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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	Docket No. **16-0152**
Dexter Davis	)	
	)	
Respondent	)	**Dismissal** (With Prejudice)

Appearances:

Mr. Dexter Davis, Petitioner; and Mr. Corey Lea, his representative; 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.

This case is DISMISSED (With Prejudice), because Administrative Law Judges have no authority to grant the relief requested. Further, the doctrine of *res judicata* would preclude consideration. The Agency Response filed September 12, 2016, a copy of which is attached, is hereby incorporated by this reference.

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 19th day of September 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
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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

DEXTER DAVIS,
Petitioner

Docket No. 16-0152

Agency Response

On or around August 22, 2016, Petitioner Dexter Davis ("Petitioner") filed a "petition for review" with the U.S. Department of Agriculture, Office of the Administrative Law Judges ("OALJ"). On August 23, 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.

Petitioner requests a hearing to be held in Shreveport, Louisiana at a federal courthouse pursuant to 7 C.F.R. part 15f ("Section 741"). *See* Petitioner's Petition for Review.

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

Petitioner's 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).

Furthermore, the actions that the instant request asserts were discriminatory were already the subject of a decision by the U.S. District Court for the Western District of Louisiana in which the Court dismissed Petitioner's complaint with prejudice on August 21, 2015. *See* docket entry No. 1, *Dexter L. Davis v. Vilsack, et al.* (W.D.La. No. 3:14-cv-3320). Thus, even if there were jurisdiction to hear the petition, the doctrine of *res judicata* would preclude it.

As Petitioner fails to assert cognizable jurisdiction for OALJ to hear this action, the Petitioner's request should be dismissed.

Date: September 12, 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
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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

DEXTER DAVIS, Petitioner

Docket No. 16-0152

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
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202-690-2163
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Date: September 12, 2016

Respectfully submitted,

[redacted]

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