

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

UNITED STATES OF AMERICA,	)	
	)	
Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	
	)	OCAHO Case No. 2023A00070
FRESCO PRODUCE, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Ariel Chino, Esq., for Complainant  
Robert H. Crane, Esq., for Respondent

ORDER REFERRING CASE TO OCAHO SETTLEMENT OFFICER  
PROGRAM AND DESIGNATING SETTLEMENT OFFICER

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 23, 2023, alleging that Respondent, Fresco Produce, Inc., violated the employer sanctions provisions of 8 U.S.C. § 1324a. Respondent, through counsel, filed an answer on July 28, 2023.

On January 25, 2024, the Court issued an Order Requiring Filing of Notice of Intent to Fine and Prehearing Statements and Scheduling Initial Prehearing Conference. The Court ordered Complainant to file a copy of the NIF with proof of its service on Respondent by February 1, 2024. *See* Order Requiring Filing Notice Intent Fine & Prehr’g Statements & Scheduling Initial Prehr’g Conf. 6. The Court ordered the parties to make their initial disclosures and to file written prehearing statements of position with the Court by February 15, 2024. *Id.* at 8. The Court described the OCAHO Settlement Officer Program and provided the parties with links to the Executive Office for Immigration Review’s Policy Memorandum 20-16

and chapter 4.7 in OCAHO's Practice Manual, both of which describe the policies and procedures for the use of settlement officers in OCAHO cases. *Id.* at 5. In its order, the Court directed the parties to confer regarding the OCAHO Settlement Officer Program and to state in their prehearing statements whether the parties were interested in a referral to the program. *Id.* at 5, 7. The Court also set an initial prehearing conference on February 21, 2024. *Id.* at 8.

Complainant filed a Notice of Filing of the Notice of Intent to Fine on February 13, 2024. The attached NIF indicated service on the Respondent on June 29, 2021, and Complainant attached a certificate of service certifying service of the NIF on Respondent's counsel by mail on February 6, 2024.

On February 20, 2024, the parties filed an agreed Joint Motion for and Consent to Referral to Settlement Officer Program, asking the Court to refer this matter to the program and "expressly consent[ing] to participation in the Settlement Officer Program and agree[ing] to engage in settlement negotiations in good faith." The parties moved the Court to refer the case to a settlement officer and stated that they "expressly consent to participation in the Settlement Officer Program and agree to engage in settlement negotiations in good faith." Joint Mot. Consent Referral Settlement Officer Program 1. Neither party filed a prehearing statement as ordered.

On February 21, 2024, the Court conducted the initial telephonic prehearing conference pursuant to 28 C.F.R. § 68.13 and, on March 7, 2024, issued an order memorializing the conference in accordance with 28 C.F.R. § 68.13(c).<sup>1</sup> During the conference, the Court discussed the OCAHO Settlement Officer Program, and both parties responded affirmatively when asked if they understood the policies and procedures for the program and consented to their use. After giving both parties an opportunity to ask questions about the program, the Court granted the parties' Joint Motion for and Consent to Referral to Settlement Officer Program, finding that the case was appropriate for an initial referral of sixty days with the parties' consent. Lastly, the Court extended the deadline for the filing of prehearing statements.

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<sup>1</sup> OCAHO's Rules of Practice and Procedure for Administrative Hearings are available on OCAHO's homepage on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

## II. RULES GOVERNING OCAHO SETTLEMENT OFFICER PROGRAM

OCAHO announced its Settlement Officer Program in August 2020 through Policy Memorandum 20-16.<sup>2</sup> It is a voluntary program through which the parties use a Settlement Officer to mediate settlement negotiations as a means of alternative dispute resolution. The Settlement Officer convenes and oversees settlement conferences and negotiations, confers with the parties jointly and/or individually, and seeks voluntary resolution of issues. The proceedings before the Settlement Officer are subject to the confidentiality provisions of 5 U.S.C. § 574. The presiding Administrative Law Judge (ALJ) may refer a case for up to sixty days for settlement negotiations before the Settlement Officer. However, with the consent of the parties, the Settlement Officer may seek the approval of the presiding ALJ to extend the period for negotiations for a reasonable period of time, not to exceed an additional thirty days. If the parties reach a settlement, the provisions of 28 C.F.R. § 68.14 apply. If the parties' settlement negotiations are unsuccessful, the case is returned to the presiding ALJ to set appropriate procedural deadlines.

