasis added). Instead, it said that so long as the Executive gives a "facially legitimate and bona fide reason" for denying a waiver under §212(a)(28) of the INA—the statutory provision at issue—"the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant." *Id.*, at 770. The Court expressly declined to address whether a constitutional challenge would "be available for attacking [an] exercise of discretion for which no justification whatsoever is advanced." *Ibid.*

Thus, the "facially legitimate and bona fide reason" in *Mandel* was the justification for avoiding a difficult question of statutory interpretation; it had nothing to do with procedural due process. Indeed, a procedural due process claim was not even before the Court. The professors argued that the denial of Mandel's visa directly deprived them of their First Amendment rights, *not* that their First

Amendment rights entitled them to procedural protections in Mandel's visa application process. *Id.*, at 754. To make an argument logically analogous to that of the professors, Muñoz would have to claim that the denial of Asencio-Cordero's visa violated her substantive due process right to bring her noncitizen spouse to the United States—thereby triggering the State Department's obligation to demonstrate why denying him the visa is the least restrictive means of serving the Government's interest in national security. But, as we have explained, Muñoz has disavowed that argument, which cannot succeed in any event because the asserted right is not a longstanding and "'deeply rooted'" tradition in this country. *Glucksberg*, 521 U. S., at 721.

The bottom line is that procedural due process is an odd vehicle for Muñoz's argument, and *Mandel* does not support it. Whatever else it may stand for, *Mandel* does not hold that a citizen's independent constitutional right (say, a free speech claim) gives that citizen a procedural due process right to a "facially legitimate and bona fide reason" for why someone else's visa was denied. And Muñoz is not constitutionally entitled to one here.

* * *

The judgment of the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 23–334

DEPARTMENT OF STATE, ET AL., PETITIONERS *v.* SANDRA MUÑOZ, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 21, 2024]

JUSTICE GORSUCH, concurring in the judgment.

A consular officer denied Sandra Muñoz's husband a visa to come to and live lawfully in the United States. 526 F. Supp. 3d 709, 713–714 (CD Cal. 2021). In doing so, the officer simply cited 8 U. S. C. §1182(a)(3)(A)(ii), a provision of the Immigration and Nationality Act that makes inadmissible any person a consular officer "has reasonable ground to believe . . . seeks to enter the United States to engage . . . in . . . any other unlawful activity." Eventually, Ms. Muñoz sued for further explanation of that decision. See App. 2, 8–9. The government, she claimed, needed to identify for her not just the statute on which it based its decision, but also the "'discrete factual predicates'" on which it relied. *Id.*, at 8, ¶36.

Over the course of this litigation, the United States has given Ms. Muñoz what she requested. As the Ninth Circuit recognized, the United States has now revealed the factual basis for its decision to deny her husband a visa. 50 F. 4th 906, 919–920 (2022); see App. to Pet. for Cert. 124a; App. 76. In this Court, too, the government has assured Ms. Muñoz that she has a chance to use and respond to that information. She can again seek her husband's admission to this country, the government says—and this time she will be armed with an understanding of why the government denied the last application. Tr. of Oral Arg. 45, 104.

Those developments should end this case. With no more information to uncover and no bar to trying for admission again, nothing is left for a court to address through this litigation. In particular, the constitutional questions presented by the government no longer have any practical relevance here. Whether or not Ms. Muñoz had a constitutional right to the information she wanted, the government gave it to her. I therefore would reverse the Ninth Circuit's decision without reaching the government's constitutional arguments. See *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U. S. 283, 294–295 (1982). At the same time, I do not cast aspersions on the motives of my colleagues who do reach the government's arguments. They may see the case differently than I do, but their decision and rationales are essentially those the Solicitor General and the Department of State urged this Court to adopt.

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[June 21, 2024]

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN and JUSTICE JACKSON join, dissenting.

"The right to marry is fundamental as a matter of history and tradition." *Obergefell* v. *Hodges*, 576 U. S. 644, 671 (2015). After U. S. citizen Sandra Muñoz and her Salvadoran husband spent five years of married life in the United States, the Government told her that he could no longer reenter the country. If she wanted to live together with him and their child again, she would have to move to El Salvador. The reason? A consular officer's bare assertion that her husband, who has no criminal record in the United States or El Salvador, planned to engage in "unlawful activity." 8 U. S. C. §1182(a)(3)(A)(ii). Muñoz argues that the Government, having burdened her fundamental right to marriage, owes her one thing: the factual basis for excluding her husband.

The majority could have resolved this case on narrow grounds under longstanding precedent. This Court has already recognized that excluding a noncitizen from the country can burden the constitutional rights of citizens who seek his presence. See *Kleindienst* v. *Mandel*, 408 U. S. 753, 765–770 (1972). Acknowledging the Government's power over admission and exclusion, the *Mandel* Court held that "a facially legitimate and bona fide reason" for the exclusion sufficed to justify that burden. *Id.*, at 770. In this case,

after protracted litigation, the Government finally explained that it denied Muñoz's husband a visa because of its belief that he had connections to the gang MS–13. Regardless of the validity of that belief, it is a "facially legitimate and bona fide reason." *Ibid.*; see also *ante,* at 1 (GORSUCH, J., concurring in judgment). Under this Court's precedent, that is enough.

Instead, the majority today chooses a broad holding on marriage over a narrow one on procedure.[1] It holds that Muñoz's right to marry, live with, and raise children alongside her husband entitles her to nothing when the Government excludes him from the country. Despite the majority's assurance two Terms ago that its eradication of the right to abortion "does not undermine . . . in any way" other entrenched substantive due process rights such as "the right to marry," "the right to reside with relatives," and "the right to make decisions about the education of one's children," the Court fails at the first pass. *Dobbs* v. *Jackson Women's*

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[1] The Government asked this Court to review three questions:

> "1. Whether a consular officer's refusal of a visa to a U. S. citizen's noncitizen spouse impinges upon a constitutionally protected interest of the citizen.
>
> "2. Whether, assuming that such a constitutional interest exists, notifying a visa applicant that he was deemed inadmissible under 8 U. S. C. 1182(a)(3)(A)(ii) suffices to provide any process that is due.
>
> "3. Whether, assuming that such a constitutional interest exists and that citing Section 1182(a)(3)(A)(ii) is insufficient standing alone, due process requires the government to provide a further factual basis for the visa denial 'within a reasonable time,' or else forfeit the ability to invoke consular nonreviewability in court." Pet. for Cert. I.

This Court granted certiorari limited to the first and second questions. 601 U. S. ___ (2024). The majority chooses to decide this case on the first question presented rather than "assuming that such a constitutional interest exists" and determining what "process . . . is due" (the second question presented). Pet. for Cert. I.

Health Organization, 597 U. S. 215, 256–257 (2022). Because, to me, there is no question that excluding a citizen's spouse burdens her right to marriage, and that burden requires the Government to provide at least a factual basis for its decision, I respectfully dissent.

I

A

Marriage is not an automatic ticket to a green card. A married citizen-noncitizen couple must jump through a series of administrative hoops to apply for the lawful permanent residency that marriage can confer. Noncitizen spouses coming from abroad must apply for a visa to enter the United States. In certain cases, however, the law requires even couples who meet and marry in the United States to send the noncitizen spouse back to his country of origin to do the same thing. In doing so, the couple must take an enormous risk to pursue the stability of lawful immigration status: the risk that when the noncitizen spouse tries to reenter the United States, he will face unexpected exile.

In technical immigration terms, a noncitizen spouse applying for a green card seeks to "[a]djus[t]" his immigration "status" from "nonimmigrant to that of [a] person admitted for permanent residence." 8 U. S. C. §1255. To do so, the citizen spouse must petition the Government on the noncitizen's behalf. The citizen spouse first sends United States Citizenship and Immigration Services (USCIS) a petition to classify the noncitizen spouse as an "immediate relative." §§1151(b)(2)(A)(i), 1154(a)(1)(A). Once USCIS approves the petition, a noncitizen spouse who is already in the United States can then apply to adjust his status to lawful permanent resident without leaving the country. See §1255(a). For a noncitizen spouse living outside of the United States, however, USCIS first approves the immediate-relative petition, but then sends it to the consulate of the country where

the noncitizen spouse lives for processing. See §1154(b); 22 CFR §§42.42, 42.61 (2023). A consular officer interviews the noncitizen spouse and makes the final admission decision. See 8 U. S. C. §§1201, 1202(f).

Because of idiosyncrasies in our immigration system, not all noncitizen spouses living in the United States can adjust their status with USCIS. Even when a couple meets, marries, and lives in the United States, the noncitizen spouse may instead have to travel back to his country of origin for consular processing if he was never formally "inspected and admitted or paroled" at the Border. §1255(a). A noncitizen who entered without "inspect[ion]" in this way typically cannot adjust his status from within the United States based on an immediate-relative petition. See *ibid.* Once the citizen spouse submits the petition to USCIS, the noncitizen spouse must return to his country of origin and meet with a consular officer, who will then adjudicate his application. See 22 CFR §§42.42, 42.61, 42.62.

Living in the United States after initially having entered without inspection is not unusual. In fact, the Government endorses the presence of many of these members of our national community. Recipients under the Deferred Action for Childhood Arrivals (DACA) program, for instance, may have been brought across the border by their parents without inspection. Even though DACA status entitles them to work and live in the country without the immediate threat of removal, see 8 CFR §236.21(c), it does not change their initial entry designation. As of the end of 2023, there were roughly 530,000 active DACA recipients in the United States. See Dept. of Homeland Security (DHS), USCIS, Count of Active DACA Recipients by Month of Current DACA Expiration (as of Dec. 31, 2023). The same is true of the approximately 680,000 holders of Temporary Protected Status (TPS), who have been designated temporarily unable to return to their home countries because of war, natural disasters, or other extraordinary circumstances. See

DHS, Citizenship and Immigration Services Ombudsman, Ann. Rep. 45 (June 30, 2023); *Sanchez* v. *Mayorkas*, 593 U. S. 409, 419 (2021) (holding that TPS status did not change an entry without inspection into a lawful admission that would allow adjustment to lawful permanent residency from within the United States). Even when married to a U. S. citizen, DACA recipients and TPS holders are barred from adjusting status within the United States if they entered without inspection. See 8 U. S. C. §1255(a).

Ironically, the longer the noncitizen spouse has lived in the United States, the more difficult and uncertain the process to adjust to lawful status can become. A noncitizen who initially entered without inspection will accrue "unlawful presence," which can bar him from reentering the country if he leaves. §1182(a)(9)(B). If a noncitizen who has lived in the United States between six months and one year leaves and tries to reenter, he will be subject to a 3-year reentry bar. §1182(a)(9)(B)(i)(I). If he has lived in the United States for more than a year and tries to reenter, he faces a 10-year ban. §1182(a)(9)(B)(i)(II).

This scheme places couples who meet and marry in the United States in a difficult position if the noncitizen spouse entered without inspection. The couple can continue to live with one spouse in a precarious immigration status; or, they can seek the stability of permanent residency for the noncitizen spouse but face a potential multiyear exile when he leaves and applies for reentry.

Recognizing this difficult choice, USCIS allows a noncitizen spouse to apply for a waiver of inadmissibility for any accrued unlawful presence before departing the United States for his consular interview. To obtain such a waiver, the noncitizen spouse must show that the citizen spouse will suffer "extreme hardship" if her noncitizen spouse is not admitted. §1182(a)(9)(B)(v). Then, once the noncitizen spouse returns to his country of origin, if a consular officer approves his visa application, he can reenter free from the

inadmissibility bar.

Consular officers fall under the State Department, see §1104(a), not DHS, which oversees USCIS, see 6 U. S. C. §271(a). Even though DHS officers and consular officers make admission determinations under the same substantive laws, see §1182, in reality, a noncitizen seeking admission via consular processing faces a far higher risk of arbitrary denial with far less opportunity for review than a noncitizen seeking admission from DHS.

DHS officers are constrained by a framework of required process that does not apply to consular processing. A noncitizen denied adjustment of status in the United States must receive notice and the reasons for a denial. See 8 CFR §245.2(a)(5)(i); DHS, USCIS, Policy Manual, vol. 7, pt. A, ch. 11—Decision Procedures (June 14, 2024) (requiring that a denial notice either "[e]xplain what eligibility requirements are not met and why they are not met" or "[e]xplain the positive and negative factors considered, the relative weight given to each factor individually and collectively, and why the negative factors outweigh the positive factors"). He can renew his application in removal proceedings before an immigration court, see 8 U. S. C. §1229b(b)(1), where DHS must present any evidence against him in adversarial proceedings, see §§1229(a), 1229a(b)(4)(B), 1229a(c)(3). From those removal proceedings, a noncitizen can petition for review to the Board of Immigration Appeals (BIA), see 8 CFR §1003.1(b), and, ultimately, a federal court of appeals, see 8 U. S. C. §1252(a).

In contrast, a noncitizen denied admission via consular processing is entitled to nothing more than a cite to the statute under which the consular officer decided to exclude him. §1182(b)(1).[2] He has no opportunity for administrative or

[2] As the majority notes, if the consular officer denies admission based on "certain grounds related to crime and national security," a noncitizen is entitled to "no explanation" at all. *Ante,* at 3 (citing 8 U. S. C. §1182(b)(3)).

judicial review, and can only submit more evidence and request reconsideration. 22 CFR §42.81(e). Former consular officers tell this Court that this lack of accountability, coupled with deficient information and inconsistent training, means decisions often "rely on stereotypes or tropes," even "bias or bad faith." Brief for Former Consular Officers as *Amici Curiae* 8. Visa applicants may "experience disparate outcomes based on nothing more than the luck or misfortune of which diplomatic post and consular officer . . . they happen to be assigned." *Id.*, at 8–9. 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). Supervisors are required by the State Department to review a certain percentage of visa denials but often fail to do so. See, *e.g.*, Office of Inspector General, ISP–I–19–17, Inspection of Embassy Santo Domingo, Dominican Republic, p. 12 (July 2019) (finding "managers did not review 284 (23 percent) of the refusals that should have been reviewed between April 1 and June 30, 2018"); Office of Inspector General, ISP–I–16–24A, Inspection of Embassy Ankara, Turkey, p. 20 (Sept. 2016) (finding visa adjudicator failed to review the required 10% of visa issuances and 20% of visa denials).

When the Government requires one spouse to leave the country to apply for immigration status based on his marriage, it therefore asks him to give up the process he would receive in the United States and subject himself to the black box of consular processing.

B

Muñoz, a celebrated workers' rights lawyer from Los Angeles, California, met Luis Asencio-Cordero in 2008, three years after he had arrived in the United States. They have

been married since 2010 and have a child together. In 2013, Muñoz filed an immediate-relative petition for her husband, which USCIS approved. Because Asencio-Cordero had originally entered the United States without inspection, the Government required him to return to El Salvador, his country of origin, for consular processing to obtain his immigrant visa. Yet he also faced a bar to reentry if he left the country. DHS granted him a waiver of this bar upon his anticipated return to the United States because of the "extreme hardship" Muñoz would suffer if he were excluded. 8 U. S. C. §1182(a)(9)(B)(v). In April 2015, Asencio-Cordero traveled from California to El Salvador. That was the last time he stood on American soil.

Asencio-Cordero attended the initial consular interview in San Salvador on May 28, 2015. In December 2015, a consular officer denied his visa application. As justification, the denial cited only to §1182(a)(3)(A)(ii). That statute provides that any noncitizen "who a consular officer . . . knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in . . . any other unlawful activity . . . is inadmissible." In other words, the consular officer excluded Asencio-Cordero based on a belief that he planned to engage in some unspecified unlawful conduct upon return to the United States. "[U]nlawful activity" could mean anything from jaywalking to murder.

Asencio-Cordero has no criminal history in the United States or El Salvador. See 50 F. 4th 906, 911 (CA9 2022); Brief for Respondents 8, n. 5 ("It is uncontested that Asencio-Cordero has never been charged with any crime"). With no obvious justification for the consular officer's belief, Muñoz and Asencio-Cordero asked for reconsideration. Muñoz sought the help of Congresswoman Judy Chu, who sent a letter to the State Department on Muñoz's behalf. The following day, the consulate responded to the letter again with only a citation to §1182(a)(3)(A)(ii). In January

and April 2016, Muñoz asked the State Department for the factual basis for her husband's inadmissibility. She and her husband provided evidence of her accolades at work and attestations of Asencio-Cordero's good moral character. A few days later, the consulate notified Muñoz that the State Department had reviewed the denial and concurred with the consular officer's decision. It denied reconsideration.

After the consulate denied reconsideration, Muñoz and her husband wrote to the State Department again requesting a factual basis for the inadmissibility decision. Asencio-Cordero has no criminal record, but he does have several tattoos from his teenage years. App. 22. They depict a range of subjects, including "Our Lady of Guadalupe, Sigmund Freud, a 'tribal' pattern with a paw print, and theatrical masks with dice and cards." Brief for Respondents 2, n. 2. Some of these images have deep significance in Latin American culture. See, *e.g.*, Brief for Professors and Scholars as *Amici Curiae* 8–10 ("Many Latin Americans view La Virgen de Guadalupe as a special protector, and as a symbol of pan-Latinx identity that transcends attachment to any one geography"). Some also happen to appear on gang members. See *ibid.* (noting that "law enforcement agencies and officials often use tattoos of common Catholic imagery . . . as indicia of gang membership"). Speculating about potential bases for a visa denial, Muñoz and her husband included additional evidence from a court-approved gang expert in their letter to the State Department. The expert reviewed Asencio-Cordero's tattoos and concluded that none were "'related to any gang or criminal organization in the United States or elsewhere.'" 50 F. 4th, at 911. The State Department responded that it lacked authority to overturn consular decisions and "'concurred in the finding of ineligibility.'" *Ibid.* The consulate followed up in May 2016, a year after Asencio-Cordero's initial interview, by listing all the entities that had reviewed the visa application and noting that "'there is no appeal.'" *Ibid.*

It was only after Muñoz and her husband sued the Government in Federal District Court that they finally received the factual basis for the denial. After almost two years of litigation, the Government submitted a declaration from a State Department attorney-adviser. *Id.*, at 912. That declaration stated that the consular officer denied Asencio-Cordero's visa application under §1182(a)(3)(A)(ii) because "'based on the in-person interview, a criminal review of Mr. Asencio Cordero and a review of . . . Mr. Asencio Cordero's tattoos, the consular officer determined that Mr. Asencio Cordero was a member of a known criminal organization . . . specifically MS-13.'" *Ibid.* (alterations omitted).

The Court of Appeals ruled in Muñoz's favor. It held that the Government's reason was too little, too late. The denial of her husband's visa burdened Muñoz's right to marriage, and the Government had provided inadequate process. Even though the Government provided a "facially legitimate and bona fide" reason, that reason was not "timely" enough to satisfy constitutional due process requirements. *Id.*, at 919–921. This Court granted the Government's petition for a writ of certiorari. 601 U. S. ___ (2024).

II

There was a simple way to resolve this case. I agree with JUSTICE GORSUCH that "the United States has now revealed the factual basis for its decision to deny [Muñoz's] husband a visa," and she has thus received whatever process she was due. *Ante*, at 1 (opinion concurring in judgment).[3] That could and should have been the end of it. Instead, the majority swings for the fences. It seizes on the

[3] Unlike JUSTICE GORSUCH, I would vacate and remand the opinion below. The Court of Appeals and District Court correctly resolved the two questions on which this Court granted certiorari. The Ninth Circuit nevertheless vacated the District Court's judgment and remanded based on the answer to a third question, which is not before this Court. See *supra*, at 2, n. 1; 50 F. 4th 906, 923–924 (2022) ("Because no 'fact in the record' justifying the denial of Asencio-Cordero's visa was made available to

Government's invitation to abrogate the right to marriage in the immigration context and sharply limit this Court's longstanding precedent.

Muñoz has a constitutionally protected interest in her husband's visa application because its denial burdened her right to marriage. She petitioned USCIS to recognize their marriage so that her husband could remain lawfully beside her and their child in the United States. It was the extreme hardship Muñoz faced from her husband's exclusion that formed the basis for USCIS's waiver of his inadmissibility. For the majority, however, once Muñoz's husband left the country in reliance on those approvals, their marriage ceased to matter. Suddenly, the Government owed her no explanation at all.

The constitutional right to marriage is not so flimsy. The Government cannot banish a U. S. citizen's spouse and give only a bare statutory citation as an excuse. By denying Muñoz the right to a factual basis for her husband's exclusion, the majority departs from longstanding precedent and gravely undervalues the right to marriage in the immigration context.

A

The constitutional right to marriage has deep roots. "[M]arriage," this Court said over a century ago, "is something more than a mere contract." *Maynard* v. *Hill*, 125 U. S. 190, 210–211 (1888). It is "the most important relation in life," *id.*, at 205, and "the foundation of the family," *id.*, at 211. This Court has described it in one breath as the right "to marry, establish a home and bring up children," a

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[Muñoz and her husband] until nearly three years had elapsed after the denial, and until after litigation had begun, we conclude that the government did not meet the notice requirements of due process when it denied Asencio-Cordero's visa"). I would let the Ninth Circuit decide in the first instance the effect of a Court holding that Muñoz received all the process she was constitutionally due.

right "long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923). In upholding the right of Mildred and Richard Loving to have their marriage license from the District of Columbia recognized by Virginia, this Court emphasized that "[m]arriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival." *Loving* v. *Virginia*, 388 U. S. 1, 12 (1967) (quoting *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U. S. 535, 541 (1942)). Indeed, the right to marriage was one of the first building blocks of substantive due process. The right was so "'fundamental'" and "'implicit in the concept of ordered liberty'" that the *Roe* Court invoked it as part of the foundation underlying the right to abortion. *Roe* v. *Wade*, 410 U. S. 113, 152–153 (1973) (cataloguing existing substantive due process rights as extending to "marriage, procreation, contraception, family relationships, and child rearing and education" (citations omitted)), overruled, *Dobbs*, 597 U. S. 215.

Almost 10 years ago, this Court vindicated the expansiveness of the right to marriage. It upheld the right of James Obergefell and his terminally ill husband, John Arthur, to have their marriage from Maryland recognized in Ohio. Rejecting the idea that "Ohio can erase [Obergefell's] marriage to John Arthur for all time" by declining to place Obergefell as the surviving spouse on Arthur's death certificate, this Court reasoned that "marriage is a right 'older than the Bill of Rights.'" *Obergefell*, 576 U. S., at 666, 678. Marriage "'fulfils yearnings for security, safe haven, and connection that express our common humanity.'" *Id.*, at 666. "Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other." *Id.*, at 667.

The majority, ignoring these precedents, makes the same

fatal error it made in *Dobbs*: requiring too "'careful [a] description of the asserted fundamental liberty interest.'" *Ante*, at 9 (quoting *Washington* v. *Glucksberg*, 521 U. S. 702, 721 (1997)); cf. *Dobbs*, 597 U. S., at 374–375 (Breyer, SOTOMAYOR, and KAGAN, JJ., dissenting). The majority faults Muñoz's invocation of the "'fundamental right to marriage'" as "difficult to pin down." *Ante*, at 9. Instead, it tries to characterize her asserted right as "an entitlement to bring [her husband] to the United States," even though it acknowledges that Muñoz "disclaims that characterization." *Ibid.*

Obergefell rejected what the majority does today as "inconsistent with the approach this Court has used in discussing [the] fundamental rights" of "marriage and intimacy." 576 U. S., at 671. Cataloguing a half century of precedent on the right to marriage, the Court stressed that "*Loving* did not ask about a 'right to interracial marriage'; *Turner* did not ask about a 'right of inmates to marry'; and *Zablocki* did not ask about a 'right of fathers with unpaid child support duties to marry.'" *Ibid.* Instead, "each case inquired about the right to marry in its comprehensive sense" of "marriage and intimacy." *Ibid.* Similarly, Muñoz does not argue that her marriage gives her the right to immigrate her husband. She instead advances the reasonable position that blocking her from living with her husband in the United States burdens her right "to marry, establish a home and bring up children" with him. *Meyer*, 262 U. S., at 399.

