

In the United States Court Of Appeals, 5th Circuit

Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer Appellants 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 Appellees	Case No. 26-10025 Verified¹ Brief of Mr. Carr Concerning Written Process Gaps And The Resulting Failures
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Written Process Gaps And The Resulting Failures

Table of Contents

Written Process Gaps And The Resulting Failures..... 1

Table of Contents..... 1

I. History of Procedural Gaps in Workflow Process.....3

 Process Breakdowns Degrade Judicial Efficiency.....3

II. Sealing / Striking Documents Handled on an Ad hoc Basis.....3

 The Lack of Clear Written Processes Permits Needless Errors.....3

 1. TXND Gaps in Process to Seal Records Caused Inconsistencies.....3

 A. Original Error, Two Exhibits with Improperly Redacted PII.....3

 B. Complex Delayed Ad Hoc Process to Correct Simple Mistake.....4

 C. Improper Resolution Creates Dual Problem.....4

 2. USCA5 Has Similar Gaps in Process to Seal Records.....4

III. Remediation of Invalid Seals in ROA Caused Additional Rework.....5

 1. Garbled Records in ROA Possible Result of Pro Se Delivery.....5

 2. Without Proper Guidance, Clerks Unsealed Documents.....5

 A. Ill Considered Replacement ROA Violated FRAP 10(e)(2).....5

 B. New ROA Improperly Exposed Unredacted PII to Public Access.....6

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

3. TXND Clerks Also Unsealed Records in TXND ECF.....	6
IV. Unauthorized New ROA Delayed Remediation of the Authorized ROA.....	7
Motion to Toll Briefing Schedule Sidelined, No Action Taken.....	7
V. Motion to Correct Garbled Records in ROA Denied.....	7
No Justification or Authorization Specified.....	7
VI. Motion to Strike Unauthorized ROA 5CC32 Altered Improperly.....	8
1. Clerk Alters 5CC32 From Unopposed to Opposed.....	8
2. Unexplained Alteration Creates Appearance of Bias.....	8
VII. Appeal Dismissed In Violation of 5CCLR 42.3.1.2.....	9
VIII. MTR of Dismissal 5CC37-1 Denied by Clerk 5CC42.....	10
Clerk Not Permitted to Adjudicate Facts or Legal Issues.....	10
IX. Motion to Reopen Appeal 5CC43-1 Rejected, Too Long.....	10
1. USCA5 Makes No Length Exceptions for Consolidated Motions.....	10
2. 5CC43-1 Rejected by AI in 5CC43-13 on Filing.....	11
Wrong Criteria For Resubmission Required in AI Decision.....	11
3. Requiring Multiple Motions to Correct Complicates Record.....	11
Exceptions Specified in FRAP Rule 32(f) Omitted.....	11
X. Unwarranted Requirement to Submit Brief to Reopen Appeal.....	12
5CC44 Rejected, Replaced with 5CC46-1.....	12
XI. Two Motions Incorrectly Withdrawn By Clerk When 5CC43-1 Split.....	13
5CC45-1 Dealt with ROA Issues.....	13
5CC46-1 Dealt with Caption and Tolling Relief.....	13
1. Clerk Incorrectly Withdrew 5CC44.....	13
Clerk Sealed Document From Public Access W/O Court Order.....	13
2. Clerk Incorrectly Withdrew 5CC45-1.....	13
Clerk Sealed Document From Public Access W/O Court Order.....	13
XII. Electronic Filing Access Removed During Critical Motion Practice.....	14
ECF Help Desk (One Person) Required, Not Available That Week.....	14
XIII. Final Motion 5CC73 Requires Correction of Numerous Errors.....	15
5CC25 / 5CC27-1 Is the Only Motion Which Required Adjudication.....	15
Verification of Document.....	15
Alphabetical Index of References.....	16

The previous final pending motion for judicial review was [5CC73](#) which required correction of numerous errors with a needlessly complex record. There has been significant motion practice in this appeal due almost exclusively to the lack of a reliable written process in TXND and USCA5. The only real motion that requires

serious adjudication was [5CC25](#) and everything else was the result of mistakes and rework which can all be attributed to a lack of reliable written process for managing the record.

