

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

In Re Charge of Jorge Eduardo Ruiz-Lopez, United States of America, Complainant v. Farmers Insurance Group of Companies, a corporation, Herb Baker, an individual, d/b/a the Lancaster, California District Office of Farmers Insurance Group of Companies, Respondents; 8 U.S.C. 1324b Proceeding; Case No. 88200010.

**REPORT OF STATUS CONFERENCE; ORDER GRANTING MOTION OF THE OFFICE OF
SPECIAL COUNSEL TO DISMISS ITS COMPLAINT AND GRANTING CHARGING PARTY'S
PETITION TO FILE COMPLAINT**

Pursuant to my order dated June 21, 1988, a telephonic conference was held on Wednesday, June 29, 1988, from approximately 2:30 p.m. to 2:55 p.m., EST. At the conference it was agreed and understood by and among the parties, their counsel, and the judge as follows:

(1) The March 25, 1988, petition of the charging party, Jorge Eduardo Ruiz-Lopez (Ruiz-Lopez), seeking leave to intervene is granted to the extent that it requests leave to file a complaint. Accordingly, the complaint dated March 25, 1988, and received March 28, 1988 is accepted as having been filed upon receipt. It does not appear necessary or appropriate to grant leave to intervene because the charging party, Ruiz-Lopez, became a party by operation of law upon filing of the complaint by the Office of Special Counsel (OSC). See 8 U.S.C. 1324b(e)(3); Section 68.2(1) of the rules of practice and procedure of this Office, 52 Fed. Reg. 44972, 44974, November 24, 1987 (to be codified at 28 C.F.R. 68.2(1)).

(2) Having inquired intensively of Farmers Insurance Group of Companies (Farmers) through Mr. Terry Kellog and of Mr. Herb Baker, individually, during the status conference and both having explicitly acknowledged their understanding of the terms and conditions of the agreement¹ and having stated no objection, counsel

¹See, e.g., settlement agreement and general release signed by Mr. Baker, individually, and by an officer of Farmers including inter alia at paragraph 1 ``...

for Ruiz-Lopez having already stated their lack of objection,² and OSC, by counsel, once again urging that its motion to dismiss complaint be granted, there appears to be no reason not to do so. Consequently under these circumstances, the settlement agreement and general release are accepted according to their terms.

During the conference, I suggested that, particularly during the formative and early period of implementation of section 102 of the Immigration Reform and Control Act of 1986 (IRCA) (8 U.S.C. 1324b), it would be an assist to the forum if OSC were to continue to participate even after it is satisfied that it has obtained from the respondents vindication of the government's (as distinct from the charging party's) interests. Counsel for OSC made clear that upon obtaining dismissal of its complaint OSC did not desire to participate further. I here express the caution that if, in a future proceeding, I form the judgment that the expertise of OSC as the repository of the authority conferred by IRCA to investigate charges of immigration-related unfair employment practices warrants its continued participation, I may refuse to permit it to abandon a proceeding it has initiated except upon termination of the entire action.

I reject the argument set out in the OSC April 11, 1988 ``Response to Order Concerning Status of Proceeding'' to the effect that Rule 41 of the Federal Rules of Civil Procedure (FRCP) permits withdrawal of the complaint in this proceeding ``with or without an order of the court.'' In my view, Rule 41 is inapplicable where, as here, the motion to dismiss the complaint relies explicitly on a settlement agreement annexed to it (as exhibit 1). By relying on the settlement agreement as the predicate for dismissing its action, OSC necessarily invoked the jurisdiction of this Office to review the settlement agreement. See 28 C.F.R. 68.10. At least where claims survive against the same respondents arising out of the identical circumstances, a multilateral settlement cannot by its nature be the predicate, outside the discretion of the forum, for unilateral dismissal of an action on the grounds that no answer has been filed when the parties to the settlement agreement include those from whom an answer would have been forthcoming but for the agreement.

[n]othing in this Settlement Agreement and General Release shall affect the right of Applicant to seek other or additional relief on his own.'' Complainant Ruiz-Lopez is understood to be the ``applicant'' within the meaning of the settlement agreement.

²See April 21, 1988 response of charging party as amended by revised proposed order tendered by certificate of service dated April 26, 1988, in which charging party submitted proposed order which would have granted dismissal of the complaint submitted by the OSC on February 9, 1988.

(3) Counsel for the charging party, and Farmers through Mr. Kellog and Mr. Baker, individually, are encouraged to discuss the possibility of settlement of the remaining issues, and not later than August 1, 1988, they should inform me whether or not they have reached an agreed disposition; as to this or other procedural matters, one party may report on behalf of all other parties. If by August 1, 1988, the parties have not reached such agreement, an answer from respondents will be due to be received by me not later than August 15, 1988. No discovery will commence prior to the date an answer becomes due.

In the event settlement discussions are terminated at an earlier date and notice to that effect is forwarded to the judge, then an answer will become due two (2) weeks from the date I am advised that discussions are terminated.

(4) In the event an evidentiary hearing proves necessary, the parties have agreed that the hearing will commence on Tuesday, November 29, 1988 and continue as necessary through Friday, December 2, 1988, at a location in or around Los Angeles or Lancaster, California, to be selected or, if necessary, on such other dates as the administrative law judge may assign.

(5) Appearances:

For Office of Special Counsel:

Ann D. Thomas, Office of Special Counsel for Immigration-Related Unfair Employment Practices, P.O. Box 65490, Washington, D.C. 20035-05490.

For Jorge Eduardo Ruiz-Lopez:

Jose Roberto Juarez, Jr., Mexican American Legal Defense and Educational Fund, 634 S. Spring Street, 11th Floor, Los Angeles, California 90014.

Anne Kamsvaag, Coalition for Humane Immigration Rights of Los Angeles, 634 S. Spring Street, 11th Floor, Los Angeles, California 90014.

For Respondents:

Terry Kellog, Farmers Insurance Group of Companies, 4680 Wilshire Boulevard, Los Angeles, California 90010.

Herb Baker, Farmers Insurance Group of Companies, 44844 Elm Street, Lancaster, California 93534.

SO ORDERED.

Dated this 30th day of June, 1988.

MARVIN H. MORSE
Administrative Law Judge