This Court has never required that plaintiffs be fully prevented from exercising their right to marriage before invoking it. Instead, the question is whether a challenged government action burdens the right. For example, the Court in *Zablocki* v. *Redhail*, 434 U. S. 374 (1978), examined the "burde[n]" placed on fathers by a statute that required a hearing to "counsel" them "as to the necessity of fulfilling" any outstanding child support obligations before being

granted permission to marry. *Id.*, at 387–388. The Court in *Turner* v. *Safley*, 482 U. S. 78 (1987), applied *Zablocki* to incarcerated people to hold that the particular prison marriage restriction at issue "impermissibly burden[ed] the right to marry." 482 U. S., at 97. There can be no real question that excluding a citizen's spouse from the country "burdens" the citizen's right to marriage as this Court has repeatedly defined it. This Court has never held that a married couple's ability to move their home elsewhere removes the burden on their constitutional rights. It did not tell Richard and Mildred Loving to stay in the District of Columbia or James Obergefell and John Arthur to stay in Maryland. It upheld their ability to exercise their right to marriage wherever they sought to make their home.

Muñoz may be able to live in El Salvador alongside her husband or at least visit him there, but not everyone is so lucky. The majority's holding will also extend to those couples who, like the Lovings and the Obergefells, depend on American law for their marriages' validity. Same-sex couples may be forced to relocate to countries that do not recognize same-sex marriage, or even those that criminalize homosexuality. American husbands may be unable to follow their wives abroad if their wives' countries of origin do not recognize derivative immigration status from women (as was the case in this country for many years, see *ante*, at 12 (noting visa "quotas . . . for female citizens with noncitizen husbands" until 1952)). The majority's failure to respect the right to marriage in this country consigns U. S. citizens to rely on the fickle grace of other countries' immigration laws to vindicate one of the "'basic civil rights of man'" and live alongside their spouses. *Loving*, 388 U. S., at 12.

B

Given that the Government has burdened Muñoz's right to marriage by excluding her husband from the country, the

question is the remedy for that burden. Muñoz argues that this burden triggers procedural due process protections in her husband's visa denial. Emphasizing that substantive due process rights like the right to marriage usually trigger strict scrutiny, the majority faults Muñoz for creating a right "in a category of one: a substantive due process right that gets only procedural due process protection." *Ante*, at 10. Muñoz, however, did not create that category of rights. This Court did. See *Mandel*, 408 U. S., at 768–770. This Court already set the ground rules for when the Government's exercise of its extensive power over the exclusion of noncitizens burdens a U. S. citizen's constitutional rights. See *id*., at 770. In short, a fundamental right may trigger procedural due process protections over a noncitizen's exclusion, but such protections are limited. See *ibid.*

Noncitizens who apply for visas from outside the United States have no constitutional entitlement to enter the country, and therefore typically have no constitutional process protections in the visa application themselves. See *Landon* v. *Plasencia*, 459 U. S. 21, 32 (1982). In contrast, noncitizens who already live in the United States whom the Government seeks to remove have procedural due process protections during that removal. See *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369 (1886); *Zadvydas* v. *Davis*, 533 U. S. 678, 693 (2001). Had the Government sought to remove Muñoz's husband when they were living together in the United States, he would have had his own constitutional protections in those proceedings. Instead, because the Government forced him to leave the country and reenter in order to adjust his immigration status, he lost them.

Not only do noncitizens seeking to enter the United States lack constitutional process rights in their visa applications. This Court has further insulated the Government's visa determinations from review by declining to evaluate them at all. See *ante,* at 6–7. This judge-made "doctrine of consular nonreviewability" reflects the Judicial Branch's

recognition that the "'admission and exclusion of foreign nationals'" is an area of unusually heightened congressional and executive power. *Ante,* at 6–7.[4] When the denial of a noncitizen's visa burdens a U. S. citizen's constitutional rights, however, this Court has had to reconcile the importance of those rights with its recognition of Government authority over visa determinations. In *Mandel*, it set the remedy. The *Mandel* Court held that when a visa denial "implicate[s]" a citizen's rights, a court will not look behind a "facially legitimate and bona fide" reason for the denial. 408 U. S., at 765, 769.

In *Mandel*, a group of U. S. professors sued the Government over the visa denial of Dr. Ernest E. Mandel, a famous Belgian Marxist. See *id.*, at 756, 759–760. The professors argued that excluding Mandel burdened their First Amendment right to hear and meet with him in person. See *id.*, at 760. The Court agreed that the professors had a First Amendment "'right to receive information'" from Mandel.

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[4]Judges created this doctrine because of the otherwise "strong presumption that Congress intends judicial review of administrative action." *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 670 (1986). The majority emphasizes that the Government asked the Court for the holding it reaches today. See *ante,* at 6, n. 3. It is hardly unusual for the Government to ask this Court for less judicial review over its immigration decisions. See, *e.g.*, *Wilkinson* v. *Garland*, 601 U. S. 209 (2024) (arguing that eligibility for cancellation of removal is unreviewable); *Santos-Zacaria* v. *Garland*, 598 U. S. 411 (2023) (arguing that noncitizens must request discretionary forms of administrative review before challenging a final order of removal in federal court); *Patel* v. *Garland*, 596 U. S. 328 (2022) (arguing that federal courts lack jurisdiction to review facts found as part of eligibility determination for discretionary relief); *Garland* v. *Aleman Gonzalez*, 596 U. S. 543 (2022) (arguing that district courts lack jurisdiction to entertain noncitizens' requests for class-wide injunctive relief). Unusually, in this case, the Government's argument against review is not based on any statutes passed by Congress but on a doctrine that this Court created itself. Rather than exercise the restraint counseled by *Mandel*, the majority instead chooses to exclude a fundamental right from *Mandel*'s prudent exception. See *infra*, at 16–19.

Id., at 762, 764. It also emphasized, as the majority does today, Congress's power over the admission and exclusion of noncitizens. See *id.*, at 766–767; *ante*, at 6–7. To avoid the need to balance "the strength of the audience's interest against that of the Government in refusing a waiver to the particular [noncitizen] applicant, according to some as yet undetermined standard," *Mandel*, 408 U. S., at 768–769, the Court instead noted that "the Attorney General did inform Mandel's counsel of the reason for refusing him a waiver. And that reason was *facially legitimate and bona fide*." *Id.*, at 769 (emphasis added). Therefore, "when the Executive exercises [conditional power to exclude] negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant." *Id.*, at 770. In other words, when a visa denial burdens a noncitizen's constitutional rights, rather than attempt to balance the competing interests under strict scrutiny, a court should accept the Government's "facially legitimate and bona fide reason." *Ibid.* That minimal requirement ensures that courts do not unduly intrude on "the Government's sovereign authority to set the terms governing the admission and exclusion of noncitizens," *ante*, at 11, while also ensuring that the Government does not arbitrarily burden citizens' constitutional rights.

This Court has repeatedly relied on *Mandel*'s test in the immigration context. See, *e.g.*, *Trump* v. *Hawaii*, 585 U. S. 667, 703 (2018) (noting that "this Court has engaged in a circumscribed judicial inquiry when the denial of a visa allegedly burdens the constitutional rights of a U. S. citizen"); *Fiallo* v. *Bell*, 430 U. S. 787, 794, 799 (1977) (relying on *Mandel* in declining to "probe and test the justifications for [a] legislative" distinction between mothers and fathers because this Court has applied limited scrutiny to "resolv[e]

similar challenges to immigration legislation based on other constitutional rights of citizens").[5] Indeed, less than a decade ago, six Justices ruling on the exact legal question the Court confronts today would have held that *Mandel* controlled or extended its protections even further in the marriage context. See *Kerry* v. *Din*, 576 U. S. 86, 103–104 (2015) (Kennedy, J., concurring in judgment) ("The reasoning and the holding in *Mandel* control here. . . . Like the professors who sought an audience with Dr. Mandel, [respondent] claims her constitutional rights were burdened by the denial of a visa to a noncitizen, namely her husband"); *id.*, at 107 (Breyer, J., dissenting) (reasoning that

[5] Despite the majority's claim that its decision is the majority rule in the Courts of Appeals, *ante,* at 8, and n. 5, lower courts have rarely reached the question the majority reaches today. That is because they have relied on *Mandel* to hold that the Government has in any case provided a "'facially legitimate and bona fide'" reason. See, *e.g.*, *Sesay* v. *United States*, 984 F. 3d 312, 315–316, and n. 2 (CA4 2021); *Del Valle* v. *U. S. Dept. of State*, 16 F. 4th 832, 838–842 (CA11 2021); *Yafai* v. *Pompeo*, 912 F. 3d 1018, 1020–1021 (CA7 2019). One of the cases the majority cites pre-dates *Mandel*, *Silverman* v. *Rogers*, 437 F. 2d 102 (CA1 1970), and two others reached the majority's holding based only on conclusory assertions, see *Burrafato* v. *U. S. Dept. of State*, 523 F. 2d 554, 555–557 (CA2 1975); *Bright* v. *Parra*, 919 F. 2d 31, 34 (CA5 1990) (*per curiam*). Only two Circuits have used the majority's reasoning to hold that a U. S. citizen's right to marriage does not trigger the *Mandel* remedy. In one, the court had an alternative holding that "even if we take [the right to marriage] as a given, the argument fails because the consulate provided a facially legitimate reason for the visa denials." *Baaghil* v. *Miller*, 1 F. 4th 427, 434 (CA6 2021). In the other, a concurring judge urged his colleagues to resolve this challenge on the same narrow holding that the majority could have followed today. See, *e.g.*, *Colindres* v. *United States Dept. of State*, 71 F. 4th 1018, 1027 (CADC 2023) (opinion of Srinivasan, J.) ("There is no need for us to take up the merits of [the] constitutional question . . . and I would refrain from doing so. Rather, we can rest our decision solely on the ground . . . that even assuming [appellant's] fundamental right to marriage includes a protected interest in living in the country with her husband, such that at least some form of due process scrutiny applies, the government's denial of a visa to him afforded her adequate process").

respondent's "liberty interest [in] her freedom to live together with her husband in the United States" is the kind "to which the Due Process Clause grants procedural protection").

Outside the immigration context, this Court has endorsed similar tests in circumstances where there is a heightened underlying governmental power. For instance, in *Turner*, the Court evaluated the right to marriage in the prison context. Even though an incarcerated person "'retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system,'" the Court emphasized that "[t]he right to marry, like many other rights, is subject to substantial restrictions as a result of incarceration." 482 U. S., at 95 (quoting *Pell* v. *Procunier*, 417 U. S. 817, 822 (1974)). Only because the challenged prison regulation there was not "reasonably related" to the government's articulated penological interests, or "legitimate security and rehabilitation concerns," did this Court hold it unconstitutional. *Turner*, 482 U. S., at 95; see *id.*, at 99.

Just as *Turner* looked at burdens on the right to marriage through the narrow lens of "penological interests" to defer to the government's control over prisons, *Mandel* used a "facially legitimate and bona fide reason" to defer to the Government's power over the exclusion of noncitizens. Neither case erased the constitutional right at issue. The Court simply recognized that the right can be substantially limited in areas where the government exercises unusually heightened control.

Applying *Mandel* and *Turner* here, the remedy is clear. The Government's exclusion of Muñoz's husband entitles her at least to the remedy required in *Mandel*: a "facially legitimate and bona fide reason" for the exclusion. 408 U. S., at 770.

C

The majority resists this conclusion by worrying about its "unsettling collateral consequences." *Ante*, at 16. The majority poses a series of hypotheticals that it fears will result from recognizing the limited right Muñoz proposes. These fears are groundless.

First, the majority's concern that applying *Mandel* to Muñoz's right to marriage in this case will result in a slippery slope of constitutional challenges is unfounded. Muñoz's right triggers limited process protections in part because her husband lost his own procedural protections when the Government required him to leave the country. Muñoz's right to marriage raises that floor from zero process to some by requiring the Government to provide a "facially legitimate and bona fide reason" when her husband receives no process. In contrast, a citizen's liberty interest "in the removal proceeding of her spouse" in the United States, *ante*, at 16, would presumably be limited by the noncitizen's own due process rights in that same proceeding. Similarly, any challenge from a wife to her husband's "'assignment to a remote prison,'" *ibid.*, would presumably be limited by the criminal procedural protections her husband already received.

Second, the majority's reliance on *O'Bannon* v. *Town Court Nursing Center*, 447 U. S. 773 (1980), is misplaced and highlights the speculative nature of its concerns. *O'Bannon* rejected a freestanding constitutional interest in avoiding "serious trauma." *Id.*, at 788. The residents of a government-funded nursing home sought relief from transfer to alternative housing because of the emotional harm they would suffer from the move. *Id.*, at 777–781, 784. Muñoz, however, does not rely on a free-floating emotional harm that separation from her husband will cause. She invokes her fundamental right to marry, live, and raise a family with her husband, the right recognized by this Court for centuries. See *supra*, at 11–14. Denying her husband entry

to the country directly burdens that right.

In sum, the majority's concerns are unwarranted. There are few circumstances where the limited relief sought by Muñoz would be available.

III

A "facially legitimate and bona fide" reason may seem like a meager remedy for burdening a fundamental right. Yet even the barest explanation requirement can be powerful. The majority relies heavily on *United States ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537 (1950). See *ante*, at 6–7, 13–14. A closer look at the story of Ellen Knauff, however, illustrates the importance of putting the Government to a minimal evidence requirement when a visa denial burdens a constitutional right.

Knauff's U. S. citizen husband sought to bring her to the United States after they married during his deployment to Germany. After this Court upheld her exclusion on undisclosed national security grounds, there was a public outcry. See C. Weisselberg, The Exclusion and Detention of Aliens: Lessons From the Lives of Ellen Knauff and Ignatz Mezei, 143 U. Pa. L. Rev. 933, 958–964 (1995). Both Houses of Congress introduced private bills for her relief and, after the Attorney General rushed to remove Knauff from Ellis Island before Congress could act, Justice Jackson (who had vigorously dissented in the case) issued a stay from this Court. See *id.*, at 958, n. 127. After extensive advocacy, the Attorney General ordered immigration officials to reopen the case. See *id.*, at 961–962. Eventually, Knauff won her case before the BIA when the Government failed to prove up its national security concerns. *Id.*, at 963–964. She was finally admitted as a lawful permanent resident. *Id.*, at 964.

The majority relies heavily on "[t]he rule of *Knauff*": that "the Attorney General has the unchallengeable power to exclude" a noncitizen. *Ibid.*; *ante*, at 14 (emphasizing that

"'[n]o limits can be put by the courts upon'" the exercise of the Government's power to "'forbid aliens or classes of aliens from coming within their borders'"). Yet, "the full story of Ellen Knauff shows a populace and a Congress unwilling to accept the exercise of this sort of raw power." Weisselberg, 143 U. Pa. L. Rev., at 964. "Once the government was required to justify its exclusion decision with substantial and reliable evidence, in an open proceeding, Knauff gained admission into the United States." *Ibid.*

Knauff brought her own habeas petition to challenge her exclusion. *Knauff*, 338 U. S., at 539–540. Her husband did not argue that her exclusion burdened his right to marriage. Twenty-two years after *Knauff*, however, when faced with such a challenge, this Court limited the justification that the Government must provide in these circumstances to a "facially legitimate and bona fide reason." *Mandel*, 408 U. S., at 770. The majority, not content to resolve this case on even those narrow grounds, instead relieves the Government of any need to justify itself at all. Knauff's story illustrates why the right to marriage deserves more. By leaving U. S. citizens without even a factual basis for their spouses' exclusion, the majority paves the way for arbitrary denials of a right this Court has repeatedly held among the most important to our Nation.

* * *

A traveler to the United States two centuries ago reported that "'[t]here is certainly no country in the world where the tie of marriage is so much respected as in America.'" *Obergefell*, 576 U. S., at 669 (quoting 1 A. de Tocqueville, Democracy in America 309 (H. Reeve transl., rev. ed. 1900)). Today, the majority fails to live up to that centuries-old promise. Muñoz may be able to live with her husband in El Salvador, but it will mean raising her U. S.-citizen child outside the United States. Others will be less fortunate. The burden will fall most heavily on same-sex couples

and others who lack the ability, for legal or financial reasons, to make a home in the noncitizen spouse's country of origin. For those couples, this Court's vision of marriage as the "assurance that while both still live there will be someone to care for the other" rings hollow. *Obergefell*, 576 U. S., at 667. I respectfully dissent.

The Honorable John H. Chun
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Bianey GARCIA PEREZ, Maria MARTINEZ CASTRO, J.M.Z., Alexander MARTINEZ HERNANDEZ, on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES; Ur JADDOU, Director, U.S. Citizenship and Immigration Services; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Mary CHENG, Acting Director, Executive Office for Immigration Review,

Defendants.

Case No. 2:22-cv-00806-JHC

CLASS NOTICE

DATED: July 30, 2024

IMPORTANT CLASS NOTICE

This Notice contains important information that may pertain to you. Please read it carefully. Under a proposed settlement of *Garcia Perez v. U.S. Citizenship and Immigration Services*, No. 2:22-cv-00806-JHC (W.D. Wash.), certain individuals who seek to file a complete Form I-589, *Application for Asylum and Withholding of Removal* ("Asylum Application"), or have already filed Form I-589, are entitled to new procedures relating to the crediting of time toward eligibility for employment authorization.

On June 9, 2022, Plaintiffs filed a class action complaint challenging the federal government's practices with respect to Employment Authorization Documents ("EADs") for applicants for asylum or withholding of removal who had their applications pending for more than 180 days. Plaintiffs are all noncitizens in the United States who have been placed in removal proceedings; have filed a complete Asylum Application; and have filed or will file a Form I-765, *Application for Employment Authorization* ("Form I-765") pursuant to immigration regulations at 8 C.F.R. § 274a.12(c)(8). Defendants include U.S. Citizenship and Immigration Services ("USCIS") and the Executive Office for Immigration Review ("EOIR").

On July 29, 2024, Plaintiffs and Defendants filed a joint motion for class certification and joint motion for preliminary approval of a Settlement Agreement. The general terms of those motions are laid out below.

On July 30, 2024, the Court granted the Parties' joint motion for preliminary approval the Settlement Agreement and ordered that a Fairness Hearing take place on September 26, 2024. Any objections to the proposed settlement should be submitted to the Court within thirty (30) days of the date of this notice, by mailing the objection in an envelope postmarked on or before August 29, 2024 and addressed to: Clerk, U.S. District Court for the Western District of Washington, 700 Steward Street, Suite 14134, Seattle, WA 98101, and including on the envelope and the letter: "Attention: *Garcia Perez v. USCIS*, No. 2:22-cv-00806-JHC (W.D. Wash.)." Objections shall not exceed twenty-five pages in length. Copies of the objection sent to the Court also must be served on counsel for Plaintiffs and counsel for Defendants as set forth below:

TO PLAINTIFFS:

Matt Adams
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Avenue, Suite 400
Seattle, WA 98104

TO DEFENDANTS:

Aneesa Ahmed
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044

All objections must include: (a) a written statement identifying the Class Member's name, address, telephone number, and signature, and, if represented by counsel, the name, address, and telephone number of counsel; (b) a written statement explaining the Class Member's objection and the reasons for such objection; and (c) any documentation in support of such objection. Any objection shall not exceed twenty-five (25) pages in length. If the Class Member wishes to appear at the Fairness Hearing, he or she must also include a statement of intention to appear at the Fairness Hearing.

WHERE CAN I FIND THE COMPLETE SETTLEMENT AGREEMENT?

The complete Settlement Agreement, including definitions of the Class Members, exact terms of relief, and the exact terms of any process available for Class Members to seek review of an alleged violation of the Settlement Agreement, may be found at www.nwirp.org and immigrationlitigation.org. In addition, this information is available on the USCIS website, www.uscis.gov, and the EOIR website, www.usdoj.gov/eoir.

WHO IS A *GARCIA PEREZ* CLASS MEMBER?

This summary of the Class and Subclasses is meant to provide the general guidelines of who qualifies as a Class Member. The *Garcia Perez* Class is a nationwide class comprised of a general class and three subclasses. **There is no requirement and no process for applying for Class**

Membership. A person who falls within the categories enumerated below need not take any other action to be recognized as a Class Member.

***Garcia Perez* Class**
All noncitizens in the United States who have filed or will file with USCIS or EOIR a complete Asylum Application and who would be eligible for employment authorization under 8 C.F.R. § 274a.12(c)(8) but for the fact that their Asylum EAD Clock was stopped or not started prior to 180 days after the date the noncitizen filed a complete Asylum Application.

Remand Subclass
Class Members whose Asylum EAD Clocks were or will be stopped following a decision by an Immigration Judge and whose Asylum EAD Clocks are not or will not be started or restarted following an appeal in which either the Board of Immigration Appeals ("BIA") or a federal court of appeals remands their case for further adjudication of their asylum and/or withholding of removal claims.

Unaccompanied Children Subclass
Class Members in removal proceedings who are unaccompanied children ("UCs") pursuant to 6 U.S.C. § 279(g) and whose Asylum EAD Clocks are not started or will be stopped while waiting for USCIS to adjudicate the filed Asylum Application.

Change of Venue Subclass
Class Members in removal proceedings whose removal proceedings have been or will be transferred to a different Immigration Court through a granted change of venue motion, and for whom EOIR has stopped or will stop the Asylum EAD Clock based solely on the change of venue.

WHAT BENEFITS ARE PROVIDED TO *GARCIA PEREZ* CLASS MEMBERS?

This summary of the benefits available to Class Members is meant to provide the *general* guidelines of who qualifies as Class Members. A person who believes he or she is a Class Member and has been denied a *Garcia Perez* member benefit should first review the exact terms of the Settlement Agreement or seek legal assistance to do so.

***Garcia Perez* Class Benefits:**
EOIR will provide written guidance to Immigration Judges directing them to clearly articulate the reason for the case adjournment on the record at the end of each hearing and that they may inform the parties of whether the Asylum EAD Clock is running or stopped. EOIR upgraded the EOIR Courts & Appeals System ("ECAS") CASE Portal to include case-specific adjournment code history relating to the 180-day Asylum EAD Clock as part of the information available to applicants' representatives of record. *Pro se* applicants may request, orally or in writing, a printout of their case-specific adjournment code history relating to the 180-day Asylum EAD Clock; Immigration Court personnel will be required to respond at the time of an in-person request or within twenty-five (25) business days of receipt of a request not made in-person. EOIR will publish guidance on its website to clarify the requirements, expectations, and procedures for individuals who contest the status of their Asylum EAD Clocks in proceedings before EOIR. An applicant may raise an Asylum EAD Clock correction request in writing or orally at an Immigration Court proceeding and will receive a response at the Immigration Court hearing or a written response within 25 business days of receipt of the request.

