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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	Docket No. **16-0155**
Robert Binion	)	
	)	**Dismissal** (With Prejudice)
Petitioner	)	

Appearances:

Mr. Corey Lea, representative for Petitioner Mr. Robert Binion, 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 Notice of Appearance included with the "Request for a Formal Hearing before the Administrative Law Judge", filed August 24, 2016, is that of a different Petitioner (Ferrell Clay Oden), NOT Robert Binion.

The case of Robert Binion, Petitioner, is DISMISSED (With Prejudice), because Administrative Law Judges have no authority to grant the relief requested, as stated in the Agency Response filed September 15, 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 22nd day of September 2016

[redacted]

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

ROBER BINION
Petitioner

Docket No. 16-0155

Agency Response

On or around August 25, 2016, Petitioner Robert Binion ("Petitioner") filed a Request for an Expedited Formal Hearing with the U.S. Department of Agriculture, Office of the Administrative Law Judges ("OALJ"). On August 26, 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 at a federal courthouse pursuant to 7 C.F.R. part 15f ("Section 741").[1] *See* Petitioner's Request.

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.

[1] 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.

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).

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

Date: September 15, 2016

Respectfully submitted,

[redacted]

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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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 15, 2016

Respectfully submitted,

[redacted]

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.go

CERTIFICATE OF SERVICE

Robert Binion, Petitioner
Docket: 16-0155

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct and this is to certify that a copy of DISMISSAL (WITH PREJUDICE) has been furnished and was served upon the following parties on September 23, 2016 by the following:

USDA (OGC-Civil Rights Division) - Electronic Mail
Juan Carlos Alarcon, OGC
Juan.alarcon@ogc.usda.gov

Petitioner(s) Representative -Electronic Mail
Corey Lea
cowtownfoundation@gmail.com

Respectfully Submitted,

Caroline Hill

Caroline Hill, Assistant Hearing Clerk
USDA/Office of Administrative Law Judges
Hearing Clerk's Office, Rm. 1031-S
1400 Independence Ave., SW
Washington, DC 20250-9203