I. History of Procedural Gaps in Workflow Process

Process Breakdowns Degrade Judicial Efficiency

This affirmed statement will list the various actions in this matter in TXND and USCA5 which led to a surprisingly long and complex history of motion practice. These statements are strictly factual but are intended to support suggestions that improved and automated processes can improve judicial efficiency. This statement is submitted in support of the [Motion for Panel Review](#) and is the first exhibit for that motion.

II. Sealing / Striking Documents Handled on an Ad hoc Basis

The Lack of Clear Written Processes Permits Needless Errors

1. TXND Gaps in Process to Seal Records Caused Inconsistencies

In [ECF101](#)pg9 there is a detailed description of how two records with unredacted PII were processed in TXND.

A. Original Error, Two Exhibits with Improperly Redacted PII

I had accidentally and separately filed two one page exhibits which had unredacted PII. When I discovered the error, I called the TXND clerk who put in 'temporary' seals on two document groups of 25 documents and 133 pages until the anticipated motions to seal were processed.

B. Complex Delayed Ad Hoc Process to Correct Simple Mistake

I promptly submitted the motions but they languished for months and when the magistrate resolved the motions the magistrate appears to not have been aware of her responsibility to remove the overly broad temporary seal and put in place a proper court ordered seal on the two exhibits.

C. Improper Resolution Creates Dual Problem

As a result, on appeal all 25 documents were still sealed when the ROA was created but there was no court order to support the seal. Of particular importance, there was no court ordered seal on the two exhibits with unredacted PII.²

2. USCA5 Has Similar Gaps in Process to Seal Records

There was a similar gap in USCA5 processing of [5CC13](#) (redocketed as [5CC14-1](#) which was a prophylactic motion to seal two exhibits ECF20-1 and ECF67-13 with unredacted PII as suggested in [5CC6](#)).

However, rather than issuing a procedural memo sealing the specific exhibits based on standing court orders with respect to unredacted PII, the clerk had no guidance for how to handle motions to seal unredacted PII.

Without guidance, the clerk did a preliminary review and noticed that the two exhibits were already sealed in TXND ECF. However, the clerk did not verify the existence of proper TXND orders. Instead, the clerk concluded that an additional order sealing the specific exhibits was unnecessary and issued the memo as [5CC14-2](#) which incorrectly concluded there were valid TXND orders sealing the exhibits and left [5CC14-1](#) in a pending state with the common 'no action taken'.

² USCA5 has been asked to supplement the record in [5CC73](#) with these and later procedural errors so that on appeal USCA5 can work with TXND on correcting these procedural gaps.

Errors from gaps in TXND processes were transferred into the USCA5 ROA creating further downstream errors and rework.

III. Remediation of Invalid Seals in ROA Caused Additional Rework

1. Garbled Records in ROA Possible Result of Pro Se Delivery

In [5CC26](#) I identified errors in the ROA which had been sent to us via email. In particular the text layers were flattened in the process of combining multiple pdf files into a single large volume for 'easy' pagination and email delivery to pro se parties. The result was at least two garbled records as can be seen in comparing [ECF10-9](#) with [ROA10-9](#)).

It is unclear if the garbled records are also in the USCA5 ECF version of the ROA as pro se parties are not permitted access to the actual ROA used by USCA5 judges. However, if pro se parties with electronic access were permitted access to the USCA5 ECF version of the ROA, that question could be resolved.

However, in [5CC26](#) I also identified the 25 documents and 133 pages which were sealed without any supporting court order as described above.