USCIS will modify its Case Status Online Tool ("CSOL") to allow anyone with a pending Asylum Application to determine, in addition to their current case status, whether their Affirmative Asylum EAD Clock is stopped because of an applicant-caused delay and the total number of days accrued at the time of a stoppage. USCIS will revise the 180-Day Asylum EAD Clock Notice to provide an exhaustive list of clock-impacting events in the affirmative asylum process to increase applicants' notice of consequences to their Asylum EAD Clock based on actions they take or fail to take. USCIS will provide a mechanism for applicants to request a correction of their Asylum EAD Clock through the eRequest Self-Service tool on the USCIS website. USCIS will also provide a mechanism for applicants to call the USCIS Contact Center, who will route the applicant's inquiry to an asylum office. USCIS will generally respond to any Asylum EAD Clock correction request within 25 business days of receipt of a clock correction request. USCIS will update the agency's public guidance to clarify further the requirements, expectations, and procedures for individuals who contest their Asylum EAD Clock information.

Timeframe for benefits:
EOIR will provide guidance regarding these benefits within ninety (90) days of the Effective Date of the Settlement Agreement.

USCIS will provide these updates within 180 days of the Effective Date of the Settlement Agreement.

Remand Subclass Benefits:
USCIS has updated the language on its website and clock notice to explain the time between an Immigration Judge's asylum decision and a BIA remand or between a BIA decision and a federal court of appeals remand will be credited toward the 180-day Asylum EAD Clock. USCIS will update its message to include instructions that an applicant should submit a copy of the applicable remand order with their I-765 application.

Timeframe for benefits:
The updated language will remain in effect for the remainder of the Agreement.

Unaccompanied Children Subclass Benefits:
USCIS policies and guidelines will control the Asylum EAD Clock for UCs who have filed an Asylum Application. USCIS will issue guidance affirming that, with regard to unaccompanied children any adjournment code associated with the transfer of jurisdiction from EOIR to USCIS should not stop the 180-day Asylum EAD Clock.

Timeframe for benefits:
The updated language will remain in effect for the remainder of the Settlement Agreement.

Change of Venue Subclass Benefits:
A change of venue will not stop the 180-day Asylum EAD Clock in cases pending before EOIR. Defendants will update the adjournment codes for EOIR and USCIS to reflect that a change of venue does not stop the 180-day Asylum EAD Clock in cases pending before EOIR.

Timeframe for benefits:
This policy will remain in effect for the remainder of the Settlement Agreement.

WHAT IS THE EFFECTIVE DATE OF THE SETTLEMENT AGREEMENT?

The *Garcia Perez* Settlement Agreement becomes effective upon the U.S. District Court's final approval of the Settlement Agreement.

WHEN WILL THE SETTLEMENT AGREEMENT TERMINATE?

The *Garcia Perez* Settlement Agreement and all of the rights acquired under the Settlement Agreement, shall end four (4) years following the full implementation of all the terms of Agreement, or upon the Effective Date of Agreement plus six (6) years, whichever shall first occur.

HOW DO I BRING A CLAIM UNDER THE SETTLEMENT AGREEMENT?

A person who believes he or she is a Class Member and has been denied a Class Member benefit may be entitled to bring a claim under the *Garcia Perez* Settlement Agreement. If you believe that you are a Class Member and that you have been denied a benefit of Class Membership, you must follow the Dispute Resolution Mechanism outlined in the Settlement Agreement. For further information regarding the dispute resolution process, including the complete *Garcia Perez* Settlement Agreement, please visit the websites of Class counsel, www.nwirp.org, and immigrationlitigation.org. In addition, this information is available on USCIS' website, www.uscis.gov, and EOIR's website, www.usdoj.gov/eoir.

You may also contact the lawyers representing the Class:

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Avenue, Suite 400
Seattle, WA 98104
(206) 587-4009
(206) 587-4025 (Fax)

NATIONAL IMMIGRATION LITIGATION ALLIANCE
10 Griggs Terrace
Brookline, MA 02446
(617) 819-4649

Do not contact the U.S. District Court for additional information.

U.S. Citizenship and Immigration Services

MENU

USCIS Extends Green Card Validity for Conditional Permanent Residents with a Pending Form I-751 or Form I-829

Release Date : 01/23/2023

USCIS is extending the validity of Permanent Resident Cards (also known as Green Cards) for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence, or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status for 48 months beyond the card's expiration date. This change started on January 11, 2023, for Form I-829 and will start on January 25, 2023, for Form I-751.

We are making this change to accommodate current processing times for Form I-751 and Form I-829, which have increased over the past year.

USCIS has updated the language on Form I-751 and Form I-829 receipt notices to extend the validity of a Green Card for 48 months for individuals with a newly filed Form I-751 or Form I-829. We will issue new receipt notices to eligible conditional permanent residents who previously received notices with an extension shorter than 48 months and whose cases are still pending. These receipt notices can be presented with an expired Green Card as evidence of continued status, while the case remains pending with USCIS. By presenting your updated receipt notice with your expired Green Card, you remain authorized to work and travel for 48 months from the expiration date on the front of your expired Green Card.

As a reminder, conditional permanent residents who plan to be outside of the United States for a year or more should apply for a reentry permit by filing Form I-131, Application for Travel Document, before leaving the United States. For more information, see our International Travel as a Permanent Resident webpage.

Last Reviewed/Updated: 01/23/2023

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.	§ § § § § § § § § §	Case No. 3:23-cv-02875-S-BT

ORDER

Before the Court is *pro se* Plaintiff Brian Carr's Motion for Sanctions (ECF No. 30), in which Carr claims that Defendants filed a motion to dismiss that was factually false, meritless, and for purposes of delay. *See* generally Mot. Sanctions (ECF No. 30). For the reasons discussed below, the Court **DENIES** Carr's Motion.

Carr initiated this civil action on December 29, 2023. *See* Compl. (ECF No. 3). Defendants timely filed a Motion to Dismiss on March 8, 2024, seeking to dismiss the original Complaint for lack of subject matter jurisdiction, failure to state a claim, and failure to identify an applicable waiver of sovereign immunity. *See* Mot. Dismiss (ECF No. 15). On March 28, Carr filed a response to Defendants' Motion to Dismiss, which included a request for leave to amend the Complaint and a "Motion for Partial Summary Judgment." *See* Resp. (ECF No. 18). Defendants then filed a Rule 56(d) Motion, requesting that the Court deny or defer consideration of the Motion for Partial Summary Judgment. *See* Rule 56(d) Mot.

(ECF No. 22). Thereafter, the Court entered an Order granting Defendants' Rule 56(d) Motion, denying the Motion for Partial Summary Judgment as premature, denying as moot several motions—including Defendants' Motion to Dismiss—and directing the filing of an Amended Complaint by April 30. *See* Order (ECF No. 26).

Carr filed an Amended Complaint (ECF No. 29), which is the live pleading, on April 23. Defendants filed a Motion to Dismiss the Amended Complaint on May 14. *See* Mot. Dismiss (ECF No. 31). That Motion is pending before the Court.

Carr also filed a Motion for Sanctions on May 8, requesting that the Court issue "creative sanctions" against Defendants under Federal Rules of Civil Procedure 11(c)(2)–(3) and 56(h), 28 U.S.C. § 1927, 18 U.S.C. §§ 1621 and 1001, Local Rule 83.8(b)(3), and Texas Disciplinary Rule of Professional Conduct 4.01. Mot. Sanctions 1–2. Carr reasoned that Defendants' Motion to Dismiss was replete with legal and factual issues and filed for purposes of delay, and that Defendants made false statements over an email regarding the Motion. *Id*. After Defendants responded to the Motion (ECF No. 35), Carr filed a Reply conceding that sanctions under Rule 11(c)(2) and 28 U.S.C. § 1927 are unavailable. Reply 10–11 (ECF No. 39).

Carr's remaining authority for sanctions under the Federal Rules of Civil Procedure falls to the Court's inherent authority. *See* Fed. R. Civ. P. 11(c)(3) (allowing the Court on its own initiative to require litigants to show cause); Fed. R. Civ. P. 56(h) (allowing the Court to issue sanctions if it finds that a Rule 56 affidavit or declaration was submitted in bad faith or for delay). The Court does not find

Defendants' conduct sanctionable and declines to issue sanctions under its inherent authority. Similarly, the Court declines to issue sanctions under Texas Disciplinary Rule of Professional Conduct 4.01 for false statements or Local Rule 83.3(b)(3) for unethical behavior. And 18 U.S.C. Sections 1001 and 1621 are both criminal statutes and do not provide authority to issue sanctions in civil cases. *See Gabriel v. Outlaw*, 2022 WL 617628, at *4 (N.D. Tex. Feb. 14, 2022) (noting that 18 U.S.C. § 1621 provides for criminal sanctions for perjury); *U.S. v. Montemayor*, 712 F.2d 104, 106 (5th Cir. 1983) (noting that 18 U.S.C. § 1001 provides for criminal sanctions for making false statements within the jurisdiction of the United States).

The Court therefore **DENIES** Carr's Motion for Sanctions.

SO ORDERED.

February 26, 2025.

REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

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.	§ § § § § § § §	Case No. 3:23-cv-02875-S-BT

ORDER

Pro se Plaintiff Brian Carr has filed a Rule 54(b) Motion to Reconsider (ECF No. 32), asking the Court to reconsider its Order (ECF No. 26) granting Defendants' Rule 56(d) Motion and denying his Motion for Partial Summary Judgment as premature. For the reasons stated below, the Court **DENIES** Carr's Motion.

Background

Carr initiated this civil action on December 29, 2023. *See* Compl. (ECF No. 3). Defendants timely filed a Motion to Dismiss on March 8, 2024, seeking to dismiss the original Complaint for lack of subject matter jurisdiction, failure to state a claim, and failure to identify an applicable waiver of sovereign immunity. *See* Mot. Dismiss (ECF No. 15). On March 28, Carr filed a response to Defendants' Motion to Dismiss, which included a request for leave to amend the Complaint and a "Motion for Partial Summary Judgment." *See* Resp. (ECF No. 18). Defendants then filed a Rule 56(d) Motion, requesting that the Court deny or defer

consideration of the Motion for Partial Summary Judgment. *See* Rule 56(d) Mot. (ECF No. 22). On April 22, the Court entered an Order granting Defendants' Rule 56(d) Motion, denying the Motion for Partial Summary Judgment as premature, denying as moot several motions—including Defendants' Motion to Dismiss—and directing the filing of an Amended Complaint by April 30. *See* Order (ECF No. 26).

Carr filed an Amended Complaint (ECF No. 29), which is the live pleading, on April 23. Defendants filed a Motion to Dismiss the Amended Complaint on May 14. *See* Mot. Dismiss (ECF No. 31). That Motion is pending before the Court.

Also, on May 14, Carr filed a Motion asking the Court to reconsider its April 22 Order, alleging that Defendants' Rule 56(d) Motion lacked a sufficient certificate of conference, Carr did not have time to file a responsive briefing before the Court's ruling, and the factual background in the Court's Order should use a "more accurate summary" of the alleged claims. *See* Rule 54(b) Mot. (ECF No. 32). Defendants timely filed a Response (ECF No. 36), and Carr filed a Reply (ECF No. 42). So, the Motion is ripe for review.

Legal Standards and Analysis

The Federal Rules of Civil Procedure do not formally provide for a motion for reconsideration. *Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 328 n.1 (5th Cir. 2004). A request to reconsider an order other than a final judgment is usually governed by Rule 54(b), as opposed to Rule 59 or Rule 60. *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 336 (5th Cir. 2017) (citing Fed. R. Civ. P. 54(b)) ("Rule 54(b) allows parties to seek reconsideration of interlocutory orders and authorizes the

district court to 'revise[] at any time' 'any order or other decision . . . [that] does not end the action.'").

While "the precise standard for evaluating a motion to reconsider under Rule 54(b) is unclear, whether to grant such a motion rests within the discretion of the court." *Dallas Cnty v. MERSCORP, Inc.*, 2 F. Supp. 3d 938, 950 (N.D. Tex. 2014) (citation omitted), *aff'd sub nom. Harris Cnty v. MERSCORP, Inc.*, 791 F.3d 545 (5th Cir. 2015). And though Rule 54(b) is a "more flexible" standard, *Austin*, 864 F.3d at 336, considerations similar to those under Rules 59 and 60 inform the Court's analysis of a Rule 54(b) motion, *see MERSCORP, Inc.*, 2 F. Supp. 3d at 950. Thus, whether a motion has a manifest error of law or fact or presents newly discovered evidence are informative "guideposts" in evaluating a Rule 54(b) motion, even though the Court is not strictly limited to that standard. *Patton v. Johnson*, 2020 WL 13504980, at *2 (N.D. Tex. Mar. 9, 2020); *see also Applewhite v. Sawyer*, 2022 WL 16710720, at *1 (N.D. Tex. Oct. 6, 2022) ("In sum, under either Rule 59 or Rule 54, a plaintiff is only entitled to reconsideration if she can demonstrate that the Court has made a manifest error of law or fact or has presented newly discovered evidence."). "[T]he Court's broad discretion under Rule 54(b) must be exercised sparingly in order to forestall the perpetual reexamination of orders and the resulting burdens and delays." *MIECO LLC v. Pioneer Nat. Res. USA, Inc.*, 2023 WL 3259492, at *2 (N.D. Tex. May 4, 2023) (internal quotation marks and citations omitted).

Having reviewed Carr's Motion, the Court finds that reconsideration is not warranted. Even under the "more flexible" Rule 54(b) standard, none of Carr's arguments persuade the Court that its previous Order is in error. And Carr has not established that there are manifest errors of law or fact, nor has he presented newly discovered evidence. *See Jefferson v. Tran*, 2023 WL 11822216, at *2 (N.D. Tex. Oct. 4, 2023) (denying motion for reconsideration because "Defendant's mere disagreement with the findings and conclusions of the Court does not warrant the Court's reconsideration" and he "has cited no new evidence of record or any change in or clarification of the substantive law"); *Baldwin v. Zurich Am. Ins. Co.*, 2019 WL 12336277, at *2 (W.D. Tex. June 26, 2019) (finding that "[n]one of plaintiff's arguments persuade the Court to alter its decision denying her Motion for Partial Summary Judgment" when "no discovery has occurred, so granting [plaintiff] judgment on the merits of her claims is still premature" and plaintiff "offers no new evidence that would convince the Court to reconsider its earlier order").

Conclusion

The Court **DENIES** Carr's Rule 54(b) Motion for Reconsideration.

SO ORDERED.

February 26, 2025.

REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

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.	§ § § § § § § § § §	Case No. 3:23-cv-02875-S-BT

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

In response to *pro se* Plaintiff Brian P. Carr's Amended Complaint, Defendants filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). (ECF No. 31). As explained below, the Court should dismiss without prejudice all claims Plaintiff, a non-attorney, attempts to bring on behalf Rueangrong Carr and Buakhao Von Kramer. With respect to the claims Plaintiff attempts to bring on his own behalf, he fails to identify an applicable waiver of the federal government's sovereign immunity, and, therefore, the District Judge should grant Defendants' Motion and dismiss Plaintiff's claims for lack of subject matter jurisdiction.

Preliminary Matters

The Amended Complaint states that "to the degree that it is legally permissible, Mr. Carr will represent" Rueangrong Carr (Rueangrong) and Buakhao Von Kramer (Buakhao) in this matter. Am. Compl. ¶¶ 12, 13 (ECF No. 29). Under

28 U.S.C. § 1654, parties may "plead and conduct their cases personally or by counsel." 18 U.S.C. § 1654. Individuals who do not have a law license may not represent other parties in federal court. *See Weber v. Garza*, 570 F.2d 511, 514 (5th Cir. 1978) ("[I]ndividuals not licensed to practice law by the state may not use the 'next friend' device as an artifice for the unauthorized practice of law"); *Gonzales v. Wyatt*, 157 F.3d 1016, 1021–22 (5th Cir. 1998) ("[Section] 1654 . . . only allows for two types of representation: that by an attorney admitted to the practice of law . . . and that by a person representing himself."); *Guajardo v. Luna*, 432 F.2d 1324, 1324 (5th Cir. 1970) (holding that only licensed attorneys may represent others in federal court).

Plaintiff Brian Carr (Brian) is a U.S. citizen and a resident of Dallas County, Texas. Am. Compl. ¶ 11. But he is not a licensed attorney. Therefore, Brian is not authorized to represent any other party in this action, including his wife, Rueangrong, or Rueangrong's sister, Buakhao Von Kramer.[1] *Monroe v. Smith*, 2011 WL 2670094, at *2 (S.D. Tex. July 6, 2011) ("Because Plaintiff is not an attorney, he cannot represent his wife's interests in this action").

Federal Rule of Civil Procedure 11 requires that every pleading, motion and other paper must be signed by an attorney or by a party personally if the person is unrepresented. Fed. R. Civ. P. 11(a). Rueangrong and Buakhao did not personally

[1] Brian married Rueangrong, a U.S. permanent resident and citizen of Thailand, in 2018, in Thailand. Am. Compl. ¶¶ 11, 60. Buakhao, a citizen and resident of Thailand, is allegedly "the widow of a deceased American veteran." *Id.* ¶¶ 5, 11.

sign the Amended Complaint, which is the live pleading in this matter. Rather, they purportedly gave Brian permission to sign the Amended Complaint "electronically on their behalf" after he "provided them with the relevant sections of the document in English and translated into Thai (relying on Google Translate)," Am. Compl. at 58, as they do not understand English. *Id.* ¶ 161. Brian prepared the Amended Complaint based on his "careful review of electronic records which [he has] retained and maintained and which [he] believe[s] to be accurate." *Id.* at 58. And Brian "assured" Buakhao that certain allegations in the Amended Complaint—about which Buakhao expressed "concerns about accuracy"—were "established from the electronic records . . . which [Brian] had retained." *Id.* Brian also explained that Buakhao's signature on the Amended Complaint "does not indicate she remembers the interviews being on that date at that time but rather that she has no knowledge or recollection to the contrary." *Id.* But Brian, who is not an attorney, is not authorized to give legal advice or sign pleadings on behalf of others.

Accordingly, the Court should dismiss without prejudice all claims Brian brings on behalf of Rueangrong and Buakhao.[2]

[2] Rueangrong and Buakhao allege that United States Citizenship and Immigration Services (USCIS) violated their due process rights by initially denying their visa applications before approving them. Am. Compl. Counts 3, 4, 5, 6, 8. Rueangrong also alleges that USCIS violated her due process rights because USCIS gave her conflicting information regarding the status of her citizenship application before ultimately denying her application. *Id.* Count 7.

Background

With respect to the claims Brian is authorized to bring on his own behalf, Brian alleges that, in 2021, he requested that his passport be sent via the United States Postal Service (USPS) from the Thai Embassy in Washington, D.C. to his home in Irving, Texas. *See id.* ¶ 27. While he paid for overnight shipping, his passport arrived late. *Id.* Brian alleges that the USPS "falsifie[d] delivery records" and failed to refund his shipping costs. *Id.* 7–9; *see also id.* ¶¶ 27, 40–41. Brian further alleges that various government agencies failed to investigate crimes he brought to their attention—including the falsification of documents related to the late delivery and the USPS's failure to refund his shipping costs. *Id.* 9–12.

Defendants filed their Motion to Dismiss on May 14, 2024, arguing that the Court lacks jurisdiction over all of Plaintiffs' claims because of sovereign immunity. *See generally* Mot. Dismiss (ECF No. 31). Carr filed his Response on May 28 (ECF No. 34), and Defendants filed their Reply on June 11 (ECF No. 41). So, the Motion is ripe for review.

Legal Standards

A motion to dismiss under Rule 12(b)(1) challenges a federal court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (internal quotation marks and citation omitted). The Court "must presume that a suit lies outside [its] limited

jurisdiction," *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001) (citations omitted), and the plaintiff, as the party asserting jurisdiction, must show that jurisdiction does in fact exist, *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

Because Brian is proceeding *pro se*, the Court must liberally construe his pleadings. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (noting that *pro se* pleadings "must be held to less stringent standards than formal pleadings drafted by lawyers"). But even under a liberal construction, Brian has failed to meet his burden to show that jurisdiction exists.

Analysis

Brian fails to identify an applicable waiver of the federal government's sovereign immunity for the claims he brings on his own behalf. Therefore, the District Judge should grant Defendants' Motion and dismiss those claims for lack of subject matter jurisdiction.

Under the doctrine of sovereign immunity, a plaintiff cannot sue the United States without its permission. *See United States v. Mitchell*, 463 U.S. 206, 212 (1983) ("It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction."); *see also Lehman v. Nakshian*, 453 U.S. 156, 160 (1981) ("[T]he United States, as sovereign, is immune from suit save as it consents to be sued.") (internal quotation citation omitted); *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 668 F.3d 281, 287 (5th Cir. 2012) (The government's consent to be sued "is a prerequisite to federal

jurisdiction."). Absent a waiver of this immunity, or consent to be sued, any suit brought against the United States or any federal agency must be dismissed for lack of subject matter jurisdiction. *See Truman v. United States*, 26 F.3d 592, 594 (5th Cir. 1994); *see also Wagstaff v. U.S. Dep't of Educ.*, 509 F.3d 661, 664 (5th Cir. 2007) (quoting *Lewis v. Hunt*, 492 F.3d 565, 571 (5th Cir. 2007)) ("The absence of such a waiver is a jurisdictional defect."). The plaintiff bears the burden of showing a waiver of sovereign immunity. *Freeman v. United States*, 556 F.3d 326, 334 (5th Cir. 2009) (quoting *St. Tammany Par. v. Fed. Emergency Mgmt. Agency*, 556 F.3d 307, 315 (5th Cir. 2009)).

As to Brian's claims against the USPS, the Postal Reorganization Act (PRA) establishes the USPS as "an independent establishment of the executive branch" that "enjoys federal sovereign immunity absent a waiver." *Hale v. U.S.*, 2023 WL 1795359, at *1 (5th Cir. Feb. 7, 2023) (internal quotation marks omitted) (quoting *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 483–84 (2006)). This sovereign immunity can generally be waived for "tort claims arising out of activities of the Postal Service," *id.* (internal quotation marks omitted) (quoting 39 U.S.C. § 409(c)), but there is an exception if a claim "aris[es] out of the loss, miscarriage or negligent transmission of letters or postal matter." *Id.* (internal quotation marks omitted) (quoting 28 U.S.C. § 2680(b)). However, the Supreme Court has "made clear that in creating this exception, it was 'likely that Congress intended to retain immunity . . . for injuries arising, directly or consequentially, because mail either fails to arrive at all or arrives late, in damaged condition, or at the wrong address.'"

Id. at *2 (quoting *Dolan*, 546 U.S. at 489). Here, Brian's claims against the USPS arise out of the allegedly late delivery of a package. *See* Am. Compl. 7–9. Thus, sovereign immunity applies and bars Brian's claims against the USPS. That Brian allegedly seeks "a credit for future services" rather than money damages does not change this result.

