

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

June 19, 2020

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324c Proceeding
)	OCAHO Case No. 2020C00058
)	
EMILIANO RIOS-VILLATORO,)	
Respondent.)	
_____)	

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

On March 6, 2020, Complainant, the United States of America, filed a complaint against Respondent, Emiliano Rios-Villatoro in the Office of the Chief Administrative Hearing Officer (OCAHO). On March 10, 2020, a Notice of Case Assignment for Complaint Alleging Document Fraud, a copy of the complaint, the Notice of Intent to Fine, and Respondent’s request for a hearing, was mailed to Respondent’s last known address via certified U.S. mail. On March 26, 2020, the package was returned to OCAHO as “Vacant.” According to the United States Postal Service, the recipient “moved, left no address.”

The Rules of Practice provide that “[i]n circumstances where the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge encounter difficulty with perfecting service, the Chief Administrative Hearing Officer or the Administrative Law Judge may direct that a party execute service of process.” 28 C.F.R. § 68.3(c). Accordingly, on April 14, 2020, this office requested that Complainant effectuate service of the package, including the complaint, on Respondent.

On June 10, 2020, Complainant informed the Court by email that the Complaint had not been served yet because of the unsafe conditions as a result of the pandemic. Complainant stated, further, “since the situation is fluid, the agent does not know the exact time span when it will be safe, but he is closely monitoring the situation.”

“OCAHO case law demonstrates that in instances when a complaint cannot be effectively served, it is dismissed without prejudice so that a complainant can refile the complaint if the Respondent is located and service can be accomplished.” *See, e.g., United States v. Iniguez-Casillas*, 6 OCAHO no. 870, 512 (1996); *United States v. Baches-Corado*, 3 OCAHO no. 571 (1993) (8

U.S.C. § 1324c document fraud complaint dismissed without prejudice when neither OCAHO nor the Immigration and Naturalization Service could serve the complaint and notice of hearing upon the respondent).

While the Rules provide that a complaint may be mailed to the last known address of an individual, 28 C.F.R. § 68.3(a)(3), the Rules also specify that service of a complaint is complete upon receipt by addressee. 28 C.F.R. § 68.3(b). Consequently, since service of the complaint cannot be effectuated, this action cannot proceed at this time. This Court is sympathetic to the constraints placed upon the Government and its ability to serve the complaint given the situation. Unfortunately, however, given that there is no way to know when service may be attempted, the Court has determined that the best course is to dismiss the case until such time as the Complainant can effectuate service.

Accordingly, the case is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

Dated and entered on June 19, 2020.

Jean C. King
Chief Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1) (2012).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324c(d)(4) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324c(d)(5) and 28 C.F.R. § 68.56.