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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	Docket No. **16-0175**
Elijah Woods	)	
	)	**Dismissal** (With Prejudice)
Petitioner	)	
	AND	
In re:	)	
	)	Docket No. **16-0176**
Daniel Woods	)	
	)	**Dismissal** (With Prejudice)
Petitioner	)	

Appearances:

Mr. Corey Lea, representative for Petitioners Mr. Elijah Woods and Mr. Daniel Woods, and

Mr. Juan Carlos Alarcon, Esq. with the Office of the General Counsel, Civil Rights Litigation Division, United States Department of Agriculture, Washington D.C.

The cases of Elijah Woods and Daniel Woods, Petitioners, are DISMISSED (With Prejudice), because Administrative Law Judges have no authority to grant the relief requested, as stated in the Agency Response filed September 27, 2016, a copy of which is attached.

Copies of this Dismissal (With Prejudice) order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 5th day of October 2016

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
FAX 202-720-9776
OALJHearingClerks@ocio.usda.gov

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

ELIJAH WOODS and DANIEL WOODS
Petitioner

Docket No. 16-0175; 16-0176

Agency Response

On or around September 6, 2016, Petitioners Elijah and Daniel Woods ("Petitioner") filed Requests for a Formal Hearing with the U.S. Department of Agriculture, Office of the Administrative Law Judges ("OALJ").[1] On September 7, 2016, OALJ issued a notice to the Assistant Secretary for Civil Rights ("Agency") requesting a response within 20 days. The Agency timely files this response.

Petitioners request a hearing to be held at a federal courthouse pursuant to 7 C.F.R. part 15f ("Section 741").[2] *See* Petitioners' Request.

Petitioners failed to identify valid legal authority and jurisdiction for this action

Under 7 C.F.R. § 1.131, there are nearly fifty statutes which expressly afford an individual a hearing before an Administrative Law Judge. None of them apply to Petitioners' request. *See* 7 C.F.R. § 1.131. As no action may be brought unless authorized, jurisdiction cannot be assumed absent express statutory or regulatory grant. *See Reid v. United States*, 211 U.S. 529, 538 (1909); *Munro v. Unites States*, 303 U.S. 36, 41 (1938); *United States v. Sherwood*, 312 U.S. 584, 290 (1941); *United States v. Testan*, 424 U.S. 392, 399 (1976); and

[1] While Elijah Woods and Daniels Woods filed individual petitions, OALJ's notice contained both Elijah and Daniel Woods on the same notice. For judicial economy and because Elijah and Daniel Woods have identical petitions, the Agency responds to both on this response.
[2] Petitioner also refers to the *Pigford* Remedy Act of 2007 and Section 14012 of the Food Energy and Conservation Act. None of the aforementioned legislation and proposed legislation has any relevance whatsoever to OALJ's jurisdiction to hear these allegations of discrimination.

Hercules, Inc. v. United States, 516 U.S. 417, 422 (1996). Petitioners have not identified a statutory jurisdictional basis which would entitle her to a hearing before the OALJ.

Petitioners' citations of "Section 741" and the Equal Credit Opportunity Act ("ECOA") do not establish a statutory jurisdictional basis for this request. *See* 7 C.F.R. § 15(f) ("Section 741"). 7 C.F.R. Part 15f applies to complaints of discrimination filed with USDA prior to July 1, 1997, alleging discriminatory acts from 1981 to 1997. The period for filing a Section 741 complaint request under the authorized waiver of the ECOA Statute of Limitations expired on October 21, 2000. 7 C.F.R Part 15f ("you have until October 21, 2000 to file your Section 741 complaint"). USDA no longer has authority under the terms of the statutory waiver to accept Section 741 complaint requests, unless such a complaint has already been docketed under part 15f by USDA or a request was filed with USDA prior to October 21, 2000. 7 C.F.R § 15f.5 is clear that Section 741 complaint requests filed under part 15f are no longer accepted by USDA. *See generally* 68 Fed. Reg. 7411 (February 14, 2003).

As Petitioners fail to assert cognizable jurisdiction for OALJ to hear this action, the requests should be dismissed with prejudice.

Date: September 27, 2016

Respectfully submitted,

J. CARLOS ALARCON, Esq.
Agency Representative
U.S. Department of Agriculture
Office of the General Counsel
Civil Rights, Labor and Employment Law
Room 3312-S (if by U.S. mail);
1400 Independence Avenue, SW
Washington, D.C. 20250-1400

Tel.: (202) 690-2163
Fax: (202) 720-4089
Email: juan.alarcon@ogc.usda

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Docket No. 16-0175; 16-0176

AGENCY'S NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Juan Carlos Alarcon, United States Department of Agriculture, Office of the General Counsel, Civil Rights Employment and Labor Litigation Division, hereby enters his appearance as counsel of record for the Agency in the above-captioned matter. The Clerk and all parties are requested to address all papers served on the Agency as follows:

Juan Carlos Alarcon
United States Department of Agriculture
Office of General Counsel, Civil Rights Employment and Labor Litigation Division
Room 3312-S
Washington, DC 20250
202-690-2163
Juan.alarcon@ogc.usda.gov

Date: September 27, 2016

Respectfully submitted,

[redacted]

JUAN CARLOS ALARCON, Esq.
Agency Representative
U.S. Department of Agriculture
Office of the General Counsel
Civil Rights, Labor and Employment Law
Room 3312-S (if by U.S. mail);
1400 Independence Avenue, SW
Washington, D.C. 20250-1400

Tel.: (202) 690-2163
Fax: (202) 720-4089
Email: juan.alarcon@ogc.usda.go