With respect to Brian's causes of action regarding various agencies' alleged failure to investigate crime, Brian does not respond to Defendants' arguments regarding sovereign immunity and instead merely—and improperly—refers to briefing he filed in response to Defendants' earlier motion to dismiss. *See* Resp. 3 (ECF No. 34) ("The restrictions on Sovereign Immunity are discussed at length in my Response of 18 Mar 2024 (ECF 18) pages 1 to 4 and won't be repeated here"); *Black Cat Expl. & Prod., LLC v. MWW Cap. Ltd.*, 2015 WL 12731751, at *2–3 (N.D. Tex. Apr. 29, 2015) (finding improper plaintiff's attempt to incorporate by reference its preliminary injunction reply brief into its motion for remand reply brief); *see also Hudson Specialty Ins. Co. v. Talex Enterprises, LLC*, 2020 WL 1318802, at *2 (S.D. Miss. Mar. 20, 2020) (noting that the commentary to Federal Rule of Civil Procedure 10 explains that "Rule 10 only permits the incorporation of contents from pleadings [and] does not authorize parties to incorporate by reference the contents or earlier motions or other papers"). Thus, the District Judge should dismiss Brian's claims. *See Bearden v. United States Dep't of Agric., Rural Hous. Serv.*, 2023 WL 6462861, at *2–3 (N.D. Tex. Oct. 2, 2023) (granting

defendant's motion to dismiss when plaintiff "fail[ed] to identify any waiver of immunity by the government").

Recommendation

The District Judge should dismiss without prejudice all claims Brian Carr attempts to bring on behalf Rueangrong Carr and Buakhao Von Kramer. The District Judge should dismiss the remaining claims Brian Carr brings on his own behalf because he fails to identify an applicable waiver of the federal government's sovereign immunity.

SO RECOMMENDED.

February 27, 2025.

REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district judge, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

United States District Court

NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRIAN P. CARR, et al.	§	
	§	
v.	§	CIVIL ACTION NO. 3:23-CV-2875-S-BT
	§	
UNITED STATES OF AMERICA, et al.	§	
	§	

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. No objections were filed. The Court reviewed the proposed findings, conclusions, and recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

SO ORDERED.

SIGNED March 21, 2025.

UNITED STATES DISTRICT JUDGE

United States District Court

NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRIAN P. CARR, et al.	§	
	§	
v.	§	CIVIL ACTION NO. 3:23-CV-2875-S-BT
	§	
UNITED STATES OF AMERICA, et al.	§	
	§	

JUDGMENT

This action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered, it is ORDERED, ADJUDGED, and DECREED that Defendants' Motion to Dismiss Plaintiffs' Amended Complaint [ECF No. 31] is **GRANTED**. All claims Plaintiff Brian Carr brings on behalf of himself and all claims he attempts to bring on behalf of Rueangrong Carr and Buakhao Von Kramer are **DISMISSED**.

IT IS FURTHER ORDERED that the Clerk shall transmit a true copy of this Judgment and the Order Accepting the Findings, Conclusions, and Recommendation of the United States Magistrate Judge to the parties and their counsel.

SO ORDERED.

SIGNED March 21, 2025.

UNITED STATES DISTRICT JUDGE

3:23-cv-2875

Dear Sir:

I apologize for any confusion that may have occurred due to my misunderstanding of American law and the judge's previous ruling on this matter. I agreed that my husband, Brian, should sign the amended petition on my behalf electronically on March 27, 2024, but the judge appears to have questioned my signature in her ruling on February 27, 2025. I signed the attached amended petition above my name to state my intentions on March 27, 2024.

On April 22, 2024, the judge ordered the "plaintiff" to file this amended petition without any changes by April 30, 2024, and my husband filed the amended petition on April 23, 2024. However, in the judge's ruling on April 27, 2025, she stated that the court could not assist me with this issue. I do not know why, but I would like the assistance described in the amended petition. I have personally signed the attached amended petition to indicate that I would like the assistance requested.

I hereby affirm that the above is true to the best of knowledge under penalty of perjury in both the United States and Thailand.

Dated: 23 Mar 2025
Location: Irving, TX

AIR CARR

Rueangrong Carr
Rueangrong.Carr@gmail.com
1201 Brady Dr
Irving, TX 75061
518-227-0129

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 Request to File Amended Complaint As Ordered By Court on 22 Apr 2024 คำร้องขอให้ยื่นฟ้อง คำร้องแก้ไข ตามคำสั่งศาลเมื่อวันที่ 22 เมษายน 2567

เรียนท่าน:

ฉันขอโทษสำหรับความสับสนที่อาจเกิดขึ้นเนื่องจากฉันเข้าใจผิดเกี่ยวกับกฎหมายอเมริกันและคำตัดสินก่อนหน้านี้ของผู้พิพากษาในเรื่องนี้ ฉันตกลงว่าสามีของฉัน ไบรอัน ควรลงนามในคำร้องแก้ไขในนามของฉันทางอิเล็กทรอนิกส์ในวันที่ 27 มีนาคม 2024 แต่ดูเหมือนว่าผู้พิพากษาจะตั้งคำถามถึงลายเซ็นของฉันในคำตัดสินของเธอเมื่อวันที่ 27 กุมภาพันธ์ 2025 ฉันลงนามในคำร้องแก้ไขที่แนบมาเหนือชื่อของฉันเพื่อระบุเจตนาของฉันในวันที่ 27 มีนาคม 2024

เมื่อวันที่ 22 เมษายน 2024 ผู้พิพากษาสั่งให้ "โจทก์" ยื่นคำร้องแก้ไขนี้โดยไม่มีการเปลี่ยนแปลงใดๆ ภายในวันที่ 30 เมษายน 2024 และสามีของฉันยื่นคำร้องแก้ไขเมื่อวันที่ 23 เมษายน 2024 อย่างไรก็ตาม ในคำตัดสินของผู้พิพากษาเมื่อวันที่ 27 เมษายน 2025 เธอระบุว่าศาลไม่สามารถช่วยเหลือฉันในประเด็นนี้ได้ ฉันไม่ทราบว่าทำไม แต่ฉันต้องการความช่วยเหลือตามที่ได้ระบุไว้ในคำร้องที่แก้ไขแล้ว ฉันได้ลงนามในคำร้องที่แก้ไขแล้วที่แนบมาด้วยตนเองเพื่อระบุว่าฉันต้องการความช่วยเหลือตามที่ร้องขอ

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 Amended COMPLAINT

The Plaintiffs, Brian P. Carr (hereafter referred to as Mr. Carr), Rueangrong Carr (hereafter referred to as Mrs. Carr) and Buakhao Von Kramer (hereafter Mrs. Von Kramer) appear pro se in this matter, as and for their complaint allege the following:

Introduction

1. This matter concerns the Defendants falsification of government records and, potentially, obstruction of justice through failure to report or correct federal crimes, and the Plaintiffs' Fifth Amendment right to due process of law.

Due Process Requirements

2. Almost all of the counts raised in this matter center around due process. Since the 70's the U.S. Supreme Court has expounded on the requirements of Due Process for administrative procedures such that it is not an obscure arcane right, but rather a central pillar of how the U.S. government must act when dealing with individuals. There is an excellent overview of 'due process' in Cornell Law LII Procedural Due Process which lists the ten key elements required for due process as:

   1. An unbiased tribunal.
   2. Notice of the proposed action and the grounds asserted for it.

3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented.
10. Requirement that the tribunal prepare written findings of fact and reasons for its decision

These elements are derived from Judge Henry Friendly's article titled "Some Kind of Hearing".

USPS Falsifies Delivery Record

3. In April of 2021, Mr. Carr purchased a guaranteed delivery Express Mail label from the United States Postal Service (hereafter USPS). The package was delivered late but a postal employee falsified the delivery record to indicate that package was delivered on time. As a result, Mr. Carr was unable to get the guaranteed refund of $26.35. Mr. Carr appealed administratively with USPS and later with USPS Office of the Inspector General (hereafter USPS OIG), the Council of the Inspectors General on Integrity and Efficiency (hereafter CIGIE), USPS Board of Governors, and Department of Justice (hereafter DoJ) to correct the falsified documents and get the requested refund. No refund has been received.

Department of State Denies Non-Immigrant Visa Without Due Process

4. In 2018 and 2019 Mrs. Carr and her sister, Mrs. Von Kramer, applied for non-immigrant visas which were denied by the Department of State (hereafter DoS) through the Bureau of Consular Affairs (hereafter BCA) without due process. In particular, the denial was a form letter with no reference to the actual evidence and which contradicted the verbal explanations of the denial by the interviewer. This could be construed as falsification of government records through omission of required information. Further, in each case the denial was based on a rationale that was not supported by the evidence or law in the matter. As there was no administrative appeal available, Mr. Carr sought correction of the injustice through the DoS OIG. CIGIE, and DoJ. Later non-immigrant visas for Mrs. Carr and Mrs. Von Kramer were

approved in 2022 but both sisters suffered financial harm from the delay in receipt of the visas.

Mrs. Von Kramer Receives Survivor Benefits

5. Mrs. Von Kramer is the widow of a deceased American veteran and was able to visit the U.S. in 2022 and commenced receiving survivors' benefits from Social Security in May of 2023, but she must return to the U.S. every six months as she was not able to establish her 'lawful presence' in the U.S. in 2019, 2020, and 2021 as she planned.

USCIS Denies Citizenship Application Based on Falsified Documents

6. On 31 Jan 2023 as a result of a joint interview held on 30 Jan 2023 for a permanent green card (I-751) and for citizenship (N-400), the United States Citizenship and Immigration Service (USCIS) approved Mrs. Carr's I-751 application for a permanent green card while not actually providing the green card as her N-400 citizenship application was also approved.
7. However, instead promptly providing Mrs. Carr with a Certificate of Naturalization, on 01 Sep 2023, USCIS updated her N-400 record to note that the interview of 30 Jan 2023 was canceled due to unforeseen circumstances.
8. Mr. Carr complained to USCIS, the Department of Homeland Security (DHS) OIG and DoJ of falsified records (the interview had been completed and the N-400 had been approved). Even so, USCIS scheduled a 'second' N-400 interview for 11 Oct 2023, a date when USCIS had been informed that Mrs. Carr would be out of the country. Mr. and Mrs. Carr made numerous efforts to reschedule the interview which were refused. USCIS denied Mrs. Carr's N-400 application on 14 Oct 2023 for 'failure to appear'. Mr. Carr has since complained to DHS OIG of 'whistleblower' retaliation for his previous reports of federal crimes and other malfeasance by USCIS.

Jurisdiction and Venue

9. This Court has subject matter jurisdiction over this action pursuant to 28 USC § 1331 and 28 USC § 1367, 42 USC Ch. 21B and the Administrative Procedure Act (APA, 5 USC §§ 551–559, 5 USC §702), as a case arising under 18 USC § 1001, 18 USC § 1505, 18 USC §

1510, 18 USC § 201, 18 USC Ch 96 (RICO), 18 USC § 1038 18 USC § 10, 5a USC IG ACT 1978, 39 USC, 8 USC Ch 12, 8 CFR § 216.4, 5 USC § 2302(b)(9)(D), 8 USC § 1421(c) as well as the Fifth Amendment of the U.S. Constitution right to due process.

10. Venue is proper in this district pursuant to 28 USC § 1391 (b) because a substantial part of the events or omissions giving rise to the claim have occurred or will occur in this district and Plaintiffs Mr. and Mrs. Carr reside in this District and Mrs. Von Kramer, as a foreign national, receives her U.S. mail care of Mr. Carr.

11. Mr. Brian P. Carr (hereafter Mr. Carr) is a U.S. citizen and resident of Dallas County in the State of Texas and a Plaintiff appearing Pro Se in this matter. Mr. Carr's contact information is:

Brian P. Carr
1201 Brady Dr
Irving, TX 75061
carrbp@gmail.com
518-227-0129

12. Mrs. Rueangrong Carr (hereafter Mrs. Carr) is a U.S. Permanent Resident and resident of Dallas County in the State of Texas and a Plaintiff appearing Pro Se in this matter. Mr. Carr is Mrs. Carr's spouse and to the degree that it is legally permissible, Mr. Carr will represent Mrs. Carr. Mrs. Carr's contact information is:

Rueangrong Carr
1201 Brady Dr
Irving, TX 75061
carrbp@gmail.com
518-227-0129

13. Mrs. Buakhao Von Kramer (hereafter Mrs. Von Kramer) is a citizen and resident of Thailand with a U.S. B-1 / B-2 non immigrant visa (business / tourist). Mrs. Von Kramer's U.S. mailing address is care of Mr. Carr, a resident of Dallas County in the State of Texas. Mrs. Von Kramer is a Plaintiff appearing Pro Se in this matter. Mrs. Von Kramer is the widow of Nikolaus Von Kramer, a German National, U.S. Army veteran (pre 1968), U.S. citizen, married to Mrs. Von Kramer on 12 January 2006, and died 26 April 2014. Mrs. Von Kramer is also Mrs. Carr's sister. Mrs. Von Kramer has also requested that Mr. Carr represent Mrs. Von Kramer to the degree that it is legally permissible. Mrs. Von Kramer's

contact information is:

Buakhao Von Kramer
c/o Brian Carr
1201 Brady Dr
Irving, TX 75061
carrbp@gmail.com
518-227-0129

14. Mrs. Von Kramer's legal residence is:

105 - 3 M 5 T YANGNERNG
SARAPEE, CHIANG MAI 50140
THAILAND

15. The United States government is the primary Defendant in this matter and is represented by the U.S. Attorney for the Northern District of Texas in her professional capacity with contact information:

United States Attorney
Northern District of Texas
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699

16. The U.S. Department of Justice (hereafter DoJ) is an agency of the United States, a Defendant in this matter and is represented by the Attorney General in his professional capacity with contact information:

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

17. The United States Postal Service (hereafter USPS) is an agency of the United States, a Defendant in this matter and is represented by the Postmaster General in his professional capacity with contact information:

Postmaster General
USPS Headquarters
475 L'Enfant Plaza SW
Washington DC 20260-0010

18. The USPS Office of the Inspector General (hereafter OIG) is an agency of the United States, a Defendant in this matter and is represented by the USPS Inspector General in her

professional capacity with contact information:

USPS Inspector General
1735 North Lynn Street
Arlington, VA 22209-2005

19. The USPS Board of Governors (BoG) is the governing body of the USPS, an agency of the United States. The USPS BoG is a Defendant in this matter and is represented by the Chairman in his professional capacity with contact information:

USPS Board of Governors Chairman
475 L'Enfant Plaza SW
Washington DC 20260-0010

20. The U.S. Department of State (hereafter DoS) is an agency of the United States, a Defendant in this matter and is represented by the Secretary of State in his professional capacity with contact information:

The Executive Office
Office of the Legal Adviser, Suite 5.600
600 19th Street Ste 5, Suite 5 600, NW
Washington, D.C. 20522

21. The DoS OIG is an agency of the United States, a Defendant in this matter and is represented by the DoS Inspector General in her professional capacity with contact information:

U.S. Department of State Inspector General
1700 North Moore Street (SA-39)
Arlington, VA 22209

22. The Council of the Inspectors General on Integrity and Efficiency (hereafter CIGIE) is an agency of the United States, a Defendant in this matter and is represented by the Executive Director in his professional capacity with contact information:

Executive Director
Council of the Inspectors General on Integrity and Efficiency
1750 H Street NW Suite 400
Washington, DC 20006

23. The U.S. Citizenship and Immigration Services (hereafter USCIS) is an agency of the United States, a Defendant in this matter and is represented by the USCIS Director in her professional capacity with contact information:

USCIS Director
20 Massachusetts Avenue, NW
Washington, DC 20529

24. The Department of Homeland Security (hereafter DHS) OIG is an agency of the United States which oversees USCIS, a Defendant in this matter and is represented by the DHS Inspector General in his professional capacity with contact information:

Department of Homeland Security Inspector General
245 Murray Dr.; Building 410;
Washington, DC 20528

25. The Social Security Administration (hereafter SSA) is an agency of the United States, a Defendant in this matter and is represented by the SSA Commissioner in her professional capacity with contact information:

Social Security Administration Commissioner
1300 D. Street SW
Washington, D.C. 20024

Count 1

USPS Falsifies Delivery Records, Refuses Credit

26. The Plaintiffs repeat and re-allege paragraphs 1 through 25, as if fully set forth herein.
27. On April 9, 2021 Mr. Carr purchased an 'Overnight Express' click'n'ship for $26.35 with tracking number 9470103699300057573507 with guaranteed delivery to return his passport from the Thai embassy to his home address. The Thai embassy mailed his passport back and the shipment was accepted by USPS at 8:46PM on 13 April 2021 with guaranteed delivery by 12PM on 15 April 2021. This was longer than overnight as it was received late in the day.
28. However, the package did not arrive at the Irving Post Office until 11:18 AM 15 April 2021 and was 'out for delivery' at 11:29 AM. It was scanned as delivered at 11:35 while the driver was almost certainly still at the Post Office, a common practice for improper 'Stop the Clock' scans.
29. It is virtually impossible to make the drive from the Post Office to Mr. Carr's house in six minutes. Note that while improper 'Stop the Clock' scans have a relatively benign name, they are, in fact, crimes of falsifying government records as per 18 U.S. Code Section 1001 (a)

(1).

30. Mr. Carr was anxious to get his passport and checked for the package several times on the morning of 15 April, 2021. When Mr. Carr received notice of the delivery at 11:35 AM via email, both Mr. Carr and Mrs. Carr went out to look for the package but could not find it.
31. Mr. Carr also called the Post Office about the missing package and was advised to not worry as there had been vehicle problems that morning and that his package would arrive soon. Mr. Carr asked if the record of delivery time would be corrected but received a non-committal answer. Mr. Carr also took a time stamped photo of the front porch area with no package present after it had been recorded as delivered.
32. At 12:30PM the package was in Mr. Carr's mail box, delivered after the guaranteed delivery time (contrary to the improper 'Stop the Clock' delivery scan).
33. That afternoon Mr. Carr initiated an online request for a refund (refund request number 6006595) which was denied in minutes as the package was falsely reported as delivered on time.
34. Two weeks later Mr. Carr was permitted to appeal that arbitrary denial and explained about the illegal 'Stop the Clock' scan and on 5 May 2021 the status of the refund was changed to 'Dispute Paid'. However, the credit card which Mr. Carr used for the online 'click n ship' never posted the refund.
35. On 9 June, 2021, Mr. Scott Hooper, District Manager, Dallas Customer Service and Sales, 951 W. Bethel Rd., Coppel, Texas, 75099-9998 replied to Mr. Carr's queries about the falsified delivery time via Congressman Veasey stating that Mr. Rodney Malone, Postmaster, Irving, TX found that "the guaranteed date and time for delivery of the Priority Express Mail was April 15, 2031, by noon. Mr. Malone retrieved data from the carrier's scanner and was able to confirm the package was scanned delivered on April 15, 2021 at 11:35 a.m.. Mr. Malone states the carrier has been trained in the proper disposition and scanning of Priority Express Mail. The signature was waived; therefore, allowing delivery directly to Mr. Carr's mailbox. Unfortunately, to be able to correct a scan in our system, it must be within the previous 21 calendar days."
36. Mr. Carr contacted USPS customer service on numerous occasions as there had not been any refund but was only told to wait longer for the refund even though he had already waited far longer than the suggested waiting time.

37. When Mr. Carr complained that the refund was due many months ago, the response was just a generic statement about submitting a new refund request (which would be denied as it was too late to initiate a new refund request). See service request 28670242 on 19 July 2021.
38. On 3 September 2021, Ms. Scarpelli of the USPS responded to Congressman Veasey stating that Mr. Carr's refund was paid on 5 May 2021 but on further investigation by Mr. Carr there were no details of the refund.
39. After Mr. Carr made numerous attempts to find the transaction ID of the credit to his bank it became apparent that Ms. Scarpelli had been misled by the numerous falsified documents which resulted from the improper 'stop the clock' scan of his package and faulty USPS business processes to issue credits when a falsified delivery record indicates an 'on time' delivery.
40. It appears that the Accounting Service Center approved the refund and passed it off to Customer Service to make the actual refund. However, because the tracking record had a falsified delivery time via the improper 'Stop the Clock' scan which was not corrected by management (a potential crime itself), customer service could not give the refund but referred Mr. Carr back to accounting services or asked Mr. Carr to start a new claim for a refund (which was not permitted at that time due to the delay).
41. There are now numerous documents which are false due to the original falsified delivery time and thousands of others as documented by USPS OIG, to include quality reports to Congress and the U.S. public, profitability reports for individual post offices and regions, and bonuses paid to management of said post offices and regions. This is a prime example of how one uncorrected falsified document multiplies until it becomes hard to find any truthful and correct documents.

Count 2

USPS OIG Refuses to Investigate or Report Federal Crimes

42. The Plaintiffs repeat and re-allege paragraphs 1 through 41, as if fully set forth herein.

43. Mr. Carr visited the USPS OIG web hotline which stated "the USPS OIG Hotline CANNOT assist you with daily mail delivery and tracking problems" but also "the USPS OIG Hotline CAN assist you with ... Employee Misconduct".

44. Mr. Carr made several submissions to the Hotline which includes Submission 167800 on 18 May 2021, Submission 170675 on 27 May 2021, Submission 184761 on 19 July 2021, and Submission 209111 on 22 October 2021. However, even though he cited specific federal crimes of falsifying government records, defrauding postal customers and USPS management uniformly unable to make any corrections, in all cases the complaint was simply referred back to USPS local management and with no correction or action taken. However, each complaint was closed as successfully resolved even though no corrections or actions were taken.
45. On 1 August 2021 Mr. Carr wrote directly to the USPS Inspector General inquiring as to the origin of the policy preventing any USPS OIG investigation of certain crimes of falsifying government records, e.g. improper 'Stop the Clock' scans of packages as delivered prior to actual delivery and, amongst other things, defrauding postal customers.
46. This letter seems to have been referred back to the USPS OIG Hotline where they suggested that Mr. Carr would need to file a Freedom of Information Act request to get the information he required.
47. Mr. Carr submitted the FOIA request on 19 October 2021 and received a statement from Tanya Hefley stating "However, we were advised, during processing, the OIG Hotline determines the best routing (OIG, Inspection Service, Postal Service, other agency, etc.) for an allegation on a case-by-case basis."
48. A 2017 USPS OIG audit found there were over 1.9 million improper 'stop the clock' scans out of the 25.5 millions which were analyzed. The result was that over 7 percent of the analyzed scans were improper. Extending this to the over 4 billion scanned packages during 2017, as many as 280 million of such scans defrauded customers by these improper scans preventing 'guaranteed delivery' refunds. Further, the USPS OIG listed over about 1.4 million customer complaints in FY 2017 related to delivery.
49. In a 2020 Blog report by USPS OIG, "Specifically, 38 percent of the more than 1,100 packages that were selected at these units and that were in the facility before the carriers arrived for the day had been improperly scanned."
50. When Mr. Carr reported the details of the falsified delivery time to OIG case workers, it was not only 'likely' that a federal crime had been committed, but,in light of USPS OIG reports

on the problem, it was 'beyond reasonable doubt.'

51. However, the reality is that improper 'Stop the Clock' scans are federal crimes and are not ever referred to the Attorney General as required by statute 5a USC IG Act 1978 Section 4.
52. On 1 August 2021 Mr. Carr wrote to the USPS IG directly complaining of an apparent illegal order preventing USPS OIG case workers from reporting known federal crimes (the well documented improper 'stop the clock scans' (a.k.a. falsified government records) to the Attorney General as required explicitly by the INSPECTOR GENERAL ACT OF 1978 which states in part that the 'Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law'.
53. The USPS IG made no response but via U.S. Representative Marc Veasey, Ms. Kelly Delaney, Senior Attorney, Government Relations, USPS OIG, replied on 7 June 2022 in USPSoigRsps.pdf (an electronic document already sent to the relevant Defendants) and stated

> The OIG conducts investigations to determine whether evidence exists of misconduct or criminal activity by postal employees and, when appropriate, refers such matters for criminal prosecution. When employee conduct does not meet the threshold for prosecution, we typically refer such matters to Postal Service management officials for their determination of possible administrative action. … We did not identify a violation that warranted referral for criminal prosecution.

