

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. 2023A00058
PJ'S OF TEXAS, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Nain Martinez, Jr., Esq., for Complainant  
Kevin R. Lashus, Esq., for Respondent

ORDER GRANTING JOINT MOTION FOR AND CONSENT TO REFERRAL TO  
THE SETTLEMENT OFFICER PROGRAM, REFERRING CASE TO THE  
OCAHO SETTLEMENT OFFICER PROGRAM, AND DESIGNATING  
SETTLEMENT OFFICER

I. PROCEDURAL HISTORY

On May 9, 2023, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, PJ's of Texas, Inc. Complainant alleges in the complaint that Respondent violated the employer sanctions provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Complainant attached as exhibits to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it served on Respondent on October 20, 2021, and Respondent's request for a hearing before OCAHO. *Id.* Exs. A-B.

On May 15, 2023, OCAHO's Chief Administrative Hearing Officer (CAHO) sent the parties by United States Postal Service (USPS) certified mail a Notice of Case Assignment for Complaint Alleging Unlawful Employment and the complaint, the NIF, and Respondent's request for a hearing (collectively the "Complaint

package”). OCAHO staff later sent two additional copies of the Complaint package to Respondent’s counsel by USPS certified mail. On June 21, 2023, Respondent, through counsel, filed a Special Appearance, Special Exceptions, and Answer. In its answer, Respondent stated that it was interested in participating in the OCAHO Settlement Officer Program. Special Appearance, Special Exceptions, & Ans. ¶ 6.

The Court issued an Order on Electronic Filing on August 11, 2023, approving this case for participation in OCAHO’s Electronic Filing Pilot Program.<sup>1</sup>

On January 29, 2024, Complainant filed a Notice of Appearance and Motion for Substitution. The Court issued an Order on Service, Complainant’s Notice of Appearance and Motion for Substitution, Electronic Filing, Prehearing Statements, and Scheduling Initial Prehearing Conference on January 31, 2024. The Court granted Complainant’s motion to substitute counsel and enrolled Complainant’s counsel in OCAHO’s Electronic Filing Pilot Program. *See United States v. PJ’s of Tex., Inc.*, 18 OCAHO no. 1524, 5-7, 13-14 (2024).<sup>2</sup> Through this Order, the Court scheduled an initial telephonic prehearing conference for February 28, 2024, and ordered the parties to file prehearing statements with the Court and make their initial disclosures of documentary evidence by February 21, 2024. *Id.* at 7, 11-14. The Court also provided the parties with information about the OCAHO Settlement Officer Program, a voluntary mediation program through which a Settlement Officer mediates settlement negotiations between the parties as a means of non-binding, alternative dispute resolution. *Id.* at 10. The Court provided the

---

<sup>1</sup> OCAHO’s Electronic Filing Pilot Program is described in detail in the Federal Register. *See* 79 Fed. Reg. 31143 (May 30, 2014). *See also* OCAHO Practice Manual Ch. 3.7.

<sup>2</sup> Citations to OCAHO precedents in bound Volumes 1 through 8 include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after Volume 8, where the decision has not yet been 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 through the Westlaw database “FIM-OCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

parties with links to the Executive Office for Immigration Review (EOIR) Policy Memorandum 20-16 and Chapter 4.7 of OCAHO's Practice Manual, both of which describe the policies and procedures for the use of Settlement Officers in OCAHO cases.<sup>3</sup> *Id.*

Complainant filed the United States Department of Homeland Security's Prehearing Statement on February 16, 2024, in which it stated that the parties had conferred about the OCAHO Settlement Officer Program and were interested in a referral. United States Dep't Homeland Security's Prehr'g Statement 6.

Respondent filed Respondent's Prehearing Statement and Initial Disclosures on February 21, 2024, and thereafter filed Respondent's First Amended Prehearing Statement and Initial Disclosures on February 23, 2024. In its prehearing statement, Respondent stated that it "maintains a desire to resolve the matter through alternative dispute resolution." Resp't's First Am. Prehr'g Statement & Initial Disclosures 2.

On February 26, 2024, the Court issued an Order Rescheduling Initial Prehearing Conference, through which it moved the prehearing conference in this matter to March 18, 2024. Order Rescheduling Initial Prehr'g Conf. 1-2.