2. Without Proper Guidance, Clerks Unsealed Documents

A. Ill Considered Replacement ROA Violated [FRAP 10\(e\)\(2\)](#)

When TXND clerk learned that over 25 documents were sealed in the TXND record without any supporting judicial order (and possibly two garbled records), they attempted to correct the error. However, it is apparent that they did not have written procedural guidance on how to do that.

They created an altogether new ROA which violates [FRAP 10\(e\)\(2\)](#) which clearly

specifies that TXND can correct such errors through a supplement to the existing ROA which includes the improperly sealed records.

[FRAP 10\(e\)\(2\)](#) also implicitly prevents the creation of a new ROA which can only be done via USCA5 judicial intervention and which would necessitate a reset of all briefing schedules which started with the approval of the original ROA. Had TXND clerks been following a written process for unsealing records in the ROA it would have been clear that generating a new ROA was not an option.

B. New ROA Improperly Exposed Unredacted PII to Public Access

When the clerks unsealed the improperly sealed documents in the new ROA they inadvertently violated [FRCP 5.2](#) and [FRAP 25\(a\)\(5\)](#) by exposing ECF20-1 and ECF67-13 with unredacted PII to public access. There are pending motions to correct this defect, but proper written guidance from the beginning would eliminate all this rework to correct defects.

3. TXND Clerks Also Unsealed Records in TXND ECF

Without proper guidance, the clerks also removed the temporary seal on the two document groups in TXND and thereby granted public access to unredacted PII in ECF20-1 and ECF67-13 in violation of [FRCP 5.2](#).

Of course, had the original motions to seal [ECF24](#) and [ECF69](#) been immediately processed as Standard Procedural Motions (with standing orders permitting the clerk to seal documents with unredacted PII with a memo so stating), all of this would not have occurred.

Further, if the USCA5 clerk processing [5CC13](#) had received a Standard Procedural

Motion (with standing orders permitting the clerk to seal documents with unredacted PII with a memo so stating) there would already be a seal on those documents in TXND ECF and the ROA. Nothing to fix.

However, given the actual written processes in place, there are still additional court actions pending to correct these omissions.

IV. Unauthorized New ROA Delayed Remediation of the Authorized ROA

Motion to Toll Briefing Schedule Sidelined, No Action Taken

Prior to the confusion over duplicate ROAs, [5CC25](#) (needlessly redocketed as [5CC27-1](#) when it was sidelined with 'no action taken' in [5CC27-2](#) had asked that the briefing schedule be tolled and for critical corrections to the caption as well as time and length considerations but deferred judicial review until two motions for ROA corrections were submitted (so that the judicial review could resolve all the pending problems). Indeed it was this motion which originally called attention to the 25 improperly sealed documents.

Further, the sidelining of this critical motion rather than recording that judicial intervention was required would have prevented the numerous motion practice following the improper dismissal of the appeal [5CC33-1](#) (now overturned with [5CC58-2](#)).

V. Motion to Correct Garbled Records in ROA Denied

No Justification or Authorization Specified

However, the motion to correct two garbled records in the ROA, [5CC26](#) was inexplicably denied in [5CC31](#) with no explanation or justification. [5CCLR](#)

[27.1](#) does authorize clerks to process motions procedurally but certainly not to deny correct and proper motions seeking judicial relief. Had there been strict adherence to written processes this error would not have occurred.

VI. Motion to Strike Unauthorized ROA [5CC32](#) Altered Improperly

1. Clerk Alters [5CC32](#) From Unopposed to Opposed

[5CC32](#) was delayed because as I was preparing it, the TXND generated a new and unauthorized ROA. It been planned to ask for a supplement to the ROA unsealing 23 documents which were improperly sealed while also striking the two exhibits with unredacted PII. Instead it became a motion to strike the unauthorized ROA because, along with being unauthorized, it released unredacted PII to public access. It also altered the pagination of all records after [ROA20pgSealed](#) without the approval of USCA5 as required by [FRAP 10\(e\)\(2\)](#).