54. Thus, the OIG is claiming the authority to decide which cases should be prosecuted while it is clear from 1978 IG Statute that Congress intended that the decision to prosecute is reserved solely for the Attorney General (or the DoJ realistically).
55. It is apparent that the USPS OIG has decided to allow the USPS to commit certain federal crimes with impunity thereby defrauding thousands of postal customers each year.
56. On 3 August 2022, Mr. Carr wrote to the USPS Board of Governors with USPSbdRqst.pdf (previously provided to relevant Defendants) complaining of apparent illegal orders preventing the USPS IG from properly reporting federal crimes to the DoJ as required by statute, possibly a crime itself of obstruction of justice.
57. There was no response from USPS BoG but on 14 Dec 2022 from Andrew Jones, USPS

Government Relations Representative replied via Representative Veasey with BrianCarr.USPSreply.12-12-22.pdf (previously provided to relevant Defendants) which states 'the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is responsible for investigating complaints about an Inspector General. CIGIE conducts its investigations independently, and it has requested that all inquiries related to its functional responsibilities be referred to CIGIE for reply.' It claims that the complaint was forwarded to CIGIE but no response was forthcoming.

58. There are anecdotal reports of widespread falsification of records of all types within USPS which is the likely result of USPS OIG unlawfully granting USPS the ability to falsify delivery records with impunity.

Count 3

DoS Denies Mrs. Carr Visa without Due Process

59. The Plaintiffs repeat and re-allege paragraphs 1 through 58, as if fully set forth herein.
60. Mr. and Mrs. Carr had married on 23 June 2018 in Thailand and applied for an immigration visa via an I-130 petition submitted to USCIS on 17 July 2018.
61. However, they learned that the I-130 petition normally takes over a year to be processed. They were concerned that his mother was over 90 years old and her health was failing. It was unlikely that she would survive for more than a year. The couple wanted Mrs. Carr to be able to meet Mr. Carr's mother so they decided to apply for a non-immigration visa.
62. As a result, Mr. Carr completed the application for a non-immigration visa DS-160 for Mrs. Carr with the $160 fee paid by Mr. Carr with his American credit card.
63. Mr. Carr requested that he be permitted to attend the interview as Mrs. Carr representative as he was more familiar with his mom's health and his finances. However, he was told that was not possible due to security and space concerns at the consulate.
64. As an alternative, Mr. Carr completed an I-864 affidavit of support showing assets of $2,986,370.28 over 90% of which were in IRA accounts which could not be moved outside of the U.S. without complex and expensive tax implications. He also attached statements supporting those assets and an explanation that the couple had sufficient assets to live wherever they chose and that it would be incredibly stupid for them to overstay their visa as

it would preclude freedom to travel in the future. They were not stupid people.

65. On 29 Aug 2018 Mrs. Carr had an interview for a B-1 / B-2 non immigrant visa (business / tourist) at the Chiang Mai Consulate in Thailand with appointment AA00843QZW.
66. The interviewer did not review any of the papers which Mr. Carr had prepared but instead did a cursory review of Mrs. Carr visa application record and noted the I-130 application to immigrate. The interviewer then informed Mrs. Carr that she could not get a tourist visa because she had an outstanding immigration visa application. The only way she could get a tourist visa would be to rescind her immigration application first and then reapply for a tourist visa. This deeply upset Mrs. Carr, presenting her with a sort of Sophie's choice dilemma. Needless to say, the interviewer's verbal claim was totally contrary to the published requirements and the law in these matters.
67. The actual denial letter had no references to any evidence presented or reviewed but simply cited section 214(b) [of the INA] and 'you did not overcome the presumption of immigrant intent, required by law, by sufficiently demonstrating that you have strong ties to your home country that will compel you to leave the United States at the end of your temporary stay'.
68. Mr. and Mrs. Carr were unlawfully denied their ability to travel freely due to denial of Mrs. Carr's visa application.
69. Mr. Carr complained to the DoS OIG with complaint H20190052 citing the lack of due process through the denial of the right to representation (Mr. Carr could not attend the interview), the denial of the opportunity for Mrs. Carr to present evidence, and the denial of the right to a written decision based solely on the law and evidence presented. Mr. Carr explained that the requirement that Mrs. Carr rescind her immigration application was not supported by the law and, as such. was unlawful.
70. On 10 October 2018 received a response via the DoS OIG in the form of a PDF file which
71. has been named DoSig2018rsps.pdf signed by Cristin Heinbeck, Outreach and Inquiries Division, Visa Services of DoS which stated in part:

> there is no provision in U.S. law that specifically precludes issuance of a nonimmigrant visa to an applicant with a pending immigrant visa case. However, such an applicant must still demonstrate that he or she has clear ties to a continuing life overseas and evidence that he or she intends only a temporary visit to the United States. Such evidence is required to overcome the provisions of

section 214(b) of the INA.

72. The DoS did not address the denial of the right to representation and the right to present evidence. Of course an applicant will not be able to overcome the provisions of section 214(b) if they are not permitted to present the evidence which is required by section 214(b).
73. As DoS OIG improperly abdicated its responsibility to oversee BCA and referred these serious violations of the Fifth Amendment rights of Due Process to BCA, Mr. Carr continued his efforts a just and lawful decision by writing several emails to the Chiang Mai Consulate General.
74. Mr. Carr was able to persuade USCIS to expedite the I-130 immigration petition process and it was approved within four months (likely a record for such petitions in Thailand at that time).
75. Mr. and Mrs. Carr were also subjected to unwarranted stress in getting the I-130 so quickly as was the staff at USCIS who had to deal with the constant concerns raised by Mr. Carr about every delay.
76. Mrs. Carr was able to meet Mr. Carr's mother and that was a source of joy for all parties. Mr. Carr's mother died within a week of their arrival so the desire to visit promptly was well founded.
77. Mr. and Mrs. Carr returned to Thailand after a roughly three month visit to the United States (so would not have 'overstayed' a tourist visa in any case).
78. However, four years later USCIS failed in meeting its statutory mandate to allow Mrs. Carr to work and travel freely and left Mrs. Carr stranded in Thailand, unable to return to the U.S..
79. As a result, Mrs. Carr had to make a second application for a tourist visa with DoS BCA with the interview on 12 Dec 2022 at the Chiang Mai Consulate with appointment AA00BCSFIT.
80. Mr. Carr sent an explanatory email to the Chiang Mai Consulate General citing the previous letter from DoS stating that Mrs. Carr's previous visa application was denied unlawfully and explaining that USCIS had unlawfully left Mrs. Carr stranded in Thailand, attaching the supporting documents for this conclusion. Mr. Carr asked that an adequately trained interviewer be assigned to review Mrs. Carr's visa application so that there would not be further unjust and unlawful decisions.

81. The Consulate General responded that all interviewers were properly trained and made their decisions independently of any input from the Consulate General but it is possible that an addendum was made to Mrs. Carr's file explaining the sensitivity of the application.
82. Mrs. Carr's second visa application was approved with no substantial input from Mrs. Carr, only an online review of the status of the application.
83. The cost of this second visa application fee was $160 which Mr. Carr attributes half to USCIS for leaving Mrs. Carr stranded in Thailand and half to DoS BCA for unlawfully denying the first visa application.

Count 4

DoS Denies Mrs. Von Kramer Visa without Due Process

84. The Plaintiffs repeat and re-allege paragraphs 1 through 83, as if fully set forth herein.
85. Mrs. Von Kramer is the widow of an American veteran who died on 26 April 2014 (born 19 Nov 1944). Mrs. Von Kramer had promptly notified the U.S. embassy and Social Security of his death.
86. A member of the embassy staff had kindly mentioned to Mrs. Von Kramer that if she visited the U.S. regularly she could get survivor benefits from Social Security. She also explained that if Mrs. Von Kramer did not have friends or family in the U.S. it would be prohibitively expensive and not really possible.
87. As a result, after Mrs. Carr (her sister) had become a Permanent Resident of the U.S., Mrs. Von Kramer's younger daughter Yui Montira Moongram submitted a DS-160 visa application for Mrs. Von Kramer and paid the $160 fee. Her first interview was held on 9 Sep 2019 at the Chiang Mai consulate.
88. Mrs. Von Kramer asked that Mr. Carr attend the interview. Mr. Carr inquired again and was told that only the applicant was permitted in the consulate due to security and space constraints.
89. Mr. Carr helped Mrs. Von Kramer prepare an extensive folder of papers (more than an inch thick) to demonstrate her financial resources and ties to Thailand. It started with dual affirmations for Mr. Carr and Mrs. Von Kramer (affirmed under penalty of perjury) with descriptions of the other 'exhibits' which included:
    - Round trip tickets to the U.S. with the first flight on 13 Oct 2019 on the same flight to the

U.S. as Mr. and Mrs. Carr were taking and return flights for Mrs. Von Kramer after a 14 day stay (longer than the 1 day minimum requirement and shorter than the 30 day / full month maximum for a 'lawful presence' visit as described in the affirmations).

- An email from Mr. Carr inviting Mrs. Von Kramer to stay at their house during her visit to the U.S..
- Previously Mr. Carr had provided Mrs. Von Kramer with a statement from one of Mr. Carr's retirement accounts showing over $400,000 in assets (signed by Mr. Carr), but as this ran to over ten pages it was decided to not include it in the packet and rely on the substantial savings Mrs. Von Kramer demonstrated below. Instead the focus would be on the accommodations and opportunities for service and volunteering and other 'lawful presence' activities described in attachments to the invitation email
- A signed copy of Mr. Carr's passport ID page.
- A Thai bank statement showing a roughly $30,000 balance in Mrs. Von Kramer's name for the last six months (and certified at the bank).
- Deeds to Mrs. Von Kramer's houses in Chiang Mai and Chiang Rai with pictures of the houses (they are nice houses) along with her and her dogs, two daughters, and other sister and brother (in different pictures).
- Deeds to some of her farm land (prime rice paddies in Chiang Rai where Mrs. Von Kramer was born).
- Title to her car along with pictures of her with the car and family members.
- University diplomas for her two daughters.
- Documentation of her daughters' long term employment as a nurse in Chiang Mai and Network Engineer in Bangkok together with pay stubs.
- Documentation of her marriage to Mr. Von Kramer and his death.
- An explanation by Mr. Carr of the requirements to get social security survivors' benefits which include several 'lawful' visits to the U.S. over a five year period (and a stipulation that any overstays would disqualify her from any future benefits).

First Visa Application Denied

90. Surprisingly enough, the interviewer verbally denied Mrs. Von Kramer first visa application based on her not having firm travel plans. This was not based on any evidence as Mrs. Von Kramer had copies of her flight tickets and invitation as described above.

91. Further, the written denial letter was identical to the one Mrs. Carr had received with no references to any evidence presented or reviewed but simply cited section 214(b) and 'you did not overcome the presumption of immigrant intent, required by law, by sufficiently demonstrating that you have strong ties to your home country that will compel you to leave the United States at the end of your temporary stay'.
92. Mrs. Von Kramer apologized to Mr. Carr at the end of the interview for not presenting her case well, but the real problem was the denial of her right to Due Process and representation.
93. Mrs. Von Kramer was raised in a very poor family with nine children and a sharecropper father. She had a limited education of only four years before she needed to start working to help support the family.
94. As a girl from a poor family in Thailand she was taught to be polite and not speak out. She was not taught how to persuasively and clearly advocate for her position. However, Due Process is guaranteed to all persons who deal with the U.S. government and the right to representation is to insure that justice is not provided only to the rich and well educated.

Second Visa Application Denied

95. Mr. Carr completed a second DS-160 visa application for Mrs. Von Kramer with the interview on 30 Sep 2019 at the Chiang Mai Consulate (appointment AA009APPX1) and Mrs. Von Kramer paid the roughly $160 fee in Thai Baht.
96. Mrs. Von Kramer was able to mention to the interviewer that she wanted to apply for Social Security but the interviewer falsely claimed that she could have her social security claims handled in Manila in the Philippines and did not need a U.S. visa for that. It is unclear if the interviewer was ignorant of Social Security rules and regulation or maliciously told her false information.
97. Mrs. Von Kramer mentioned her contact at the embassy who had explained the U.S. requirements for non citizens to receive Social Security benefits overseas to Mrs. Von Kramer, but the interviewer declined to call her.
98. The interviewer also did not read Mr. Carr's extensive explanation of Social Security rules and regulations applicable to Mrs. Von Kramer but instead denied her application based on the false claim that she could get her social security benefits in the Philippines.
99. The written denial letter was the same form letter as before with no mention of the actual evidence considered.

Third Visa Application Denied

100. Mrs. Von Kramer again apologized to Mr. Carr for not presenting her case well as she had not given the interviewer the extensive documentation which Mr. Carr had compiled.

101. Mr. Carr completed a third DS-160 visa application for Mrs. Von Kramer with the interview on 9 Oct 2019 at the Chiang Mai Consulate (appointment AA009BKKHR) and Mrs. Von Kramer paid the roughly $160 fee in Thai Baht.

102. Before the interview, Mrs. Von Kramer practiced handing the packet of documentation to the interviewer as she had not done that in previous interviews. Mr. Carr also ensured that she called attention to his affirmation which explained all the other attachments as well as the requirements for Social Security benefits paid to foreign nationals overseas.

103. In the actual interview, Mrs. Von Kramer did hand the packet to the interviewer and he did spend a few seconds reading the first few pages, before closing the packet and informing Mrs. Von Kramer that she could not get a visa as she was a widow and too old with insufficient ties to Thailand. If she were to remarry she could reapply and might be eligible for a visa.

104. Of course this verbal rationale is completely contrary to the published rules and laws for non-immigration visas.

105. The written denial letter was the same form letter as before with no mention of the actual evidence considered.

106. It should be noted that if Mrs. Von Kramer were to remarry, she would no longer be eligible for SSA survivors' benefits, the central focus of the first few pages of Mr. Carr's affirmation.

107. It is also apparent that the DoS BCA has unpublished unwritten unlawful policies which are followed by interviewers such as:

- Immigration applicants should not be granted tourist visas irrelevant of the actual facts and circumstances.
- Widows of deceased American citizens (or more properly surviving spouses) should never be granted tourist / business visas irrelevant of the actual facts and circumstances

The last item may be intended to reduce drains on the overburdened social security system which could be considered an admirable goal, but it is up to Congress to balance the complex trade offs of such matters.

108. Mrs. Von Kramer suffered financial loss due to these unlawful denials of visa applications to

include three application fees ($160 times 3, or $480) but also the flight tickets she was not able to use. Her round trip fare via Expedia on China Southern Airlines was $511.53 which was a bargain for non-refundable tickets, but Expedia was helpful in negotiating with China Southern Airlines due to the extenuating circumstances and was able to get a refund of the entire amount less the stated change fee of $134.

109. Mrs. Von Kramer was also unable to establish a lawful presence in the United States during the years of 2019, 2020, and 2021 according to SSA policies concerning payments to non-citizens residing outside the United States.

Fourth Visa Application Approved

110. Mrs. Von Kramer made a fourth application for a tourist visa with DoS BCA with the interview on 12 Dec 2022 at the Chiang Mai Consulate with appointment AA00BCSFIT.

111. Mrs. Van Kramer was able to schedule her interview to be 15 minutes after Mrs. Carr time slot so that the two sisters went in together. It happened that Mrs. Carr was able to introduce Mrs. Von Kramer to Mrs. Von Kramer's interviewer with the statement 'She is my sister' before Mrs. Carr went on to her interview.

112. Mrs. Von Kramer was prepared with a more extensive folder of papers and had practiced presenting the papers with simple and brief explanations (e.g. "Here is an invitation letter from my brother-in-law, here is a picture of me with my sister and brother-in-law, here is a copy of my brother-in-law's passport page which he has signed for me, …")

113. However, before Mrs. Von Kramer could start her presentation, the interviewer asked if she would be traveling with others. She answered that she would be traveling with her sister and brother-in-law and the interviewer replied 'Let me look into the status of the other members of your group'. He then briefly looked at records on his computer before telling Mrs. Von Kramer that her visa application was approved.

114. It is possible that Mrs. Von Kramer's interviewer may have read any notes or concerns about Mrs. Carr's visa application made by the Chiang Mai Consulate General in response to Mr. Carr's previous email.

SSA Conditionally Grants Survivors' Benefits

115. As a result, Mrs. Von Kramer was able to visit the United States briefly in 2022 and 2023, possibly establishing a lawful presence for those years according to SSA standards. See SSA POM RS 02610.025 5-Year Residency Requirement for Alien Dependents/Survivors

Outside the United States (U.S.)

116. After a weekend trip to Cancun Mexico in January of 2023, Mrs. Von Kramer continued the process of applying for SSA survivors' benefits which started in May of 2023 and have continued with the requirement that Mrs. Von Kramer can not continue to receive benefits outside the U.S. if she is outside the U.S. for more than six months.

117. Mrs. Von Kramer has met SSA's requirements for payments and intends to continue her regular visits to the U.S. until SSA determines that she has established a lawful presence in the U.S. for five years.

DoS Refuses FOIA Requests

118. On 11 May 2023 via the DoS FOIA request web page Mr. Carr submitted two FOIA requests along with emails to FOIARequest@state.gov with required release forms for Mrs. Von Kramer and Mrs. Carr seeking all records related to the visa applications cited herein..

119. On 24 July 2023 responding to Case Number: F-2023-08493 Laura Stein, Deputy Director, Office of Domestic Operations, Directorate for Visa Services (DoS) stated that even with authorizations for release of FOIA information from Mrs. Carr and Mrs. Von Kramer, the DoS would still be required by section 222(f) of the Immigration and Nationality Act (8 US section 1202(f)) to keep confidential any visa records that were not previously received from or sent to the subject of the request.

120. This misconstrues 8 US section 1202(f) which states:

> (f) Confidential nature of records shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States,

121. However, the Fifth Amendment guarantees to all persons (including foreign nationals) the right to Due Process which certainly includes access to all the evidence presented against them. All such information must be released to the applicant in order to administer the immigration laws and the applicants' due process rights so 222(f) does not apply to applicants seeking access to records applicable to their case.

122. These requirements on administrative procedures even extend to properly classified information covered by the Classified Information Procedures Act (CIPA) which provides uniform procedures for prosecutions involving classified information.

123. In Kiareldeen v. Reno, see 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.

Count 5

DoS OIG Refuses to Investigate or Report Federal Crimes

124. The Plaintiffs repeat and re-allege paragraphs 1 through 123, as if fully set forth herein.

125. In early October 2018 Mr. Carr submitted a complaint via the DoS OIG hotline (a web page) concerning malfeasance in the processing of visa applications as the DoS BCA did not provide due process, particularly the right to representation, lack of a written decision based on the evidence and the law, and right to appeal.

126. On 10 October 2018 he was assigned reference number H20190052 and a response which included 'We have reviewed your complaint and determined that the appropriate office to address your concerns is the Bureau of Consular Affairs, Executive Office. Your information has been forwarded to that office.'

127. This was consistent with The DoS OIG hotline web page at https://www.stateoig.gov/hotline which states 'Please note: OIG does not investigate complaints about the denial of U.S. visas.'

128. In April of 2023 Mr. Carr again complained about the lack of due process in processing visa applications and received the same response (apparently a form email) with H20231749 on 20 April 2023 for Mrs. Carr and H20231753 on 18 April 2023 for Mrs. Von Kramer.

129. However, in the 2023 complaints Mr. Carr explicitly made a plausible allegation of falsifying government records (a federal crime) from omitting required information from the denial notices as required by Due Process. Specifically there was no reference to any of the actual evidence presented or considered.

130. The right to a written decision well founded on the evidence is particularly important (perhaps the foundation of due process) and 18 U.S. Code Section 1001 defines a federal crime (falsification of government records) as:

> (a) ... whoever, in any matter within the jurisdiction of the executive... branch of the Government of the United States, knowingly and willfully --

(1) falsifies, conceals, or covers up ... a material fact;

131. This has been held to include the omission of required facts which would include the rationale for a particular visa denial. It would also include having contradictory records, e.g. the video recording which included absurd conclusions such as that Mrs. Carr could not receive a non-immigration visa while she had an outstanding immigration application and a written decision which has no explanation at all.

132. Mr. Carr asked that the matter be forwarded to the DoJ as DoS OIG was required to report all plausible allegations of federal crimes to the Attorney General by statute, i.e. the INSPECTOR GENERAL ACT OF 1978 which states in part that the 'Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law'

133. Mr. Carr explained that if the DoS OIG did not have sufficient resources to investigate every plausible allegation of a federal crime, it was acceptable to forward the complaints to another department for resolution (perhaps even local management) as long as the complaint was also forwarded to the DoJ.

134. Further, on 20 June 2023, Mr. Carr reported this malfeasance and, potentially, obstruction of justice within the DoS OIG to the DoS IG, Secretary Blinken (DoS), and CIGIE.

Count 6

CIGIE Takes No Action to Insure Lawful IG Compliance

135. The Plaintiffs repeat and re-allege paragraphs 1 through 135, as if fully set forth herein.

136. On 20 June 2023, Mr. Carr complained to the CIGIE about DoS IG not reporting federal crimes to the DoJ as required by statute.

137. On 9 August 2023 the CIGIE responded that it was closing the case IC23-083 with no action taken (a standard form letter email with no reference other than the date of complaint and case number).

138. On 9 Oct 2023, Mr. Carr complained to the CIGIE about USPS IG not reporting federal crimes to the DoJ as required by statute.

139. On 1 Nov 2023 the CIGIE responded that it was closing the case IC24-010 with no action taken (a standard form letter email with no reference other than the date of complaint and case number).

140.46Mr. Carr was seeking that the council abide by its charter and insure that all Inspector Generals (IG) and staff under the different IGs are aware of the requirement to report all federal crimes to the Attorney General (AG) or, logically, the Department of Justice (DoJ), whenever they believe a federal crime has been committed within their purview / department(s) which they monitor. See the INSPECTOR GENERAL ACT OF 1978, Section 4, which states in part that the "Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law."

141. It appears the United States Postal Service (USPS), Department of State (DoS) and Department of Homeland Security (DHS) IG's have each decided that they can choose not to prosecute certain federal crimes, particularly those crimes which have been integrated into the monitored departments normal procedures and which would be greatly disruptive to the monitored department to correct. They do this by refusing to report these crimes to the DoJ.

142. However, just because criminally illegal processes are integrated into the monitored department does not make them immune from prosecution. The decision to prosecute resides solely with the DoJ and failure of the IG to report federal crimes is at least malfeasance and could be construed to be obstruction of justice (another federal crime).

143. Mr. Carr was not asking for prosecution of any crime but only a directive from the CIGIE that all OIG personnel report all plausible allegations of federal crimes to DoJ even if they do not have sufficient resources to investigate the allegation and can not confirm that the crime is likely, much less prosecutable.

144. Further, it appears that the CIIGE has gone from a council which was intended to develop and enforce the highest standards adherence to the law to instead become a group that supports and encourages criminal behavior in their monitored departments and shares ideas and methods for supporting the criminal behavior. This could be construed as going beyond simple obstruction of justice to violating federal RICO criminal statutes, e.g. collusion between the illegal orders of the USPS BoG, USPS senior management, USPS IG, and CIGIE.

