



**User Name:** Andrea Jamison

**Date and Time:** Tuesday, September 26, 2017 9:59:00 AM CST

**Job Number:** 53969033

## Document (1)

1. [Mohammed v. Frazier, 2008 U.S. Dist. LEXIS 10002](#)

**Client/Matter:** -None-

**Search Terms:** 2008 U.S. Dist. LEXIS 10002

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Cases

**Narrowed by**  
-None-



Positive

As of: September 26, 2017 3:59 PM Z

## Mohammed v. Frazier

United States District Court for the District of Minnesota

February 8, 2008, Decided; February 8, 2008, Filed

Civ. No. 07-3037 (RHK/JSM)

### Reporter

2008 U.S. Dist. LEXIS 10002 \*; 2008 WL 360778

Wael A. Mohammed, Plaintiff, v. Denise Frazier, et al.,  
Defendants.

### Core Terms

---

motion to dismiss, moot, Recommendation, Amend,  
responsive pleading, application for adjustment,  
purpose of rule, rendered moot, subject-matter,  
adjudicate, parties', days

**Counsel:** [\*1] For Wael A. Mohammed, Plaintiff:  
Herbert A Igbanugo, LEAD ATTORNEY, Igbanugo  
Partners Int'l Law Firm, PLLC, Minneapolis, MN; Katie A  
DeGrio, LEAD ATTORNEY, Igbanugo Partners Int'l Law  
Firm, PLLC, Mpls, MN.

For Denise Frazier, Field Office, District Director, U. S.  
Citizenship & Immigration Services, Paul Novak,  
Director, Vermont Service Center, U. S. Citizenship &  
Immigration Services, Evelyn Upchurch, Director, Texas  
Service Center, U.S. Citizenship & Immigration  
Services, Emilio T Gonzalez, Director, U. S. Citizenship  
& Immigration Services, Alberto Gonzales, Attorney  
General of the United States, Michael Chertoff,  
Secretary, U. S. Department of Homeland Security,  
Robert S. Mueller, Director, Federal Bureau of  
Investigation, Defendants: Friedrich A P Siekert, LEAD  
ATTORNEY, United States Attorney's Office, Mpls, MN.

**Judges:** RICHARD H. KYLE, United States District  
Judge.

**Opinion by:** RICHARD H. KYLE

### Opinion

---

#### ORDER

Plaintiff Wael Mohammed commenced this action  
against the Director of the Federal Bureau of

Investigation, the Attorney General of the United States,  
the Secretary of Homeland Security, and several  
officials working for the Bureau of Citizenship and  
Immigration Services ("CIS"), seeking a writ of  
mandamus [\*2] compelling CIS to adjudicate his  
application for adjustment of status. Defendants moved  
to dismiss, arguing *inter alia* that the Court lacks  
subject-matter jurisdiction over Mohammed's Complaint.  
On December 28, 2007, Magistrate Judge Mayeron  
issued a Report and Recommendation in which she  
recommended (among other things) that Defendants'  
Motion be denied.

Mohammed and Defendants filed Objections to the  
Report and Recommendation, and Mohammed filed a  
Rebuttal to Defendants' Objections. In his Rebuttal,  
however, Mohammed indicated that his application for  
adjustment of status was denied by CIS on January 15,  
2008. (See Rebuttal at 5 & Ex. 1.) Accordingly, on  
January 22, 2008, the Court issued an Order to Show  
Cause requiring Mohammed to explain why his  
Complaint had not been rendered moot by CIS's denial  
of his application.

On January 29, 2008, Mohammed filed his Response to  
the Court's show-cause Order, arguing that this action  
had not been rendered moot because CIS's denial of his  
application was illegal and was an *ultra vires* act. (See  
Response at 1-2.) This argument is unpersuasive. The  
Complaint sought only one form of relief: an Order  
compelling CIS to act on Mohammed's application.  
[\*3] (See Compl. at 10 (asking the Court to "Order  
Defendants to instruct their agents to promptly  
adjudicate Plaintiff's case within 30 days or earlier").)  
Now that CIS has denied the application, there is no  
further relief sought in the Complaint for the Court to  
grant, regardless of the legality (or alleged lack thereof)  
of CIS's actions.

Although the Complaint is now moot,<sup>1</sup> Mohammed has also asked the Court for leave to amend the Complaint to challenge CIS's "unlawful" denial of his application. (Response at 2-3.)<sup>2</sup> The Government responds that the proposed amendment would be futile because Congress has stripped the federal courts of jurisdiction to review CIS's adjustment-of-status decisions. Pursuant to [Federal Rule of Civil Procedure 15\(a\)\(1\)\(A\)](#), however, a plaintiff may amend his complaint *as of right* at any time before he has been served with a "responsive pleading." Defendants have not filed an Answer to the Complaint, and their Motion to Dismiss is not a "responsive pleading" under [Rule 15](#). See [Winfrey v. Brewer, 570 F.2d 761, 764 n.4 \(8th Cir. 1978\)](#) ("A motion to dismiss is not a 'responsive pleading' for purposes of [[Rule 15](#)]."); [James V. Hurson Assocs., Inc. v. Glickman, 343 U.S. App. D.C. 313, 229 F.3d 277, 282 \(D.C. Cir. 2000\) \[\\*4\]](#) ("We have repeatedly clarified that a motion to dismiss is not a responsive pleading for the purposes of [Rule 15](#)."); see also [Fed. R. Civ. P. 7\(a\), \(b\)](#) (noting difference between pleadings and motions). Accordingly, Mohammed was not required to obtain leave before filing his proposed Amended Complaint. Nevertheless, because Mohammed has sought such leave, the Court will grant Mohammed's Motion to remove any confusion in the docket.

Finally, to the extent that Defendants believe the Court lacks jurisdiction over Mohammed's Amended Complaint, they may file before Magistrate Judge Mayeron a motion to dismiss for lack of subject-matter jurisdiction, pursuant to [Federal Rule of Civil Procedure 12\(b\)\(1\)](#).

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** as follows:

1. The parties' Objections (Doc. Nos. 28, 29) to the Report and Recommendation are **OVERRULED** as moot;
2. Mohammed's Complaint (Doc. No. 1) is **DISMISSED WITH [\*5] PREJUDICE** as moot;
3. Defendants' Motion to Dismiss (Doc. No. 8) is **DENIED** as moot; and

4. Mohammed's Motion for Leave to Amend (Doc. No. 38) is **GRANTED**. Mohammed is **DIRECTED** to serve and file his Amended Complaint, in the form attached to the Motion for Leave to Amend, within 10 days of the date of this Order.

Dated: February 8, 2008

s/ Richard H. Kyle

RICHARD H. KYLE

United States District Judge

---

End of Document

---

<sup>1</sup> Because the Complaint is moot, Defendants' Motion to Dismiss and the parties' Objections to Magistrate Judge Mayeron's Report and Recommendation also are moot.

<sup>2</sup> Mohammed has also separately filed a Motion for Leave to Amend (Doc. No. 38).