2. Unexplained Alteration Creates Appearance of Bias

This motion was unopposed as it was to prevent the release of unredacted PI. As an unopposed motion seeking non procedural relief it was immediately available for judicial review (as the clerk could not provide the requested relief). All the other motions for relief were also ready for judicial review and should have promptly referred to a judge for resolution.

However, instead the clerk on 2 Jun 2026 inexplicably altered the status of the motion to 'Opposed' with notice in email [5CC32DU](#) which states:

OPPOSED MOTION filed by Appellant Mr. Brian P. Carr to amend the record on appeal [32]. Date of service: 05/30/2026 [26-10025] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows:

UNOPPOSED MOTION filed by Appellant Mr. Brian P. Carr for expedited ruling on [32], to strike The original ROA of 15 Apr 2026 should be amended as necessary rather than striking portions of the ROA generated on 28 May 2026. from the record on appeal. Date of service: 05/30/2026

There was no listed justification and there was a clear Certificate of Conference Compliance in [5CC32](#) which cited opposing counsels email stating:

Defendants will not oppose sealing materials that contain PII

Further, this update was made only minutes before the improper dismissal of the appeal [5CC33-1](#) (now overturned with [5CC58-2](#)).

Had there been formal Standard Procedural Notices for the parties and this motion status with written procedures for the court to document the changes (in Standard Procedural Memos) this change would have been either prohibited or adequately supported by the record.

VII. Appeal Dismissed In Violation of [5CCLR 42.3.1.2](#)

[5CC33-1](#) (now overturned with [5CC58-2](#)) dismissed the appeal for 'failure to prosecute' even though there were several motions waiting for judicial review. The dismissal stated:

Under [5th Cir. R.42.3](#), the appeal is dismissed as of June 2, 2026, for want of prosecution. The appellant failed to timely file appellant's brief

However, [5CCLR 42.3.1.2](#) specifically states:

42.3.1.2 Appeals without Counsel. The clerk must issue a notice to appellant that 15 days from the date of the notice the appeal will be dismissed for want of prosecution, unless the default is remedied before that date. If the default is remedied within that time, the clerk must not dismiss the appeal.

Clearly the clerk was not following written processes as the rule only provides for notice of impending dismissal, not actual dismissal prior to notice.

VIII. MTR of Dismissal [5CC37-1](#) Denied by Clerk [5CC42](#)

Clerk Not Permitted to Adjudicate Facts or Legal Issues

We submitted an MTR contesting the premature dismissal as [5CC37-1](#) but this motion was denied by the clerk in [5CC42](#) and in clear violation of [5CCLR 27.1](#) which allows the clerk to resolve motions on procedural grounds. No procedural issues were identified and it was an opposed motion with the DoJ opposing response as [5CC38](#). There were contested issues which required adjudication.

However, instead of referring [5CC37-1](#) for judicial review as required by [5CCLR 27.1](#) the clerk did not follow local rules and denied the motion directly.

IX. Motion to Reopen Appeal [5CC43-1](#) Rejected, Too Long

1. USCA5 Makes No Length Exceptions for Consolidated Motions

As there were so many discrepancies in the USCA5 record due to lack of written processes, a single motion which covered all the corrections and would have allowed a judge to put the appeal back on track with a single consolidated motion was rejected because it was too long. This had the sad effect of insuring that multiple consolidated motions would need to be resolved together with an increasingly complex record.

It is recommended that USCA5 adopt a relaxed length standard for certain consolidated motions to allow numerous issues to be heard without fragmenting the motions and briefs into multiple documents and making a complex record even

more complex.

2. [5CC43-1](#) Rejected by AI in [5CC43-13](#) on Filing

Wrong Criteria For Resubmission Required in AI Decision

USCA5 AI was used to file the Motion to Reopen [5CC43-1](#) but the USCA5 AI also rejected the filing with an automated response [5CC43-13](#) based on the length of the motion.