18 USC § 1505 - Obstructions of proceedings (OIG Case)

18 USC § 1510 - Obstruction of criminal investigations

Bribery to prevent communication with investigator

18 USC § 201 - Bribery of public officials and witnesses

Illegal order to OIG case worker to not report federal crimes to DoJ,

Case worker (or IG) gets to keep job if they do not report federal crimes to DoJ

18 USC Ch 96 (RICO) -

145. Of course Mr. Carr is not arguing that the RICO charges would be prosecutable or even recommending / asking the DoJ to prosecute any party, only that DoJ insures that all agencies of U.S. government endeavor to obey all lawful statutes to include reporting all plausible allegations of federal crimes to the DoJ.

Count 7

USCIS Denies Citizenship After Approval

Initial Applications

146. The Plaintiffs repeat and re-allege paragraphs 1 through 145, as if fully set forth herein.

147. On 04 Aug 2020, USCIS received Mrs. Carr's I-751 application for a permanent green card (remove two year conditions) with receipt MSC2091582908. However, there was no interview with Mrs. Carr receiving an 18 month extension letter and later a 24 month extension letter (thus extending the original expiration of her 'green card' from 13 Nov 2020 to 13 Nov 2022). This delay in scheduling the I-751 interview is a direct violation of 8 CFR Section 216.4(b)(1) which states:

> … The 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.

148. On July 11, 2022, Mrs. Carr submitted her N-400 application for naturalization as USCIS timetables suggested her I-751 interview was imminent and there was a 9 month delay for N-400 interviews. This would allow her to complete her I-751 interview and get her permanent green card about six months before her N-400 interview. This would allow time for her to study for the English and civics exams without concerns about having an expired green card.

Mrs. Carr's emphatic desire for a permanent green card before citizenship

149. It is important to understand that Mrs. Carr was absolutely terrified of USCIS. As an older immigrant from a poor family with extremely limited education, only 4 years of schooling, and no formal exposure to English in her childhood, Mrs. Carr feared arbitrary, capricious and unjust actions by USCIS such as deporting her without cause or notice if she failed her citizenship test or leaving her stranded overseas, not able to return to the U.S..

150. Mr. Carr also came from a relatively poor family, but he was born in the U.S. and was very fortunate. Mr. Carr graduated from West Point and later received a graduate degree from M.I.T.. Mr. Carr could not believe that USCIS would take unlawful and illegal actions such as leaving Mrs. Carr stranded overseas unable to return to the U.S.. It turns out in retrospect that Mrs. Carr was more correct than Mr. Carr.

Unlawful Restrictions on Travel by USCIS, Stranded in Thailand

151. In September of 2022, Mrs. Carr returned to Thailand on an emergency basis as her mother's health was failing. Sadly Mrs. Carr arrived just after her mother's death but was able to participate in the funeral ceremonies which extended until December of 2022 as Thai traditions has the ashes from the cremation waiting 100 days before being taken back by the family.

152. Her green card and extensions expired on 13 Nov 2023 while Mrs. Carr was in Thailand on an emergency basis. Even though 8 CFR Section 216.4 states ... 'Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director [of USCIS] has adjudicated the petition.', USCIS refused to provide Mrs. Carr with any documentation to allow her return to the United States. This is contrary to the above statute.

153. USCIS's suggestion for how Mrs. Carr was to return to the US was via an I-131A (for travelers who have 'lost' their documents to get a one time document allowing their return for a $575 fee). Instead Mrs. Carr got a $160 multiple entry B1 / B2, business / tourist visa and was able to return to the USA in late Dec 2022.

Rescheduling Original Interview

154. Further, USCIS scheduled Mrs. Carr's N-400 interview for 14 Dec 2022. Mr. Carr explained to USCIS that Mrs. Carr would be unable to attend as she was out of the country and could not return due to USCIS's refusal to provide her with proof of valid permanent resident

status. On 21 Nov 2022 USCIS canceled the 14 Dec 2022 interview and later scheduled her joint interview for I-751 and N-400 for 30 Jan 2023.

A-551 Passport Stamp Instead of Green Card

155. Mrs. Carr was also able to come into a USCIS office on 3 Jan 2023 to get an A-551 stamp in her passport which was valid for one year but does not provide the full ability to travel and work freely of a traditional green card.

Improper Application of English Requirement to Older and Poor,
Discriminates Against Buddhist and Islamic Cultures

156. Prior to the interview on 30 January 2032, Mr Carr initiated a complaint with the DHS OIG that the English requirements for naturalization were discriminatory based on religion, income, age and culture.

157. It is well established that the appropriate time to learn the sounds of English is soon after birth. Further the appropriate time to learn to recognize the shapes of English characters is before adolescence.

158. For example, in Thai language there is no 'th' sound. Further, the pair of plosive sounds d and t are not in the Thai language. The Thai language includes only the consonant that is between d and t. As an adult Mr Carr cannot hear the sound that is between d and t nor can he pronounce it. Similarly, because Mrs. Carr was not exposed to English at an early age, she is unable to hear or pronounce the 'th' sound.

159. Similarly, the time to learn to recognize the characters of the English alphabet is before adolescence. While it is possible to learn to recognize a foreign alphabet at later years, the recognition will never be as quick, accurate or comfortable as if it was learned before adolescence.

160. The actual effect of the English requirement for citizenship is to discriminate against older individuals from poor families from Buddhist and Islamic countries.

Joint I-751 and N-400 Interview of 30 Jan 2023

161. There was a joint I-751 and N-400 application on 30 Jan 2023. The informal results were that Mrs. Carr failed the English and civics tests. The interviewer also canceled the 'final' portion of the I-751 interview which was an undocumented and possibly unlawful review of the 'criminal background' questions from some previous forms (not part of the I-751

application itself) as Mrs. Carr did not understand English and so could not personally answer those questions.

162. The results of the interview were given verbally and informally at the time of the interview. There was also a poorly written and ambiguous form letter with check boxes concerning the N-400 results.

163. However, the next day (31 Jan 2023) USCIS entered a formal written decision for the I-751 application (previously provided to relevant Defendants as I797forMSC2091582908-ioe9752855294.pdf.) which stated in part:

> We have approved your I-751, Petition to Remove Conditions on Residence. Our records also indicate we have approved your Form N-400 Application for Naturalization. Because we also approved your N-400, you will not receive a new Permanent Resident Card (also known as a Green Card). Instead, once you have taken the Oath of Allegiance, you will receive a Certificate of Naturalization, which will be proof of your U.S. citizenship. If you have questions regarding this process, please contact the USCIS contact center at 800-375-5283.

164. Mr. and Mrs. Carr were elated at this change in fortune as it was a complete reversal of the informal verbal results. They relied on the formal written decision as a final findings of facts, decision, and order (to borrow from judicial terminology which is appropriate for a serious due process matter concerning the ability to vote and work and travel freely).

USCIS Denied I-751 Through False Statements

165. Within a couple of weeks Mr. and Mrs. Carr inquired at the specified contact number as to when the Oath of Allegiance would be scheduled and were told that the normal processing time for such matters was 4 or 5 months and that they should call back after that.

166. Mr. and Mrs. Carr would later learn that her I-751 was actually denied (no green card would ever be issued on that application based on the statement that Mrs. Carr's N-400 was approved). As more than thirty days have passed since this effective denial based on statements which USCIS believed to be false, there are no avenues within USCIS to actually get the permanent green card.

USCIS Unlawful Policies Justified as 'Enforcement'

167. The US government has had a long history of discriminating against foreign nationals with

USCIS and its counterpart for visas in the Department of State each contributing through an unlawful disregard for due process.

168. However, during the Trump era with the appointment of Director Francis Cissna, confirmed 5 Oct 2017, USCIS went to new heights of illegally mistreating foreign nationals.

169. Specifically, USCIS stopped waiving of the interview for an I-751 application even though these waivers were mandatory in accordance with 8 CFR Section 216.4 (b) which states:

> "The 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."

The unlawful elimination of waivers (previously about 90% had been waived) created an explosion in the unlawful queue for I-7171 interviews for USCIS which already had an illegal 1-year backlog of applications. Further, the interviewer was now required to verbally confirm the prior criminal background questions.

170. As most I-751 applicants do not speak English and most USCIS interviewers speak only English, USCIS effectively stopped conducting interviews for I-751 applications. Instead of adding more resources to conduct the expanded interviews with the collected fees, USCIS just illegally stopped conducting interviews which, along with the illegal termination of the mandated waivers, added to the explosion of the illegal queue for I-751 interviews. Executive Discretion gives wide latitude to the executive branch but this does not extend to explicitly prohibited behavior when there are legal options available such as using the collected fees for their specified purpose of granting waivers and conducting interviews. As cited above, USCIS was explicitly required to grant a waiver or schedule the interview and adjudicate the I-751 within 90 days of the acceptance date of the I-751 in 8 CFR Section 216.4(b)(1).

171. Instead USCIS simply waited until the applicant later filed an N-400 application for citizenship, though not all applicants later filed N-400 applications. Then the interviews were combined with the verbal review of the criminal background questions conducted in English, assuming the applicant was able to pass the English test. Further, the criminal background questions were already part of the N-400 interview in any case.

172. However, if the applicant was unable to pass the English test, then USCIS was in a bind for the I-751 new criminal background portion of the joint interview. USCIS had to find a creative solution to process this case.

173. It appears that USCIS chose to effectively deny the I-751 application by claiming it was approved along with the N-400 so that no permanent resident card was provided. However, USCIS would then refuse to provide either a permanent resident card or certificate of naturalization by later claiming in future case updates that the N-400 application had not been approved.

174. This meets the criteria of a federal crime because the effective denial of the I-751 application was based on a claim that USCIS believed was false. For future reference, this will be called 'effective denial based on false premises'.

USCIS Provides Incomplete or False Estimates of Interview Dates

175. When USCIS effectively ceased providing separate I-751 interviews, they did not provide notice to applicants nor did they provide accurate estimates for the dates when interviews would be scheduled. The actual scheduling of I-751 interviews was never unless the applicant submitted an N-400 application (citizenship) in which case both interviews were scheduled together almost immediately irrelevant of the normal queue for N-400 interviews.

176. This caused great uncertainty and fear for those applicants who were poorly educated with limited English ability and poor understanding of US government procedures such as Mrs. Carr.

177. The phone number provided by USCIS for questions and concerns was answered by an automated phone system which was distinctly unresponsive and would routinely hang up on applicants if they were not able to correctly formulate a request or question which the automated could respond to.

178. For most of the time when the I-751 application was pending scheduling an interview (and in a queue over two years long and growing), there were no requests or questions which the automated system could respond to. It was certain that the automated system would hang up on the applicant after about five minutes of struggling to find a way to speak to an actual person where they could explain their concern. This phone number was the only point of

contact for applicants attempting to get information about the status of their application.

Criminal Background Questions Unlawful

179. Just after the interview of 30 January 2023, Mr Carr also initiated an IG complaint concerning the criminal background questions which were routinely included as part of the USCIS application policy.

180. In particular, there are no exceptions provided about classified information which cannot be released to the interviewer or records sealed by a lawful court order.

181. Further, it is overly broad to not restrict the questions to actual convictions for serious crimes. As stated the questions would include every minor traffic or even parking violation in the state of Texas where such violations are considered crimes. The truth is, no one remembers all the situations where they may have gone over the speed limit or parked a few inches too close or too far from the curb.

182. In fact, the only accurate answer to any of the criminal background questions is 'yes' with an explanation of 'I can neither affirm nor deny the existence of information relating to this question.'. Any other answer could risk violations of the law by providing either classified or sealed information. Further, no one remembers or even knows all the circumstances where they may have violated some minor traffic, parking, or zoning regulation.

USCIS Informed of Upcoming Travel Plans

183. In August, Mr. and Mrs. Carr contacted USCIS about scheduling a new A-551 stamp for Mrs. Carr's passport to preserve her limited ability to work and travel based on their travel plans to be out of the country from 10 Oct 2023 to 25 Dec 2023. They were told that they could not get a replacement A-551 stamp as they can only be issued within 30 days of expiration and the applicant must be in the US to get the stamp.

184. In August Mr. Carr also contacted his congressman, Representative Veasey, seeking assistance in getting the Oath of Allegiance scheduled as no action had been taken in the matter.

N-400 Interview of 30 Jan 2023 Canceled

185. However, on 01 Sep 2023 USCIS sent a notice (USCIScancel20230901-20230130.pdf previously provided to relevant Defendants) which states that "the interview of 30 Jan 2023 was canceled due to unforeseen circumstances" (sent under the N-400 receipt). Of course

this is a completely false document (and hence a federal crime) as the N-400 interview was completed and this document contradicts several previous documents and verbal statements as well as the final decision in the I-751 case and later activity in the N-400 case.

186. On 5 Sep 2023 Mr. Carr and Mrs. Carr called USCIS at the prescribed number and spoke with Destiny, ID G010590.

They asked that Destiny send an email to the appropriate party to promptly schedule Mrs. Carr's Oath of Allegiance as stated in the cited I-751 approval notice and, in the alternative, if an N-400 was not actually approved, that Mrs. Carr be sent a new 10 year Permanent Resident Card.

Destiny explained that it is not uncommon for additional interviews to be required even after the I-751 and N-400 are approved and that Mrs. Carr could not be sent the approved Permanent Resident card. Implicitly her statement indicates that such formal approvals were actually effective denials based on false premises.

At that time Mr. Carr asked that Destiny take notes for details to include in the email she would send on their behalf.

Mr. Carr cited 18 U.S. Code Section 1001 which is one of many criminal codes for falsification of government records and states in part:

(a) ... whoever, in any matter within the jurisdiction of the executive... branch of the Government of the United States, knowingly and willfully --

(1) falsifies, conceals, or covers up ... a material fact; ... or

(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

(3) prohibits taking any action based on a false document with the implicit exceptions that actions may be taken to: correct the false document or, if the individual is not authorized to correct the false document, to report the false document to their supervisor

and / or the relevant OIG explaining that there is an existing false document and a possible federal crime when the document was created.

N-400 Interview Scheduled for 11 Oct 2023, Insufficient Notice

187. On 06 Sep 2023 USCIS scheduled an interview for 11 Oct 2023 as shown in UscisI797intrvw20231011.pdf (document previously provided to relevant Defendants), but the actual notice was not received until 15 Sep 2023 when it as too late to respond until the next week as Mrs. Carr works Tuesday to Sunday and is not able to respond while she is working.

188. The arrival date of this notice is a critical issue as there must have been timely notice of the interview in order to justify the denial of the N-400 application for failure to appear. In USCISuspsMailArrivals20230915.pdf (previously provided to relevant Defendants) is an email from USPS which shows the mail which arrived at their address on 15 Sep 2023. The notice of 06 Sep 2023 seems to have been mailed on 12 Sep 2023 according to the postmark shown in the USPS email. As 30 days notice is required for such interviews, the notice on 15 Sep 2023 was not timely for an 11 Oct 2023 interview and the denial of the N-400 application for failure to appear must be overturned due to lack of notice.

189. In the contested decision there is no claim of any notice at all and it appears that USCIS routinely delays mailing documents a few days after the date of the 'notice'. In cases of mailed documents they adjust the 30 days to 33 days to allow for time in the mail, but there is no adjustment for delay in printing and actually mailing the notice. Given that this document took 9 days to arrive, a more realistic adjustment for mailing would be 45 days if mailed without the normal proof of mailing.

Complaint of Falsified Records, 01 Sep 2023 Cancellation

190. On 10 Sep 2023, Mr. Carr contacted the USCIS director and DHS IG reporting the contradictory records (was the interview held on 30 Jan 2023 which approved the I-751 and N-400 or was it canceled with no results). With contradictory records, one or more of them must be false, the foundation of the federal crime of falsification of government records.

191. Mr. Carr also asked for acknowledgement of the report within 7 days. No such acknowledgement has been received to date.

192. On 07 Oct 2023, Mr. Carr asked that DoJ assist in correcting these serious defects in USCIS

and DHS IG. The reports of the crime and request for assistance have previously been provided to relevant Defendants. (Note: Mr. Carr was unaware of the scheduling of the interview for 11 Oct 2021 on 06 Sep 2023 when he first reported the crime).

193. On 12 Sep 2023 Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Umika, ID G20028112.

They complained of the 1 Sep 2023 I-797 Notice of the canceling of the 30 Jan 2023 N-400 interview due to unforeseen circumstances (described previously). They explained that the interview was held on that date and the 01 Sep 2023 document is a false record (and federal crime) which also contradicts the I-751 final decision of 31 Jan 2023 which stated that the N-400 application was approved at that interview. They advised Umika that she must either correct the false record or, if she did not have the authority to correct the record, she must contact either her supervisor or the IG or both to report the crime. Failure to do so on her part would itself be a crime under 18 U.S. Code Section 1001, part 3, which Mr. Carr read to her after asking her to take notes.

Mr. and Mrs. Carr also asked that Mrs. Carr immediately be sent the new 48 month extension letter which was publicly authorized by USCIS on 23 Jan 2023, one week before the interview (so USCIS was required to have mailed her a copy of the extension letter before the interview). The USCIS announcement was also about two months after they had complained to USCIS and the DHS OIG that USCIS had unlawfully left Mrs. Carr stranded in Thailand due to the absence of such a 48 month extension letter.

They also asked that USCIS send Mrs. Carr a permanent green card as soon as possible as there was now a record in the N-400 case indicating that her N-400 application had not been approved and so there was no basis for withholding the approved green card.

They also asked that the local representative contact the USCIS director in order to get copies of the emails which properly explained their complaints to date as that was the only method of sending written documents to USCIS for their consideration.

They also asked that the local representative call them back on Monday 18 Sep 2023 at 9AM as Mrs. Carr would be working during normal business hours on Tuesday through Sunday and unable to take calls. No such callback was made. (Note: At this time, Mr. Carr was unaware of the scheduling of the interview for 11 Oct 2021 on 06 Sep 2023 and did not receive notice until 15 Sep 2023.)

First Request to Reschedule Interview

194. On 19 Sep 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with David, ID G009845. (Note: this request was timely as Mr. Carr only learned of the scheduled interview date on 15 Sep 2023)

They requested that the interview scheduled for 11 Oct 2023 be rescheduled as they had prior plans to be out of the country from 10 Oct 2023 to 25 Dec 2023.

Mrs. Carr asked if the interview could be scheduled for only a day or two earlier but they were told that it could not be scheduled earlier.

Their request to reschedule the interview was assigned ID T1B2622391513DAL.

Upon a lengthy description of the purpose of the ten week trip, David incorrectly summarized the reason for the trip as 'leisure' which raised concerns for Mr. Carr that their trip was not being given appropriate gravity. They asked that David request that USCIS reschedule for after the completion of their trip on 25 Dec 2023. It turned out that David was restricted to 80 characters in his request and so described the reason for rescheduling as Mrs. Carr will be out of the country from 10 Oct 2023 to 25 Dec 2023 to increase the likelihood that the individual who responded would be aware of the duration of their trip.

They also asked that Mrs. Carr be provided with a 12 month extension letter as her A-551 stamp would expire on 03 Jan 2023 and if there were health or other problems which delayed their return, she would no longer have proof that she was authorized to work and travel freely. David assigned sn 30214416 to a request that a local USCIS representative

call Mrs. Carr from 2028382104 to discuss the extension letter.

Unsuccessful Call Back on 21 Sep 2023

195. The call back by the local USCIS representative was made on 21 Sep 2023 in the morning. Mrs. Carr was not home (as she was working) but it was rescheduled for later that evening at 7:30PM when Mrs. Carr was likely to be home. Mr. Carr called Mrs. Carr and she came home a little early and was home by 7PM but the USCIS representative did not return the call as agreed upon. No further return calls were made for this request.

Request that Mr. Carr be Mrs. Carr's Authorized Representative

196. Due to the confusion of not being able to get any response from USCIS, on 25 Sep 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Martha, ID G029811.

They asked about how to submit a G-28 appointment of Mr. Carr as the representative in this matter. They were told to mail the application to:

ATTN: N-400, G28 submission
850 NW Chipman Rd, Suite 5000
Lees Summit, MO 64063

An online G-28 request had been submitted on 24 Sep 2023 and the hard copy request was mailed on 26 Sep 2023. Martha also explained how to submit a document directly to USCIS on their web site and an electronic copy of the G-28 was submitted on 28 Sep 2023.

Martha also explained that USCIS responds to G-28 requests within 30 days. No response has been received to date on this G-28 request.

Denial of Reschedule Request, Not Sent to Authorized Email

197. While speaking with Martha on 25 Sep 2023, Mr. and Mrs. Carr also learned that on 19 Sep 2023, USCIS had denied their request to reschedule the interview and sent an email to airpk1961@gmail.com, an email address that is rarely monitored.

198. This was not proper. Before they were married Mrs. Carr had used that email and Mr. Carr had used carrbp@gmail.com. However, since their marriage they have shared their emails

with both parties having full access to both email addresses. As they have a legal union, they are not required to maintain separate personal email addresses and now reference all emails to carrbp@gmail.com which is regularly monitored. In rare cases when businesses insist on separate email addresses for separate persons, they provide Mrs. Carr's old email address, but that address is not regularly monitored. At no time have they agreed that USCIS should direct email notices to Mrs. Carr's old email address and none of the submissions to USCIS have authorized the use of that email address. The actual email from USCIS was previously provided to relevant Defendants as USCISnotReschedule20230919.pdf. It stated in part: "Type of service requested: -- Appointment Reschedule ... USCIS has reviewed your request for a rescheduled appointment, and we regret to inform you that your request has been denied based on the information provided. Failure to comply with your appointment notice or to appear for your scheduled interview may result in adjudication of your application based on the available information."

New request to Reschedule Interview

199. Due to the delay in their receipt of the denial of their request to reschedule the interview (sent on 19 Sep 2023, found on 25 Sep 2023), Mr. Carr uploaded a timely explanation of the reasons for rescheduling the interview on 27 Sep 2023 which has been previously provided to relevant Defendants as PostponeIntervieUntilAfter25Dec2023.pdf along with copies of the flight tickets, date restricted European visas, hotel reservations, required medical insurance coverage and European bus tour tickets, all of which are non-refundable. The document explains that the purpose of the trip is religious obligations, family obligations, business promotion, business training and education, and leisure. Planning for the trip was started in Feb 2023 and the leisure portion of the trip was to celebrate the approval of Mrs. Carr's N-400 application for naturalization as USCIS stated in I797forMSC2091582908-ioe9752855294.pdf on 31 Jan 2023.

200. On 2 Oct 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Crystal, ID G027432.

Mr. and Mrs. Carr asked that Crystal submit a new request to reschedule the interview based on the documents submitted on 27 Sep 2023. Crystal explained that they could not

make a new request to reschedule the interview until 15 days after the previous denial on 19 Sep 2023, i.e. 04 Oct 2023 (after the start of Mrs. Carr work week).

They explained that they had provided additional justification for rescheduling the interview which has been uploaded for USCIS to consider.

They asked that USCIS review the uploaded G-28, separately filed online and sent via mail and submitted electronically 28 Sep 2023. Crystal explained that USCIS has 30 days to act on G-28 requests.

201. On 10 Oct 2023, Mr. and Mrs. Carr called USCIS at the prescribed number and spoke with Antoinette, ID G0023588.

Mr. and Mrs. Carr asked that Antoinette submit a new request to reschedule the interview explaining that it was more than 15 days after the previous denial of the request to reschedule and explained that they had submitted additional documentation.

