

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

UNITED STATES OF AMERICA )  
Complainant, )  
 )  
v. ) 8 U.S.C. § 1324c Proceeding  
 ) Case No. 95C00071  
HONORIO CARMONA-ANICA, )  
Respondent. )  
\_\_\_\_\_ )

ORDER  
(June 14, 1995)

On April 17, 1995, Complainant filed its Complaint in this case against Honorio Carmona-Anica (Carmona or Respondent) in the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint alleges that Carmona violated 8 U.S.C. § 1324c(a)(2) by knowingly using, attempting to use, and possessing a forged, counterfeited, altered and falsely made Form I-151, alien registration card (A64-826-527) in the name of Honorio Carmona, for the purpose of satisfying a requirement of the Immigration and Nationality Act. Previously, Complainant served on Respondent an underlying Notice of Intent to Fine (NIF), in response to which by letter dated July 19, 1994, he exercised his right to request a hearing before an administrative law judge.

OCAHO issued a Notice of Hearing (NOH) on April 18, 1995. The NOH, with a copy of the Complaint and OCAHO rules of practice and procedure enclosed, was mailed to Respondent, return receipt requested. Delivery of that mailing is confirmed by the United States Postal Service (USPS) receipt returned to OCAHO which evidences that it was received at Carmona's address, and signed for by William A. Payne (Payne) on May 7, 1995.

By letter/pleading, dated May 14, 1995, Payne advises that USPS "let me have the complaint because I have the same address that the addressee/respondent had." Payne recites that Carmona was granted voluntary departure, enclosing a copy of an August 3, 1994 Decision of the Immigration Judge to that effect. He recites that Carmona is in Mexico City and cannot attend a hearing in consequence of which he requests that I dismiss the case. Advising of certain hours Carmona can be reached by telephone, Payne suggests that "mail to his home does not seem to be reliable." He concludes by requesting on his own behalf and that of other friends in the United States that this case be dismissed so that Carmona can "legally visit us someday, and it would be a shame for our border with Mexico to stand in the way."

To similar effect as the request quoted above, I have received four letters, none of which appear to have been served on Complainant. Remarkably, considering that the Complaint in this case implicates false documents intended to defraud the government, one letter from a physician and another from a canon attest to the honor, honesty, worth and devotion of Respondent. Presumably the public policy against defrauding their government reflected in the allegation of a violation of § 1324c(a)(2) is of little concern to these correspondents, unless as I would hope, they were unaware of the gravamen of the Complaint and of the moral turpitude implicit in a finding of liability. These letters are ex parte, and prohibited. In any event they are irrelevant. For record purposes, however, the copy of this Order addressed to Complainant includes copies of those communications.

More to the point, § 1324c cases do not vanish when the respondent leaves the country having accepted voluntary departure in lieu of an order of deportation. OCAHO caselaw established in a series of orders in a recent proceeding makes clear that such departure may frustrate but does not bar the ability of the hearing process to reach a conclusion. See U.S. v. Flores-Martinez, 5 OCAHO 733 (1995); 4 OCAHO 713 (1994); 4 OCAHO 698 (1994); 4 OCAHO 647 (1994). It must be remembered that while Carmona doubtless did not enjoy receiving the NIF, it was his election before entry of the voluntary departure order and in preference to accepting a final § 1324c order to invoke the ALJ hearing process.

Flores-Martinez also confirms that once invoked, the § 1324c hearing process is not frustrated by absence from the United States of the alien respondent pursuant to voluntary departure. In Flores-Martinez, service of the Complaint was held to be effective by delivery to the Respondent's attorney although the Respondent had departed for

Mexico. In contrast, in the present case, there is no basis for concluding that delivery to Payne effects service on Carmona. I do not doubt the statement in Payne's letter that as he had the same address as had been Carmona's, he took delivery from USPS of the NOH which transmitted the Complaint. Payne has not undertaken to appear before me as attorney for Carmona; I do not treat his letter as an effort at representation. See 28 C.F.R § 68.33.<sup>1</sup> I conclude that service of the Complaint was not effected upon Carmona, a conclusion I reach reluctantly where the alien confronted with a NIF implicating § 1324c culpability relocates beyond reach of service in the United States of the Complaint which follows from that NIF.

Having found that service was not effective, this Order invites Complainant to advise whether it elects to proceed or to dismiss the Complaint. If Complainant prefers not to dismiss the Complaint, I will expect it to provide a detailed scenario which explains the means to achieve service of the Complaint and subsequent hearing procedures.

Complainant's response will be timely if filed not later than July 10, 1995.

**SO ORDERED.**

Dated and entered this 14th day of June, 1995.

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MARVIN H. MORSE  
Administrative Law Judge

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<sup>1</sup> Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1994), as amended by 59 Fed. Reg. 41, 243 (1994) (to be codified at 28 C.F.R. § 68.2(i), (k) [hereinafter cited as 28 C.F.R. pt. 68].