

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

In re Investigation of:	)	
	)	
GEORGIA INSTITUTE OF TECHNOLOGY	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Subpoena No.
	)	2021S00046
	)	
	)	
	)	

---

ORDER GRANTING THE UNITED STATES' MOTION FOR LEAVE TO AMEND  
ITS CERTIFICATE OF SERVICE AND REQUIRING COUNSEL TO FILE  
NOTICES OF APPEARANCE

I. PROCEDURAL HISTORY

At issue is an administrative subpoena the undersigned signed on July 12, 2021, at the request of the Immigrant and Employee Rights Section (IER) of the United States Department of Justice's Civil Rights Division. The subpoena required the Georgia Institute of Technology (Georgia Tech) to produce various documentation, including information pertaining to certain students and alumni. The subpoena was issued in furtherance of an ongoing investigation and no complaint has been filed in this matter. *See* 28 C.F.R. § 68.25(a) (authorizing issuance of administrative subpoenas before or after the filing of a complaint to require the attendance and testimony of witnesses and the production of things including, but not limited to, documents and records).

On September 22, 2021, the Court received a letter from an individual, William Wheeler, in which he objected to Georgia Tech's release of his personal information as part of its response to the administrative subpoena.

On September 24, 2021, the Court issued an Order Setting Schedule on Petition to Revoke or Modify Administrative Subpoena in which the Court construed the letter as a petition to revoke or modify the subpoena. Further, the Court ordered IER file a response to the petition and provided Georgia Tech an opportunity to respond to the petition, all within eight days of the issuance of the Order.

On October 4, 2021, IER timely filed the United States' Response to Petition to Revoke or Modify Administrative Subpoena. IER's counsel certified that they served the United States' response on Mr. Wheeler using an overnight courier service.

The certificate of service did not mention Georgia Tech. Also, on October 4, 2021, Georgia Tech, through counsel, filed Georgia Institute of Technology’s Response to Petition to Revoke or Modify Administrative Subpoena. Georgia Tech’s certificate of service reflected service of its filing on IER counsel and Mr. Wheeler.

On October 6, 2021, IER filed a Motion for Leave to Amend Certificate of Service of United States’ Response to Petition to Revoke or Modify Administrative Subpoena. Counsel for IER explained that, although they served the United States’ Response on Georgia Tech by electronic mail on October 4, 2021, they inadvertently omitted that information from their certificate of service. Mot. Leave Amend Certificate Service 1. IER attached to its motion an amended certificate of service reflecting service on both Georgia Tech and Mr. Wheeler on October 4, 2021, and asked the Court for leave to amend the certificate of service. *Id.* at 1-3.

## II. LEGAL STANDARDS AND DISCUSSION

28 C.F.R. § 68.6(a) requires filings to “be accompanied by a certification indicating service to all parties of record.” The certificate of service IER filed with the Court on October 4, 2021, was deficient in that it did not indicate service of its response upon Georgia Tech, the subpoena recipient. Given IER counsel’s representations to the Court in their subsequent motion that they did timely serve Georgia Tech with a copy of the United States’ response by electronic mail on October 4, 2021, but mistakenly omitted that information from the certification, the Court grants IER leave to amend its certificate of service.

The Court next considers the amended certificate of service attached to IER’s Motion for Leave to Amend Certificate of Service of United States’ Response to Petition to Revoke or Modify Administrative Subpoena. The Court finds that the amended certificate of service complies with OCAHO’s regulations in that it certifies “the manner and date of service” of the filing on all of the parties. 28 C.F.R. § 68.6(a); *see also United States v. Ron Eagley*, 3 OCAHO no. 435, 433, 434 (1992) (accepting certificate of service belatedly filed with the Court given, in part, that it complied with § 68.6(a) by certifying the date and manner of service).<sup>1</sup> The amended

---

<sup>1</sup> Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-

certification likewise complies with OCAHO's rules requiring that, "[w]hen a party is represented by an attorney, service shall be made upon the attorney." 28 C.F.R. § 68.6(a). Here, although counsel for both Georgia Tech and IER have not filed notices of appearance pursuant to 28 C.F.R. § 68.33(f), they have implicitly acknowledged each other's representation. Georgia Tech's counsel served its response on IER's counsel, and IER's counsel served their filing on Georgia Tech's counsel. For clarity of the record, counsel for the United States and Georgia Tech shall file notices of appearance in this matter that comply with 28 C.F.R. § 68.33(f).

### III. ORDERS

IT IS SO ORDERED that the United States' Motion for Leave to Amend Certificate of Service of United States' Response to Petition to Revoke or Modify Administrative Subpoena is GRANTED. The Court accepts the amended certificate of service filed with the Court on October 6, 2021. The amended certification shall serve as the certificate of service for the United States' Response to Petition to Revoke or Modify Administrative Subpoena dated October 4, 2021.

IT IS FURTHER ORDERED that, within seven days of the date of this Order, counsel for the United States and counsel for the Georgia Institute of Technology shall file notices of appearance in this matter that comport with 28 C.F.R. § 68.33(f).

ENTERED:

---

Honorable Carol A. Bell  
Administrative Law Judge

DATE: October 15, 2021

---

OCAHO," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.