Antoinette contradicted the previous representative, Crystal, and stated that new requests to reschedule can only be made more than 30 days after a previous denial. As interviews are scheduled with the nominal 30 days notice (33 days if notice is by mailing), this would ensure that USCIS never reconsiders any denial of rescheduling no matter what the extenuating circumstances. As this claim also contradicts the previous representative it is likely that Antoinette's and possibly Crystal's claims are false and, hence, federal crimes.

Access to Case Records Unlawfully Denied

202. On 01 Sep 2023, Mr. Carr submitted a request for the entire record in the I-751 and N-400 cases via an online submission of a G-639 FOIA request. Mr. Carr asked for every email, message, or other records which reference the two receipts in this matter (MSC2091582908 and IOE9752855294) including both audio and video recordings. The request was assigned request ID NRC2023277190 and the response was made on 05 Oct 2023.

203. However, the response was only 32 pages and was only the original I-751 and N-400 applications. On 31 Oct 2023 a new FOIA request was submitted via email a copy of which

was previously provided to relevant Defendants as USCISfoiRqst.pdf. Note that this is a violation of the applicant's due process right to have access to the evidence against the applicant. Mr. Carr had requested access to every record which the tribunal relied on to deny the N-400 application, but was denied access to all such records. It is also possible that the claim that there were only two responsive documents was a federal crime of falsifying government records as it is clear that more records were requested and there was no justification for withholding the other documents.

USCIS Denies N-400 Citizenship Application for Failure to Appear

204. The Decision from USCIS dated 13 October 2023 previously provided to relevant Defendants as USCISdeny20231013.pdf states:

> On July 11, 2022, you filed a Form N-400, Application for Naturalization, with U.S. Citizenship and Immigration Services (USCIS) under section 319 of the Immigration and Nationality Act (INA). After a thorough review of the information provided in your application for naturalization, the documents supporting your application, and your testimony during your naturalization interview, USCIS has determined that you are not eligible for naturalization. Accordingly, USCIS must deny your application for naturalization. ...
>
> On November 13, 2018, you obtained conditional permanent resident status through your spouse and your conditions were removed on January 30, 2023. USCIS received your Form N-400 on July 11, 2022, and on January 30, 2023, you appeared for an interview to determine your eligibility for naturalization.
>
> At the beginning of your naturalization interview, an Immigration Services Officer placed you under oath and then administered the naturalization test. At that time you were unable to write a sentence in ordinary usage of the English language, and answer 6 of 10 U.S. Government and history (civics) questions correctly. Since you did not achieve a passing score on the English or civics portions of the naturalization test, on October 11, 2023, you were scheduled for a second interview to retake these portions of the naturalization test. On October 11, 2023, you did not appear as requested. Further, you have not provided USCIS with a good reason for your absence. Your failure to appear at the second

interview means you have not passed the English or civics testing requirements for naturalization. As a result, you are ineligible for naturalization since you have not demonstrated your ability to pass the English or civics requirements for naturalization. Therefore, USCIS must deny your application for naturalization. See INA 312 and Title 8, Code of Federal Regulations (8 CFR) section 312.5(a) and (b).

If you believe that you can overcome the grounds for this denial, you may submit a request for a hearing on Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, within 30 calendar days of service of this decision (33 days if this decision was mailed). See attached 8 CFR 336.2 (a) and 103.8(b). Without a properly filed Form N-336, this decision will become final. See INA 336.

USCIS Refuses to Provide New Green Card

205. On 19 Oct 2023, Mr. and Mrs. Carr called USCIS at the proscribed number and requested that Mrs. Carr be sent a new Green Card as her I-751 was approved on 31 Jan 2023 but the Green Card was withheld as her N-400 was also approved and her Certificate of Naturalization was imminent. However, the purported Decision of 14 Oct 2023 clearly indicates that USCIS does not intend to provide Mrs. Carr with the promised Certificate of Naturalization in the foreseeable future.

206. This request resulted in a referral of T1B2922301353MSC which concerned 'Non Delivery of Permanent Resident Card'. It was answered on 27 Oct 2023 with the document previously provided to relevant Defendants as USCISnoGreenCard20231027.pdf which listed 'Type of service requested: -- Non-Delivery of Permanent Resident Card' but answered with: "You ... contacted U.S. Citizenship and Immigration Services (USCIS) because you have not received your denial, termination or revocation notice. We have enclosed a copy of the notice for your reference. Please note that we are not able to extend the period for you to file an appeal from this decision. Therefore, follow the instructions on your notice carefully and submit accordingly."

207. There was no notice attached and the text does not make sense with respect to the request for a green card from an approved application. It appears to be the standard form letter message for a denial of a request.

208. The form letter does mention the requirement to contest an unfavorable decision within 30 days and, of course, pay the $700 fee first. However, as this decision referred to was an approval which was illegally contorted by false pretenses to be an effective denial, the text of the response is not responsive to actual request.

209. It appears that when USCIS attempts to effectively deny an application by claiming approval based on false pretenses, there is no way to appeal or correct the error other than the federal district courts.

Legal Arguments

Lack of Jurisdiction

210. Of primary importance is the lack of jurisdiction for USCIS to revise or ignore a prior final decision.

211. It is well understood that in the interest of justice to all parties in an action, there must be some final closure of arguments and litigation. Final decisions are intended to provide that relief to all parties with the caveat that each party has 30 days to notify all other parties of any pending disagreements. This is normally done through a notice of appeal requirement, generally within 30 days after proof of service of the decision by the prevailing party.

212. If USCIS had any complaints or concerns with the findings of facts in the I-751 decision of 31 Jan 2023, they should have raised the concerns within 30 days of publication of the decision.

213. As there is no avenue for USCIS to submit a motion for reconsideration of a matter which was decided by USCIS, the only forum where USCIS can seek redress is a new action in the federal district courts.

214. To provide otherwise is to deny all applicants to USCIS from the justice of having any final decision.

Lack of Notice to Support Failure to Appear

215. Another fundamental principle of due process is that all participants must be given adequate and sufficient notice of any action. It is clearly a travesty of justice to deny an application because of failure to appear when there is no evidence of notice.

216. In particular, in this case there is compelling evidence showing that Mr. Carr did not receive

notice of the upcoming interview until less than 30 days before the interview, i.e. 15 Sep 2023 for a hearing on 11 Oct 2023. As such, the improper denial must be overturned.

Lack of an Independent and Impartial Tribunal

217. One of the fundamental premises of due process is to have matters decided by an independent and impartial tribunal. It is important to recognize that Mr. Carr had filed numerous complaints with the DHS OIG concerning malfeasance and other unlawful activities by USCIS. His final complaints were for the federal crimes of falsifying government records by several employees who reported directly or indirectly to the director who made the final decision.

218. It is absurd to even consider that the Field Office Director, Ms. Montgomery, could be unbiased in resolving a matter in which several of her employees were accused of federal crimes which would surely reflect poorly on her own performance and future career opportunities.

Additional Federal Crimes by Ms Montgomery

219. One of the foundations of any government of law is to have accurate written records of all proceedings. That is almost certainly why Congress has decided to make it a serious federal crime to falsify any government record.

220. When Director Montgomery cited the approval of the I-751 application without mentioning the finding of an approval of the N-400 application, she falsified the record by omitting required facts..

221. When Director Montgomery stated 'Further, you have not provided USCIS with a good reason for your absence.' without mentioning the original request to reschedule she committed the crime of falsifying the record by failing to include required facts. Further, Director Montgomery does not mention the extensive documentation of substantial financial and personal impact required to change long standing plans in order to attend the interview. This evidence was provided to USCIS, and she falsified the record by omitting critical facts.

222. The entirety of her decision is based on timely notice and lack of response but she fails to discuss any of the factors which are critical elements of her decision.

Right of Appeal Prohibitive / Denied

223. The contested decision continues with the following text:

If you believe that you can overcome the grounds for this denial, you may submit a request for a hearing on Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, within 30 calendar days of service of this decision (33 days if this decision was mailed). See attached 8 CFR 336.2 (a) and 103.8(b). Without a properly filed Form N-336, this decision will become final. See INA 336.

224. An initial reading of this paragraph suggests that there are administrative procedures for appealing such bad decisions. However, while USCIS borrows heavily from judicial terminology in describing their processes and procedures creating the semblance of 'due process', the reality is USCIS does not provide any of the elements of due process.

225. In particular, the required fee to file N-336, request for a hearing, is a hefty $700 while the fee for filing a new N-400 is only $625. Similarly, the filing fee for a motion to reconsider is also $700 as is the fee for filing a 'Notice of Appeal'. For a budget minded applicant, the filing fees with federal district courts are a much more affordable $350 (admittedly heavily subsidized) so that applicants with limited assets may only be able to afford to file with the district courts rather than pursue the absurdly expensive administrative alternatives.

226. The likely reason that federal district courts are heavily subsidized is that justice should be provided to all persons and should not be restricted to the wealthy who can afford substantial fees.

Automated Phone System Prevents Applicants from Being Heard

227. It is a violation of due process for USCIS to restrict applicants to an automated phone system for all questions, concerns, requests, and evidence.

228. First of all, USCIS can not require all applicants to have phone access. They must provide a physical address where applicants and their representative or interpreter can ask questions and present concerns, requests, issues, and evidence. Appointments can not be required though substantial waits may be required without an appointment.

229. This in person access is required as each applicant must be permitted to be heard whether they have access to a phone or are technically savvy.

230. Further, it is a violation of due process when the automated phone system hangs up on applicants who are not able to correctly state their needs. The system must instead pass the request on to a human representative to hear the issues of the applicant though this option

may be deferred during non-business hours and holidays.

231. While providing this human access can be a significant expense, it is required for the due process opportunity to be heard.

232. If USCIS chooses it can also provide online secure messaging to applicants and their representatives as a cost effective way of providing a reliable and less expensive method raising concerns and getting responses.

Difficult Appointment of Spouse as Representative

233. It is a violation of the due process for USCIS to restrict the ability of an I-751 applicant's spouse to represent the applicant.

234. Due process requires the right to representation though not necessarily by an attorney. As the spouse is an American citizen, they almost certainly have better English and U.S. government skills. As such they are ideal representatives for their immigrant spouses.

235. In fact it is completely legal and proper for a spouse to represent the other party as needed in a real legal union (a.k.a. marriage). In truth, one of the signs of a fake marriage would be the absence of the citizen spouse to represent the immigrant spouse.

Inclusive Assumptions for Freedom of Information Act Requests

236. As due process requires that the applicant have full access to all of the evidence presented against him or her, the FOIA default must be to provide all records including audio and video recordings which the tribunal has access to.

Plaintiffs Were Damaged by USCIS's Unlawful Decisions and Actions

237. The refusal of USCIS to provide Mrs. Carr with her Certificate of Naturalization harmed Mrs. Carr by limiting her ability to vote and enjoy other privileges of citizenship. Also, Mrs. Carr has close family members (which includes two sons. a brother, and two sisters including Mrs. Von Kramer) who have been denied their right to apply for immigration and be placed in the queue for Permanent Residence (Green Card) as well as, potentially, citizenship.

Count 8

DHS OIG Takes No Action To Address Criminal Behavior

238. The Plaintiffs repeat and re-allege paragraphs 1 through 237, as if fully set forth herein.

239. On 4 Dec 2022, Mr. Carr complained via DHS OIG Hotline that Mrs. Carr had been

stranded in Thailand through the unlawful, knowing failure of USCIS to abide by the statutory mandates of 8 CFR Section 216.4 ... "Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition."

240. Mr. Carr was assigned case number HLCN1670132157186 but has not received any further response from DHS OIG.

241. On 5 Dec 2022 expanded on his complaint against USCIS and received case number HLCN1670226793068 but has not received any further response.

242. It is possible that the announcement on 23 Jan 2023 of a new 48 month extension letter was based on Mr. Carr's complaint on 4 Dec 2022 that Mrs. Carr was stranded in Thailand due to the expiration of her 24 month extension letter.

243. However, Mrs. Carr's freedom to work and travel freely was never restored as she never received the 48 month extension letter.

244. On 10 Sep 2023, Mr. Carr notified the DHS OIG directly through the IG of the federal crimes committed by USCIS. He also opened a complaint via DHS OIG Hotline and was assigned case number HLCN1694292030038.

245. On 13 Nov 2023, Mr. Carr notified the DHS OIG directly through the IG of the additional federal crimes committed by USCIS as well as the 'whistleblower' retaliation taken by USCIS against Mrs. Carr for Mr. Carr's widespread reports of federal crimes. Mr. Carr also opened another complaint via DHS OIG Hotline and was assigned case number HLCN1699850033209.

246. It is the DHS OIG's responsibility to not only insure that such serious malfeasance and deprivation of a person's constitutionally guaranteed rights do not happen but also that the harm from failures is redressed to the degree possible by the monitored agency (USCIS in this case).

Count 8

DoJ Takes No Action To Address Criminal Behavior

247. The Plaintiffs repeat and re-allege paragraphs 1 through 246, as if fully set forth herein.

248. On 3 Mar 2023 Mr. Carr notified the DoJ Attorney General via mail of the allegations raised against the USPS, USPS OIG, and USPS BoG. The DoJ had previously been copied on the allegations as they were raised to the relevant agencies.

249. The DoJ opened reference NM301959635 for the matter with email contact of criminal.division@usdoj.gov, referring the matter to the Postal Inspection Service.

250. On 20 June 2023 Mr Carr notified the DoJ via mail of federal crimes and malfeasance in the DoS and related agencies and asking assistance in correcting the unlawful actions. Mr. Carr did not request the prosecution of any party. The DoJ had previously been copied on the various complaints with the DoS agencies.

251. On 8 Sep 2023 Mr. Carr asked for the assistance of the DoJ with respect to the USCIS and related agencies. The DoJ had previously been copied on the various complaints with the USCIS agencies.

252. On 9 Oct 2023, Mr. Carr again asked the DoJ for assistance with the USPS problems clarifying that he was not seeking prosecution of any party but instead seeking to end the federal crimes and other unlawful practices.

253. On 25 Oct 2023, Mr. Carr again asked the DoJ for assistance in correcting the unlawful practices by CIGIE with respect to failing to maintain proper standards for IG's and OIG employees. He did not request the prosecution of any party, only assistance in preventing unlawful conduct. .

Relief Soughts

PRAYER FOR RELIEF

WHEREFORE, The Plaintiffs ask this Court to enter Orders:

USPS, OIG and DoJ Corrections

1. Directing USPS to provide a credit for future services for $26.35 to Mr. and Mrs. Carr; In the alternative, USPS can provide a credit to Mr. Carr's credit card (the same card which was charged initially) or a check in that amount to Mr. Carr in the event that USPS finds it too cumbersome to add support for credits for future services to its online web services.
2. Directing USPS to update its dispute / credit process so that postal customers can get guaranteed refunds for late deliveries with a single visit / web form with the presumption that the delivery was late as attested by the customer (and notice that falsifying a government record is a federal crime).

3. Directing USPS OIG to do a preliminary investigation whenever USPS delivery records conflict with the customer's attestation. USPS OIG must refer the matter to DoJ in all cases where there is clear evidence that either the customer or the delivery driver falsified a government record. Due to the automated nature of many USPS records, this determination could be automated to a substantial degree so that USPS OIG staff only need to get involved with cases where there are clear indications of falsification of government records.
4. Directing USPS to promptly correct all incorrect delivery records, certainly before they are accumulated and reported to Congress and the U.S. public or used for computing management bonuses.
5. Directing USPS OIG, DoS OIG, and DHS OIG to expeditiously investigate all plausible allegations of federal crimes. It the event that an OIG does not have sufficient resources to expeditiously investigate all plausible allegations of a federal crime sufficiently to determine if a federal crime is likely, it can refer the matter to local management or other parties for resolution, but it must report all such plausible allegations of federal crimes to DoJ which it does not investigate itself. If an OIG finds that any allegation of a federal crime is likely it must expeditiously report the matter to DoJ whether or not the crime is deemed to be worthy of prosecution. The determination of prosecution is reserved solely to DoJ.
6. Directing DoJ to investigate USPS BoG, USPS management, USPS IG, and USPS OIG management to determine if there were illegal orders preventing USPS OIG staff from reporting federal crimes to the DoJ. If there is evidence of such illegal orders, all such orders must be properly rescinded. Any penalties or prosecution is solely at the discretion of DoJ.
7. Directing DoJ to investigate USPS BoG and USPS management to determine if there were illegal orders encouraging falsifying delivery records (a.k.a. improper 'Stop the Clock' scans). If there is evidence of such illegal orders, all such orders must be properly rescinded. Any penalties or prosecution is solely at the discretion of DoJ.

Department of State Corrections

8. Directing DoS to provide a credit for future services of $80.00 to Mr. and Mrs. Carr and $624 to Mrs. Von Kramer. These credits can be used by the parties themselves, their family, or their friends. In the alternative, the DoS can provide checks in those amounts to the Plaintiffs in the event that DoS finds it too cumbersome to support these credits in their

otherwise automated payment system.

9. Directing DoS to ensure that all visa denials include clear and specific references to the evidence considered and rationale for denial. All visa denials must be reviewed by supervisors and corrected if there is not clear and specific references to the evidence considered and the rationale for denial. The applicant must be promptly informed of the rationale for the rejection in writing in any case. Any visa denials which are not corrected in this fashion should be referred to the DoS OIG and reported to the DoJ for any such omissions for decisions on prosecution for falsification of government records through omission of required facts.
10. Directing DoJ to work with DoS to ensure that all the elements of Due Process are properly implemented in the visa application review process with particular attention to the right to representation and the right to access all the evidence presented against the applicant.
11. The European Schengen visas could be considered as a starting point as they are able to provide fair and consistent visitor visas at an affordable rate, often relying on global firms who handle much of the burden of collecting and reviewing the required paperwork.
12. Directing DoS OIG to investigate whether there were unpublished unlawful policies or guidance provided to interviewers such as denying non immigrant visas to older widows of deceased American citizens or applicants with concurrent immigration applications. All such policies must be rescinded and any decisions on prosecution is reserved to the DoJ.
13. Directing DoS to evaluate all non-immigrant visa applications since 1 Jan 2018 to the present on a per country basis to determine the denial rate for applications where according the applicant was over 57 years old and marital status listed in the application would be indicative of eligibility for SSA survivors' benefits, specifically deceased spouse who was an American citizen or permanent resident with more than ten years residence and not remarried.
14. DoS is further directed that if the denial rate for the identified applicants is more than one standard deviation higher than all applicants for the specific country, then all identified applicants must be contacted and offered a credit for the prior denied visa application(s), adjusted for any increases in the application fees. Further, the prior applicant must also be provided with the SSA's preliminary determination of current eligibility for survivors' benefits based on the deceased spouse's work history and other dates provided by DoS from

the visa application.

SSA Order

15. Directing SSA to reconsider the finding that Mrs. Von Kramer's does not have five years of lawful presence in the United States. As Mrs. Von Kramer was unlawfully prevented from visiting the United States in 2019, 2020 and 2021 with the stated goal of, among other things, establishing a lawful presence, the SSA is directed to credit her with having met the requirements of lawful presence for those three years. If her actions in 2022 and 2023 or later years meet the requirements for lawful presence, then Mrs. Von Kramer must be held to have established a lawful presence in the United States and granted the benefits thereof.
16. Any DoS identified applicants whose previous non-immigrant visas may have been improperly denied as determined above and who later are granted non-immigrant visas should also be given letters from the DoS stating that the applicant may have been denied prior visa applications unlawfully and asking that SSA credit the applicant with 'lawful presence' for the years when they may have been unlawfully denied the ability to visit the U.S. with the letter identifying the date of the first improper denial and the date of the first approved visa.

CIGIE Corrections

17. CIGIE must review its standards and policies to ensure that all IG's and OIG employees are aware of the requirements to expeditiously investigate and report federal crimes. In the event that a particular OIG does not have sufficient resources to expeditiously investigate all plausible allegations of a federal crime sufficiently to determine if a federal crime is likely, it can refer the matter to local management or other parties for resolution, but it must report all such plausible allegations of federal crimes to DoJ which it does not investigate itself. If a particular OIG finds that any allegation of a federal crime is likely it must expeditiously report the matter to DoJ whether or not the crime is deemed to be worthy of prosecution. The determination of prosecution is reserved solely to DoJ.
18. Directing the DOJ to investigate the failure of CIGIE to itself promptly investigate and report federal crimes. All such practices and policies which led to past failures must be rescinded. The decision on penalties and prosecution are reserved solely to the DoJ.

USCIS Corrections

Credit for Visa Fees when Stranded Overseas

19. Directing USCIS to provide a credit for future services with USCIS to Mr. and Mrs. Carr for $80 for use on their behalf as well as their family members and friends. This credit is half of the business / tourist visa application fee which was required in order for Mrs. Carr to return to the U.S. when she was stranded in Thailand in 2022. The fee was $160, but DoS has been requested to provide the other half for their unlawful denial of such a visa to Mrs. Carr in 2017. In the alternative USCIS may choose to provide checks to all injured parties as an alternative to credits for future services in this and other reparations, but this is solely at the option of USCIS. It is possible that the total reparations requested may justify handling them as credits for future services.

Right to work and travel freely as well as right to vote

20. The primary relief sought is for Mrs. Carr to receive her Certificate of Naturalization as soon as possible. However, specific relief sought include orders directing:

A. Mrs Carr should receive her 48 month extension letter or a 1 year extension letter as soon as possible, specifically within one week of the date of issuance of the court's order.

B. Mrs Carr should receive her 10-year Permanent Resident Card as soon as possible. Specifically within one month of the court's order.

C. Mrs. Carr should have her Oath of Allegiance ceremony scheduled and completed within 1 month and her Certificate of Naturalization issued within 2 months of the court's order.

In the event that this court determines that it does not have jurisdiction to fully order the implementation of the Final Decision of 31 Jan 2023 approving both of Mrs. Carr's I-751 and N-400 applications, the court is asked review the Denial of Mrs. Carr's N-400 application on 14 Oct 2024 'de novo' per 8 USC section 1421(c).

Credit for Delay in Granting Citizenship

21. Directing USCIS to credit Mrs. Carr with additional credits for the deprivation of the rights of citizenship to include the rights for close family members to seek immigration authorizations as well as the right to vote and such. As it is not possible retroactively grant Mrs. Carr the right to vote and others rights of being a U.S. citizen (such as the right to visit Europe without a European visa) the family members should be credited with twice the delay in her citizenship, i.e. their position in the queue for immigration visas should be

adjusted as if their application was received earlier. The doubling of their credit in queue position corrects not only the delay in their application but also they get their citizenship rights (e.g. voting) earlier in compensation for the deprivation of Mrs. Carr's citizenship rights (e.g. voting). For Mrs. Carr the computation of the credit for family members immigration should be based on the delay in citizenship which should be from 13 Nov 2021 to the date when her Certificate of Citizenship is actually given to her. The 2021 is used because that is the earliest date that Mrs. Carr was eligible to become a citizen and is in recognition of the unwarranted challenges and barriers USCIS placed on her citizenship. Indeed Mrs. Carr would have become a citizen on that date had USCIS permitted it.

Credit for Extraneous I-751 Fees

22. Directing that Mrs. Carr be given a credit for future services with USCIS for the extraneous I-751 application fees of $680 which were duplicated with N-400 services (interview and biometrics). Mrs. Carr never received any I-751 specific services and should not have been charged for the services. This credit can be used for future services with USCIS for herself, her family, Mr. Carr's family, or Mr. or Mrs. Carr's friends.