3. Requiring Multiple Motions to Correct Complicates Record

Exceptions Specified in [FRAP Rule 32\(f\)](#) Omitted

Further, the AI program insisted on an incorrect measure of length of 20 pages for a corrected motion citing [FRAP Rule 27](#) but that is not the length measurement measurement for computer generated motions (which are the only motions which AI could analyze) which should have been measured in word count. Forcing a computer generated motion to adhere to the arcane number of pages length hinders both the litigants and court as described in [5CC47](#) a motion to correct the length requirements generated by automated AI rejections.

Further, and perhaps most important, the requirements stated in [5CC43-13](#) omitted the exceptions listed [FRAP Rule 32\(f\)](#) stating that the table of contents and other tables and certifications are not counted in the page or word limits. This discrepancy is also described in [5CC47](#).

By omitting the exceptions, the incorrect ruling effectively required that the consolidated motion to reopen the case and correct the underlying defects which caused the premature dismissal would be multiple motions and harder for the

clerks and judge to respond to. Later confusion resulted from the need to split this motion into two motions, [5CC44](#) which became [5CC46-1](#) and [5CC45-1](#)

X. Unwarranted Requirement to Submit Brief to Reopen Appeal

[5CC44](#) Rejected, Replaced with [5CC46-1](#)

[5CC44](#) met the incorrect page length restrictions without the exceptions of [FRAP Rule 32\(f\)](#) and was submitted timely on 4 Jul 2026, but did not have an Appeal Brief attached. As a result two days after we filed [5CC44](#) it was rejected with a docket update (notice shown in [5CC44du](#)) on 6 Jul 2026 which stated:

Document is insufficient for the following reasons: brief must be attached for motion to reopen to be submitted to the court

Of course we argue that it is not reasonable to require an appeal brief when there is no correct and accurate ROA and the caption is not settled.

However, when [5CC44](#) was rejected we submitted a timely single issue appeal brief [5CC46-2](#) on 8 Jul 2026 (two days later) which was attached to motion [5CC46-1](#). [5CC46-1](#) was an approximate copy of [5CC44](#) but with additions stating that the preliminary appeal brief was submitted under protest and insistence that we be granted permission to supplement the brief once the ROA, caption, and other issues were resolved.

Just prior to submitting [5CC46-1](#) on 8 Jul 2026 we submitted the sibling motion [5CC45-1](#) which focused on the ROA issues and duplicated the request to reopen the case. In order for [5CC45-1](#) to be accepted it also had a copy of same single issue preliminary brief as [5CC45-2](#). All motions were timely from clerks order [5CC42](#) of 23 Jun 2026.

XI. Two Motions Incorrectly Withdrawn By Clerk When [5CC43-1](#) Split

[5CC45-1](#) Dealt with ROA Issues

[5CC46-1](#) Dealt with Caption and Tolling Relief

As [5CC43-1](#) was rejected for length issues and the rejection listed incorrect resubmission requirements, [5CC43-1](#) needed to be broken into two motions, [5CC45-1](#) which dealt with ROA issues and [5CC46-1](#) which dealt primarily with caption and tolling relief.

1. Clerk Incorrectly Withdrew [5CC44](#)

Clerk Sealed Document From Public Access W/O Court Order

[5CC44](#) dealt primarily with caption and tolling relief but was rejected for lack of an attached appeal brief. This was resolved with [5CC46-1](#). However it was not withdrawn. An unfortunate side effect of this improper withdrawal was the it was Restricted. Restricted prevents public access so is the logical equivalent of sealing. See Exhibit A and Exhibit B. Based on the email exchanged with the clerk [5CC62](#) the motion should have been classified as Superseded to alert parties that the active version was [5CC46-1](#).