The presiding ALJ may refer a case to a Settlement Officer upon: (1) receipt of written confirmation of consent to referral from each party in the case, and (2) subject to 5 U.S.C. § 572(b) and the eligibility provisions of the program, a determination by the presiding ALJ that the case is appropriate for referral.<sup>3</sup> The eligibility provisions include, as relevant, that an ALJ shall not refer a case if (a) either party objects to the referral, (b) one or more parties are proceeding pro se unless the pro se parties are fully informed regarding program's procedures and consent to their use, or (c) a case is not appropriate for referral. OCAHO Settlement Officer Program Policy Memorandum 20-16, Sec. 1.C.

## III. DISCUSSION AND ANALYSIS

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<sup>2</sup> <https://www.justice.gov/eoir/page/file/1300746/download>.

<sup>3</sup> See Section II.A.1-2 of OCAHO Settlement Officer Program Policy Memorandum 20-16, available at <https://www.justice.gov/eoir/page/file/1300746/download>. See also Chapter 4.7(b)(1) of the OCAHO Practice Manual, available at <https://www.justice.gov/eoir/eoir-policy-manual/iv/4/7>.

As explained in its Order Memorializing Initial Prehearing Conference, the Court finds that referral of this matter to the OCAHO Settlement Officer Program is appropriate. This case meets the eligibility requirements for the program set forth in Section I.C.1-2. of Policy Memorandum 20-16 and Chapter 4.7(a)(4)(A)-(B) of the OCAHO Practice Manual. After considering the factors enumerated in 5 U.S.C. § 572(b), Section I.C.3. of Policy Memorandum 20-16, and Chapter 4.7(a)(4)(C) of the OCAHO Practice Manual, the Court finds that they do not counsel against referral of this case to the OCAHO Settlement Officer Program. The Court's referral is based on its review of the pleadings in this matter, the parties' Joint Motion for and Consent to Referral to Settlement Officer Program, and the Court's discussions with the parties' counsel during the initial prehearing conference in which they affirmed their understanding of the policies and procedures for the program and consented to their use.

Given the Court's finding that this case is appropriate for referral to the OCAHO Settlement Officer Program, and after granting the parties' Joint Motion for and Consent to Referral to Settlement Officer Program in which they consented to the referral in writing, the Court now refers this case to the program for settlement negotiations beginning on March 18, 2024, and continuing through May 17, 2024, pursuant to 28 C.F.R. § 68.28(a).

No procedural deadlines need to be stayed in this matter for purposes of this referral. As the Court explained to the parties during the initial prehearing conference, should this case not settle through the Settlement Officer Program, the Court will set a date for another prehearing conference before which the parties must file their prehearing statements. At the next prehearing conference, the parties must be prepared to set additional case deadlines, including dates for the completion of discovery, the filing of dispositive motions and responses, and a hearing.

Should the parties reach a settlement agreement through the OCAHO Settlement Officer Program, the Court may issue an order setting deadlines for the filing of any settlement materials. As the Court explained during the initial prehearing conference, the parties should consult 28 C.F.R. § 68.14 to understand the two avenues for leaving this forum after settlement. If the parties enter into a settlement agreement, 28 C.F.R. § 68.14(a)(2) provides that the parties may jointly file a notice of full settlement and an agreed motion to dismiss. The Court may require the filing of the settlement agreement. The parties should indicate in their filing whether they seek dismissal with or without prejudice.

IV. ORDERS

IT IS SO ORDERED that this case is referred to the OCAHO Settlement Officer Program for settlement negotiations beginning on March 18, 2024, and continuing through May 17, 2024;

IT IS FURTHER ORDERED that Administrative Law Judge John A. Henderson is designated as the Settlement Officer for this case; and

IT IS FURTHER ORDERED that, should the parties reach a settlement, they shall proceed in accordance with 28 C.F.R. § 68.14.

SO ORDERED.

Dated and entered on March 7, 2024.

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Honorable Carol A. Bell  
Administrative Law Judge