Review of Other I-751 and N-400 Records

23. Directing that USCIS databases should be queried for all I-751 records processed since 1 Jan 2018 to determine how many other records were similarly falsified. In particular, how many I-751 applications by quarter were approved but with no permanent resident card or Certificate of Naturalization issued within 90 days.
24. If the identified applicants are found to have a statement in the I-751 approval that the corresponding N-400 had been approved then these applicants should be issued a Certificate of Naturalization as soon as possible if they have not already been issued said certificate.
25. All such applicants should be similarly credited for future services with USCIS for their use, their families use, or their friends use for the cost of the I-751 application fee. In addition, any relatives who apply for immigration visas based on their citizenship status should be credited with double the time of the original applicant's delay. The delay is computed to be from the date of the I-751 claim of N-400 approval to the actual date of issuance of a Certificate of Naturalization.
26. If the number of applicants and immigration credits are so large as to substantially impact current immigration queue members, USCIS is directed to apply to Congress to get

sufficient additional slots for each country so as to preserve the integrity of the queue for that country.

Falsified Records Must Be Corrected

27. Further, all falsified records should be deleted (actually hidden to avoid potential database corruption) with new records of a falsified record being inserted at the same date and time of the deleted/hidden record. There should be an additional corresponding record at the current date and time which includes the content of the falsified record for later review.
28. All reports to Congress and other entities which relied on these falsified completion records must be revised to note the number of records which were previously recorded as processed, but were actually pending correction of the false resolution. The corrected resolutions should be added to current reports as approvals from previously denied falsified records (a new category).

Adjustments for Language / Cultural Differences

29. Just as USCIS has added exemptions for people with medical impairments, as well as exemptions based on age, USCIS is directed to extend these exemptions to consider the education opportunities presented to a particular individual before they were 21. They should also be extended to consider the difficulty in mastering English based on the nation of birth.
30. For example, there could be an annual review by country of the rate of application for citizenship as well as the rate of granting citizenship. Exemptions should be granted to individuals from countries like Thailand where mastering English is extremely difficult for those who are older and poorly educated. The exemptions should be granted based on age less years of formal training in English before they were 21 and sufficient to correct the rate of citizenship approvals to match those of countries such as Canada or the United Kingdom where the rate of granting citizenship is, presumably, highest.
31. The approval rate would be the number of approvals from a particular country divided by the number of permanent residents from that country who are eligible to apply for citizenship, not the number who actually apply. It is expected that there will be a large backlog of residents form Buddhist / Muslim countries who would like to be citizens but did not apply because the English and Civics test was too difficult for them to pass based on their lack of exposure to English in their youth.

32. For countries such as Thailand and other Buddhist / Muslim countries, this would likely mean eliminating the English and civics test for all N-400 applicants for a few years until the rate of granting citizenship matches that of Canada or the United Kingdom. This would be a valuable correction to eliminate the past unlawful discrimination against certain groups based on religion, race, culture, and age.

USCIS Must Correct Time For Legal Notice

33. USCIS be directed to allow more time for timely notices of actions. If USCIS wishes to update its notice process to record and publish accurate records of the actual date of mailing of notices, 7 days could be added to the actual date of mailing for notices. Three days for first class mail is insufficient to be confident of prompt receipt.
34. As it generally takes USCIS 6 days to print a notice and prepare it for mailing, this would normally be 45 days after the date of the decision itself to allow for unforeseen delays in processing before and after mailing.
35. Of course, any denials based on assumed notice without an accurate record of delivery (signature required mailing or process server), would be conditional and must be easily contestable in the event that there was not actual timely delivery. The applicant must be able to contest the denial without any additional fees by explaining any extenuating circumstances which prevented timely notice or appearance (e.g. applicant was in the hospital and did not receive the notice or was not able to appear or answer while hospitalized).
36. For all cases where USCIS denied an application for failure to appear and there was not 45 days notice nor any record of the actual date of mailing, all such actions since 1 Jan 2018 must be remanded to USCIS for proper processing overturning all denials where there was not proof of timely notice.
37. The applicant must be given a credit for the filing fees for the original application as well as having the application opened again for proper consideration. All denial records must be updated to note the denial was overturned due to lack of notice. All reports to Congress and others which were based on the improper denial (showing an application was processed) must be corrected to show that the application was incorrectly denied and has been returned to an active status.

Adjustment of USCIS Fees for Appeal, Reconsideration

38. USCIS fees for N-336 requests to review, motions to reconsider, notice of appeal, and actual appeal filing must be reduced so that they are not prohibitive. It is suggested that no motion to argue or motion to reconsider should cost more than 5% of the federal district court filing fee (now $350, hence no more than $17.50). Actual appeal filing fees should not exceed half the district court filing fees, e.g. $175. There must be no fee for N-336 and other motions to reconsider when the applicant is contesting presumptive / conditional denials for failure to appear as the applicant must be provided the opportunity to explain failures in actual notice or extenuating circumstances which prevented appearance or answering (e.g. hospitalization).
39. The justification for this is to encourage applicants to seek redress with the USCIS rather than going directly to the district courts. It also furthers due process by making the proceedings fair and providing opportunities for applicants to be heard / argue their cases as necessary.

USCIS Must Restore Interview Waivers and
Cease Criminal Background Reviews for I-751 Applications

40. The administrative policies implemented by the prior USCIS director in the 2018 time frame must be rescinded. They do not provide any improvement in enforcement and greatly harm applicants' rights in these matters. They are also in direct violation of the waiver or interview within 90 days requirement explicitly stated in 8 CFR Section 216.4(b)(1) and cited above.
41. Mrs. Carr is requesting that interview waivers be resumed at an accelerated rate so that at least 2 months of backlog are eliminated each month. Realistically that means that three months of applications must be granted their permanent resident card each month without the optional interview and without further delay.
42. This should eliminate the current illegal four year backlog within two years.
43. Once the backlog is reduced to three months the accelerated approvals can be eliminated and mandatory approvals without interview will only be for those applications which have languished in the queue for up to three months and the total number of pending applications exceeds the number of new applications.
44. If there are concerns about applicants not understanding the criminal background questions in English, USCIS can provide written copies of the criminal background questions

translated into all the appropriate languages. However, these questions should only be applied to new applicants for immigration visas, not approved permanent residents.

45. USCIS should immediately begin with interview waivers for the oldest applications, but if USCIS wishes, it can send out new forms to potential waiver recipients asking for authorization to access all of their social media, mobile and credit rating records for both spouses. Failure to provide authorization or the appropriate accounts and addresses would result in a delay of any interview waivers. All applicants who authorized full electronic access to their records could be granted waivers before applicants who did not provide such access though the delay in the scheduling of an interview is restricted to 90 days in 8 CFR Section 216.4(b)(1) in all cases.
46. Over time, USCIS could develop AI programs which very accurately identify fake marriages based on the contents or lack of social media and other records. Given the vast amount of information available through phone records (e.g. Google's timeline which could show the location of each spouse for every day and night of their purported marriage), social media and credit histories, the interview itself appears to be a highly ineffective and very expensive method of identifying fake marriages. A well trained AI program could identify fake marriages with substantially greater accuracy at a fraction of the cost of interviews.

Required Access Provided to Applicants

47. USCIS must immediately disable hang ups by the automated phone system and instead fail over to a human representative. Further, USCIS must send notices to all active applicants of the address where they can go without any appointment to ask questions and raise concerns. USCIS must respond to in person questions, concerns and requests.
48. Secure messaging systems are now relatively routine technology and should be offered as an addition to the MyUSCIS web page to provide a more reliable and cost effective alternative for those applicants who choose to use this option. It is absurd to require technically savvy applicants or their representatives to navigate the lengthy automated phone system to get to speak to a person who will reduce their input to 80 characters at great expense to USCIS and great information loss from incomplete or inaccurate transcription.

USCIS Must Guarantee Applicants' Right to Representation

49. USCIS must grant immediate approval to any spouse who files to become an applicant's representative. Further, the application form itself must be adjusted to allow that option on

the application itself.

50. Pending I-751 applicants must be notified immediately of their ability to add their spouse as a representative via a simple phone call.

More Expansive FOIA Responses

51. USCIS must change its defaults for FOIA requests to provide access to every record including audio and video recordings which reference the requested receipt number.

DHS OIG Corrections

52. Directing DHS OIG to ensure that it promptly investigates and reports all federal crimes as described above. Further, while the decision to prosecute resides solely with the DoJ, the DHS OIG needs to ensure that serious malfeasance such as depriving foreign nationals of their constitutional rights is promptly investigated and corrected. Further, the DHS OIG must ensure that appropriate and timely redress is provided to injured parties.
53. For example, if a foreign national is unlawfully stranded overseas, the DHS OIG must ensure that the offending agency corrects the defect promptly, perhaps sending a PDF file with the required extension letter via email to the stranded party in time to not hinder their travel plans. The 23 Jan 2023 approval of a 48 month extension letters was too late and was not provided to the injured party in this case.

DoJ Corrections

54. Directing the DoJ to investigate and track all plausible allegations of federal crimes as necessary to insure that the criminal behavior is not repeated and that injured parties receive appropriate redress. It is acceptable for local OIG's or even local management to complete the bulk of the investigations as long as the DoJ monitors the results and does not forego the option of criminal prosecution until adequate remediation is put in place to prevent future crimes and redress is provided to all injured parties.
55. Directing the DoJ to investigate all failures of OIG's to expeditiously report plausible federal crimes to the DoJ as described above. Any failures to report federal crimes must be investigated as potential 'obstruction of justice' crimes though prosecution remains the purview of the DoJ and the threat of prosecution should be used as a cudgel to insure future adherence as well as redress when appropriate.
56. Granting the Plaintiffs such additional relief as the interests of justice may require, together

with their costs and disbursements in maintaining this action.

Respectfully submitted,

Verification of Complaint

We the undersigned Plaintiffs hereby affirm under penalty of perjury in both the United States and Thailand that as individuals:

1. I have reviewed the allegations and believe all of the allegations 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 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: 27 Mar 2024
Location: Irving, TX

/s *Air Carr*

Rueangrong Carr
1201 Brady Dr
Irving, TX 75061
Date: 27 Mar 2024
Location: Irving, TX

/s Buakhao Von Kramer

Buakhao Von Kramer
105 - 3 M 5 T YANGNERNG
SARAPEE, CHIANG MAI 50140 THAILAND
Date: 27 Mar 2024
Location: Irving, TX

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*

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

CERTIFICATION OF ELECTRONIC SIGNATURES

In accordance with TXND LR 11.1(d), on the recorded date I received permission from Mrs. Carr and Mrs. Von Kramer to sign this document electronically on their behalf after having provided them with the relevant sections of the document in English and translated into Thai (relying on Google Translate). We then discussed the documents in English (as Google Translate does always provide meaningful translations) and the only concerns about accuracy was Mrs. Von Kramer's concern that the document specifies precise dates and times for the various visa interviews and she really does not remember that level of detail about those events (several years ago).

I assured Mrs. Von Kramer that the dates and times were established from the electronic records of the appointment (e.g. the official appointment document to allow applicant entry into the consulate) which I had retained. I explained that her signature does not indicate she remembers the interviews being on that date at that time but rather that she has no knowledge or recollection to the contrary. She does remember interviews of that nature in that time frame.

In turn, I must qualify that almost none of the details in this now sworn statement (no longer allegations) were based on my recollection but rather careful review of electronic records which I have retained and maintained and which I believe to be accurate.

/s *Brian P. Carr*

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Date: 28 Mar 2024
Location: Irving, Texas

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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 Request for Assistance คำร้องขอความช่วยเหลือ

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAR 28 2025
CLERK, U.S. DISTRICT COURT
By _____ Deputy

เรียนผู้พิพากษารัทเทอร์ฟอร์ด

ข้าพเจ้าได้รับแจ้งว่าท่านได้แนะนำให้ผู้พิพากษาอาวุโสยกฟ้องคดีนี้ เนื่องจากข้าพเจ้าไม่ได้ลงนามในคำร้องแก้ไขที่ยื่นต่อศาลเมื่อวันที่ 27 มีนาคม 2024 อย่างถูกต้อง

ไบรอันสามีของข้าพเจ้าได้ลงนามในคำร้องแก้ไขทางอิเล็กทรอนิกส์ในวันนั้น และข้าพเจ้าตกลงไว้ก่อนหน้านี้ว่าเขาจะลงนามทางอิเล็กทรอนิกส์ในนามของข้าพเจ้าได้ วิธีนี้ดูเหมือนจะไม่เพียงพอ แต่ข้าพเจ้าไม่ทราบแนวทางแก้ไขใดๆ ในขณะนี้

อย่างไรก็ตาม ข้าพเจ้าได้ลงนามในคำร้องฉบับดั้งเดิมเมื่อวันที่ 28 ธันวาคม 2023 และคำร้องฉบับดังกล่าวสะท้อนถึงความต้องการและสถานการณ์ของข้าพเจ้าในวันนั้นได้อย่างถูกต้อง

ข้าพเจ้าวิงวอนศาลอย่างจริงใจให้ให้ความช่วยเหลือที่เราต้องการ

การขอวีซ่าท่องเที่ยวครั้งแรกถูกปฏิเสธ

1. เมื่อฉันและสามีแต่งงานกันเมื่อวันที่ 23 มิถุนายน 2018 เรามีความสุขมากและอยากไปเที่ยวด้วยกัน เรายื่นคำร้องกับสำนักงานตรวจคนเข้าเมืองสหรัฐฯ เพื่อที่เราจะได้เยี่ยมชมและใช้ชีวิตใน

สหรัฐอเมริกา เราต้องการใช้เวลาในประเทศไทยและสหรัฐอเมริกาให้มากขึ้น รวมถึงไปเที่ยวประเทศอื่นๆ ด้วย

2. เรายื่นขอวีซ่าถาวรซึ่งจะทำให้เราได้ "กรีนการ์ด" อย่างไรก็ตาม หลังจากที่ไบรอันยื่นขอวีซ่าถาวรของฉันแล้ว เราจึงได้รู้ว่าต้องใช้เวลาหนึ่งปีกว่าที่เราจะเดินทางไปสหรัฐอเมริกาได้

3. เนื่องจากแม่ของไบรอันอายุมากและสุขภาพไม่ดี เราจึงกลัวว่าเธอจะเสียชีวิตในไม่ช้านี้ ฉันอยากเจอแม่ของเขา ดังนั้นเราจึงยื่นขอวีซ่าท่องเที่ยว (ไม่ใช่วีซ่าถาวร) ที่จะทำให้เราไปเยี่ยมแม่ของเขาได้ จากนั้นจึงกลับมายังประเทศไทยจนกว่าจะได้รับวีซ่าถาวร

4. ไบรอันกรอกคำร้องของฉัน ชำระค่าธรรมเนียม (ประมาณ 90 เหรียญ) และนัดหมายให้ฉันที่สถานทูตเชียงใหม่ ฉันรู้สึกประหม่ามากและอยากให้ไบรอันมาสัมภาษณ์กับฉัน แต่สถานทูตบอกว่าไม่

5. ไบรอันเตรียมเอกสารมากมายเพื่ออธิบายว่าแม่ของเขาอายุมากและสุขภาพไม่ดี เราคาดว่าเธอจะเสียชีวิตก่อนที่เราจะได้วีซ่าเข้าเมือง

6. เขายังให้เอกสารที่แสดงว่าเรามีทรัพย์สินเพียงพอที่จะใช้ชีวิตที่ไหนก็ได้ที่เราต้องการ เราจะไม่อยู่เกินกำหนดเพราะการอยู่เกินกำหนดจะทำให้เราไม่สามารถเดินทางได้อย่างอิสระในอนาคต

7. ผู้สัมภาษณ์ไม่ได้ถามอะไรฉันเลย แต่เธอตรวจสอบคอมพิวเตอร์ของเธอและบอกว่าฉันได้ยื่นขอวีซ่าถาวรไปแล้ว และเธอจะไม่อนุมัติวีซ่าท่องเที่ยวของฉัน เว้นแต่ฉันจะยกเลิกวีซ่าถาวรก่อน

8. ฉันรู้สึกแย่มากและเริ่มร้องไห้ ฉันกลัวว่าไบรอันจะไปเยี่ยมแม่ของเขาเพียงลำพัง และเราจะต้องแยกจากกันเป็นเวลาหลายเดือน และฉันจะไม่มีวันได้พบแม่ของเขาเลย ขณะที่ฉันกำลังจะจากไป หญิงสาวใจดีคนหนึ่งที่สถานทูตพยายามปลอบใจฉันและบอกให้ฉันลองอีกครั้ง และบางทีฉันอาจจะได้สัมภาษณ์กับผู้สัมภาษณ์ที่ใจดีในครั้งหน้า แต่หัวใจของฉันยังคงแตกสลาย

9. หลังจากฉันออกจากการสัมภาษณ์ ฉันได้พบกับไบรอันด้านนอกสถานทูตและบอกเขาเกี่ยวกับการสัมภาษณ์ เขาโกรธเพราะเขาได้ศึกษาข้อกำหนดสำหรับวีซ่าท่องเที่ยวอย่างละเอียด และมั่นใจว่าเอกสารที่เขาเตรียมไว้ให้ฉันนั้นตรงตามข้อกำหนดสำหรับวีซ่าท่องเที่ยวทั้งหมด

10. เขายังอารมณ์เสียด้วยเพราะเอกสารที่ฉันได้รับซึ่งอธิบายว่าทำไมวีซ่าท่องเที่ยวของฉันถึงถูกปฏิเสธไม่ได้กล่าวถึงการสมัครวีซ่าถาวรของฉัน แต่กล่าวถึงเฉพาะกฎหมายที่คุณคาร์อ่านอย่างละเอียดเท่านั้น เขาได้เตรียมการเพื่อให้แน่ใจว่าฉันจะได้วีซ่าท่องเที่ยว นอกจากนี้ยังไม่มีกฎหมายใดที่จะป้องกันไม่ให้ฉันได้วีซ่าท่องเที่ยวเพราะฉันมีใบสมัครวีซ่าถาวรที่รอการพิจารณาอยู่

11. ไบรอันร้องเรียนกับเจ้านายที่สำนักงานวีซ่าท่องเที่ยว และในที่สุดพวกเขาก็ยอมรับว่าผู้สัมภาษณ์ทำผิดพลาด ไม่มีกฎหมายใดที่ระบุว่าฉันไม่สามารถขอวีซ่าท่องเที่ยวได้หากฉันมีใบสมัครวีซ่าถาวรที่รอการพิจารณาอยู่ แต่พวกเขายังคงยึดตามนโยบายที่ผู้สัมภาษณ์เป็นผู้ตัดสินใจเรื่องวีซ่าท่องเที่ยว เขายังรู้สึกหงุดหงิดเพราะผู้สัมภาษณ์ไม่เคยดูเอกสารใดๆ ที่เขาเตรียมไว้เลย

12. ไบรอันตัดสินใจไม่ยื่นขอวีซ่าท่องเที่ยวอีกเพราะเขาเกรงว่าใบสมัครของเขาจะถูกปฏิเสธอย่างผิดกฎหมาย ดังนั้นเขาจึงร้องเรียนกับเจ้าหน้าที่ที่รับผิดชอบวีซ่าเข้าเมืองของเราทุกๆ สองสามวัน เขาอธิบายว่าเขาต้องการให้ฉันพบแม่ของเขาก่อนที่เธอจะเสียชีวิต สถานทูตอนุมัติวีซ่าเข้าเมืองของฉันภายในสี่เดือนหลังจากที่ฉันยื่นคำร้อง ซึ่งถือว่ารวดเร็วมาก

13. ฉันได้พบกับแม่ของเขาและมันเป็นความสุขที่ยิ่งใหญ่สำหรับเราทั้งคู่ เธอมีความสุขมากที่เราแต่งงานกันและมีความสุขมากสำหรับเรา อย่างไรก็ตาม เธอเสียชีวิตภายในหนึ่งสัปดาห์หลังจากที่เรามาถึงดัลลาส ดังนั้นฉันจึงเก็บช่วงเวลาเหล่านั้นไว้เป็นความทรงจำ

14. เมื่อฉันมาถึงสหรัฐอเมริกาในปี 2018 ฉันก็ได้รับ 'กรีนการ์ด' สองปีในไม่ช้า สามเดือนก่อนที่ 'กรีนการ์ด' ของฉันจะหมดอายุในปี 2020 ไบรอันได้ยื่นขอ 'กรีนการ์ด' สิบปี (และจ่ายค่าธรรมเนียมประมาณ 700 ดอลลาร์)

15. อย่างไรก็ตาม แทนที่จะสัมภาษณ์ สำนักงานตรวจคนเข้าเมืองกลับส่งจดหมายมาแจ้งว่า 'กรีนการ์ด' ของฉันยังมีอายุใช้งานอีกสองปี น่าเสียดายที่จดหมายฉบับนั้นน่าสับสนมาก และเมื่อเราเตรียมตัวเดินทาง เจ้าหน้าที่ใช้เวลานานในการตรวจทานจดหมายฉบับนั้น

16. ไบรอันบอกฉันไม่ต้องกังวล แต่ฉันกลัวว่าตำรวจตรวจคนเข้าเมืองจะจับกุมฉันและส่งฉันกลับประเทศไทยเพราะ 'กรีนการ์ด' ของฉันหมดอายุแล้ว หรือฉันอาจจะติดอยู่ในประเทศไทยและไม่สามารถกลับประเทศไทยได้

17. อย่างไรก็ตาม ในปี 2022 'กรีนการ์ด' ของฉันหมดอายุในขณะที่ฉันกำลังเดินทางฉุกเฉินเพื่อไปเยี่ยมแม่ก่อนที่เธอจะเสียชีวิต หรืออีกนัยหนึ่งคือไปร่วมงานศพของเธอ ฉันติดอยู่ในประเทศไทยและไม่สามารถเดินทางกลับได้เนื่องจากสายการบินของเราไม่สามารถยืนยันได้ว่า 'กรีนการ์ด' ของฉันยังใช้ได้อยู่หรือไม่

18. ไบรอันยื่นขอวีซ่าท่องเที่ยวอีกครั้งที่สถานทูตเชียงใหม่ (ค่าธรรมเนียม 90 ดอลลาร์) บัวขาวน้องสาวของฉันยื่นขอวีซ่าท่องเที่ยวอีกครั้งเช่นกัน เราสัมภาษณ์พร้อมกันและทั้งคู่ได้รับการอนุมัติ ผู้สัมภาษณ์ไม่ได้ดูเอกสารที่ไบรอันเตรียมไว้ให้ฉันอีกครั้ง แต่เพียงตรวจสอบคอมพิวเตอร์ของเขาและบอกว่าวีซ่าได้รับการอนุมัติแล้ว

19. วีซ่าท่องเที่ยวของบัวขาวได้รับการอนุมัติเช่นกัน และเราเดินทางไปสหรัฐอเมริกาด้วยกัน

ได้รับการอนุมัติสัญชาติ แต่ฉันถูกปล่อยให้เป็นคนต่างด้าวที่ผิดกฎหมาย

20. ฉันสมัครขอสัญชาติอเมริกันในปี 2022 และถูกกำหนดให้เข้ารับการสัมภาษณ์และการทดสอบความเป็นพลเมืองในขณะที่ฉันติดอยู่ในประเทศไทย ไบรอันสามารถกำหนดการสัมภาษณ์และการทดสอบใหม่เป็นวันที่ 30 มกราคม 2023 แต่หลังจากการทดสอบ เราได้รับแจ้งว่าฉันสอบข้อเขียนภาษาอังกฤษ สอบความเข้าใจภาษาอังกฤษ และสอบพลเมืองไม่ผ่าน เราผิดหวังมาก