2. Clerk Incorrectly Withdrew [5CC45-1](#)

Clerk Sealed Document From Public Access W/O Court Order

A more serious error was that even after the clerk was notified that [5CC45-1](#) was still an essential motion in [5CC62](#) (one half of the replacement for [5CC43-1](#)) it was still Withdrawn requiring an additional motion [5CC61](#) to correct the mistaken withdrawal and the logical sealing of the document from public access without any court order (it is still listed as Restricted with no public access).

XII. Electronic Filing Access Removed During Critical Motion Practice

ECF Help Desk (One Person) Required, Not Available That Week

On 10 Aug 2026 I attempted to file [5CC61](#) electronically and it was rejected (system time out with error of not having privileges). I called the USCA5 ECF Help Desk as recommended but the call was diverted to another person because there was only one person as the ECF Help Desk and they were out that week. I filed the motion and its exhibit via email to Pro_se@ca5.uscourts.gov (which I had used to submit my motion for electronic filing access). The motion was recorded as submitted on the date of the email but the notice was delayed for a few days which created concerns as to submitting the motion timely (to preserve the issue).

This was a particularly troubling time for such problems to arise as that same date the appeal was reopened and I was given one week to submit our appeal. On the Sunday before the deadline I could not submit our appeal electronically.

On the morning of 17 Aug 2026 I attempted to file the required brief but got the same errors. I called the ECF Help Desk as she was able to restore my electronic access as the order supporting the access was still in place. It is unclear who / why access was removed as there was not order supporting the removal. However, in a few hours I was able to file a more complete preliminary appeal [5CC71](#) electronically with the automated checks for validity.

It is concerning that there is no backup person or procedure for an operation which is time critical in USCA5.

XIII. Final Motion 5CC73 Requires Correction of Numerous Errors

5CC25 / 5CC27-1 Is the Only Motion Which Required Adjudication

There has been significant motion practice in this appeal due almost exclusively to the lack of a reliable written process in TXND and USCA5. The only real motion that requires serious adjudication was 5CC25 and everything else was the result of errors and rework which can all be attributed to a lack of reliable written processes for managing the record.

Respectfully submitted,

Verification of Document

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

1. I have reviewed the above affirmation and believe all of the statements to be true to the best of my knowledge.
2. I have reviewed the associated documents and exhibits and believe them to be true and accurate copies with the exception of the documents identified as being redacted. The redacted documents have only been altered to remove sensitive personal information or other redactable information (as cited in the redaction) according to normal redaction procedures.

I hereby reaffirm that the above is true to the best of my knowledge under penalty of perjury in both the United States and Thailand.

/s Brian P. Carr

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Date: 8 Sep 2026

Location: Irving, Texas

Alphabetical Index of References

5CC13.....	4, 6
5CC14-1.....	4
5CC14-2.....	4
5CC25.....	3, 7, 15
5CC26.....	5, 7
5CC27-1.....	7, 15
5CC27-2.....	7
5CC31.....	7
5CC32.....	8 f.
5CC32DU.....	8
5CC33-1.....	7, 9
5CC37-1.....	10
5CC38.....	10
5CC42.....	10, 12
5CC43-1.....	10 f., 13
5CC43-13.....	11
5CC44.....	12 f.
5CC44du.....	12
5CC45-1.....	12 f.
5CC45-2.....	12
5CC46-1.....	12 f.
5CC46-2.....	12
5CC47.....	11
5CC58-2.....	7, 9
5CC6.....	4, 13 f.
5CC61.....	13 f.
5CC62.....	13
5CC71.....	14
5CC73.....	2, 15

5CCLR 27.1.....	7, 10
5CCLR 42.3.....	9
5CCLR 42.3.1.2.....	9
ECF10-9.....	5
ECF20-1.....	4, 6
ECF24.....	6
ECF67-13.....	4, 6
ECF69.....	6
FRAP 10(e)(2).....	5 f., 8
FRAP 25(a)(5).....	6
FRAP Rule 27.....	11
FRAP Rule 32(f).....	11 f.
FRCF 5.2.....	6
ROA10-9.....	5
ROA20pgSealed.....	8