

DOCKETED

SEP 23 2004

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**FILED**  
SEP 14 2004  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

CARLOS RODRIGUEZ,

Plaintiff,

v.

MICHAEL COMFORT, as District Director of the  
Chicago District of the Department of Homeland  
Security, et al.,

Defendant.

NO. 04 C 4574

Judge Hart

**NOTICE OF MOTION**

TO: Taher Kameli, Esq.,  
KAMELI & ASSOCIATES  
Suite 2026  
220 South State Street  
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on SEPTEMBER 22, 2004 at 11:00 a.m. at the opening of Court or as soon thereafter as counsel may be heard, I will appear before JUDGE HART in the courtroom usually occupied by him in the Everett McKinley Dirksen Building, 219 South Dearborn, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and there present:

**DEFENDANT'S MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT FOR MANDAMUS**

at which time and place you may appear, if you see fit.

Respectfully submitted,

PATRICK J. FITZGERALD  
United States Attorney

By:   
SHEILA M. ENTENMAN  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-8788

AFFIDAVIT OF MAILING

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

MARION MC LEMORE being first duly sworn on oath deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 14TH day of SEPTEMBER 2004, she placed a copy of

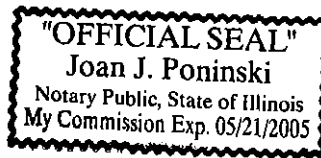
- 1. NOTICE OF MOTION
- 2. DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR MANDAMUS

in a postage prepaid envelope addressed to the following named individual and caused said envelope to be deposited in the United States mail chute located in the Everett McKinley Dirksen Building, Chicago, Illinois on said date at the hour of 5:00 p.m.

Taher Kameli, Esq.,  
KAMELI & ASSOCIATES  
Suite 2026  
220 South State Street  
Chicago, Illinois 60604

*Marion Mc LEMORE*  
SUBSCRIBED AND SWORN TO before me

this 14TH SEPTEMBER, 2004  
*Joan J. Poninski*  
NOTARY PUBLIC



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CARLOS RODRIGUEZ )  
)  
Plaintiff, )  
)  
v. )  
)  
MICHAEL COMFORT, as District Director )  
of the Chicago District for the Department )  
of Homeland Security, U.S. Citizenship & )  
Immigration Services, ("USDHS, CIS") )  
)  
Defendant. )

No. 04 C 4574

Judge Hart

**DEFENDANT'S MOTION TO DISMISS**  
**PLAINTIFF'S COMPLAINT FOR MANDAMUS**

The defendant, MICHAEL COMFORT and the Department of Homeland Security, Citizenship and Immigration Services by and through their attorney, PATRICK J. FITZGERALD, the United States Attorney for the Northern District of Illinois, hereby move to dismiss the complaint filed by plaintiff.

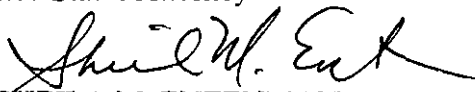
The complaint for mandamus seeks intervention of the District Court to compel the DHS, CIS to complete the adjudication of plaintiff's application for adjustment of status pursuant to Section 245A of the Immigration and Nationality Act (INA). (See Complaint, Par.1 and 6). However, the defendants, US DHS, CIS have approved plaintiff's application on September 13, 2004, which was pending background clearance at the time this complaint was filed. (See Govt. Ex. 1, Approval Notice; see also Complaint Ex. I). Thus, the action plaintiff seeks has already been provided for by the defendant without the intervention of the district court, thereby rendering this action moot. As is referenced in the complaint at Exhibit I, the US DHS, CIS could not complete

plaintiff's case until the necessary background clearances were obtained, and now that those are completed the case has been favorably adjudicated by the agency for plaintiff. (Govt. Ex. 1). Therefore, the action is moot and should be dismissed. A case is moot if "there is no possible relief which the court could order that would benefit the party seeking it." *McKinney v. Indiana Michigan Power Co.*, 113 F.3d 770, 772 (7<sup>th</sup> Cir. 1997). And when a case is moot, "federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). Thus, there is no actual "case" or "controversy" for the court to take jurisdiction over the matter. U.S. Const., art. III, sec. 2. This is therefore a constitutional limit on federal jurisdiction over the matter, and the court does not have jurisdiction because the case is moot. *See United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395 (1980).

Additionally, the defendants submit that the complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction because section 242(a)(2)(B)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §1252(a)(2)(B)(i) expressly removes jurisdiction from the courts to review "any judgment" regarding adjustment of status applications "notwithstanding any other provision of law." Jurisdiction in this matter rests with the Attorney General and his delegates, the DHS, CIS.

Respectfully submitted,

PATRICK J. FITZGERALD  
United States Attorney

By:   
SHEILA M. ENTENMAN  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-8788

U.S. Department of Homeland Security  
10 W. Jackson Blvd.  
Chicago, IL 60604



U.S. Citizenship  
and Immigration  
Services

September 13, 2004

Mr. Carlos Rodriguez-Molina  
2229 W. 18<sup>th</sup> Street  
Chicago, IL 60608

A#: 93 041 676  
Approval Date: 9/13/04  
Class: W46

Dear Mr. Carlos Rodriguez-Molina,

Please be advised that you have been granted permanent resident alien status as of 09/13/04. This letter should not be regarded as proof of that status. You are being processed for an alien registration card, which will be mailed to you at the above address within the next few months. If you move from that address prior to receiving the card, please notify this office by mail of your new address. If you require proof of your status on order to travel, accept employment or other reason, you may come to one of our offices for a temporary stamp. Bring this letter and your passport with you.

Sincerely,

Michael M. Comfort  
District Director