The Court conducted the initial telephonic prehearing conference pursuant to 28 C.F.R. § 68.13<sup>4</sup> on March 18, 2024. During the conference, the Court explained the policies and procedures governing the OCAHO Settlement Officer Program, including the time period for referrals and the possibility of obtaining an extension of this referral period. Order Memorializing Prehr'g Conf. 5. The Court directed the parties to review Chapter 4.7 of OCAHO's Practice Manual and EOIR Policy Memorandum 20-16, which provide further details regarding the Settlement Officer

---

<sup>3</sup> EOIR Policy Memorandum 20-16 is available at <https://www.justice.gov/eoir/page/file/1300746/download>. Chapter 4.7 of the OCAHO Practice Manual also describes the OCAHO Settlement Officer Program and may be found at <https://www.justice.gov/eoir/eoir-policy-manual/iv/4/7>.

<sup>4</sup> Proceedings in this case will generally be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024). OCAHO's Rules 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>.

Program's policies and procedures. *Id.* The Court provided the parties with an opportunity to ask questions regarding the Settlement Officer Program, and both parties confirmed their interest in an immediate referral to the program. *Id.* Given the parties' mutual agreement for a referral and their representations to that effect in their filings, the Court found that the case was appropriate for referral and advised the parties to submit a written joint motion requesting referral. *Id.* at 5-6 (citing EOIR Policy Mem. 20-16, Section II.A.).

At the initial telephonic prehearing conference, the Court also ordered Complainant to file with the Court a copy of the complete NIF that it served on Respondent on October 20, 2021, including attachment(s), and to provide proof of its service on Respondent. *Id.* at 3-4. In response, on March 28, 2024, Complainant filed Complainant's Notice of Filing containing the attachments to the NIF it served on Respondent on October 20, 2021.

On March 29, 2024, the parties filed a Joint Motion for and Consent to Referral to the Settlement Officer Program. In this joint motion, the parties requested that the Court refer this matter 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 2 (citations omitted).

## II. RULES GOVERNING OCAHO SETTLEMENT OFFICER PROGRAM

OCAHO announced its Settlement Officer Program in August 2020 through Policy Memorandum 20-16. 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. EOIR Policy Mem. 20-16, Section II.A. 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. *Id.* Section I.C.

### III. DISCUSSION AND ANALYSIS

Pending before the Court is the parties' Joint Motion and Consent to Referral to the Settlement Officer Program. The parties move the Court to refer the case to the OCAHO Settlement Officer Program and have consented and agreed to engage in settlement negotiations in good faith. Joint Mot. Consent Referral Settlement Officer Prog. 2. Counsel for both parties signed the motion. *Id.*

Through their Joint Motion and Consent to Referral to the Settlement Officer Program, both parties have satisfied the OCAHO Settlement Officer Program's requirement that no referral may be made without "receipt of written confirmation of consent to referral from each party in the case." EOIR Policy Mem. 20-16, Section II.A.1. As noted above, the Court has already determined that this case, in which both parties are represented by counsel and have agreed to a referral after being fully informed about the program's procedures and consenting to their use, is appropriate for referral pursuant to EOIR Policy Memorandum 20-16, Sections II.C.1-2. Order Memorializing Prehr's Conf. 5; *see also* OCAHO Practice Manual, Chapter 4.7(a)(4) (March 13, 2023) (discussing the program's eligibility requirements). Moreover, the Court does not find that any of the factors in 5 U.S.C. § 572(b), EOIR Policy Memorandum 20-16, Section I.C.3., and Chapter 4.7(a)(4)(C) of the OCAHO Practice Manual counsel against referral of this case to the program. This finding is based on the parties' representations during the initial prehearing conference and the Court's review of the pleadings in this matter, including the complaint and attachments, the answer, the parties' prehearing statements, and the parties' Joint Motion and Consent to Referral to the Settlement Officer Program.

Given the Court's findings that this case is appropriate for referral to the OCAHO Settlement Officer Program, and that none of the eligibility factors counsel against referral, the Court now grants the parties' Joint Motion and Consent to Referral to the Settlement Officer Program and refers this case to the program for settlement negotiations for sixty days beginning on April 25, 2024, and continuing through June 24, 2024, pursuant to 28 C.F.R. § 68.28(a) and EOIR Policy Memorandum 2016, Sections II.C, II.D.2. The Court designates Administrative Law Judge John A. Henderson as the Settlement Officer for this case.

The Court has not yet set a case schedule in this matter, and therefore, no procedural deadlines need to be stayed during the referral period. *See* EOIR Policy Mem. 20-16, Section II.C. As the Court explained during the initial prehearing conference, the parties may engage in discovery during mediation. Order Memorializing Prehr's Conf. 6.

During the referral period, the parties shall comply with the OCAHO Settlement Officer Program's confidentiality requirements, *see* EOIR Policy Mem. 20-16, Section IV, and, as specified in the program, the statutory provisions of 5 U.S.C. § 574 "which generally prohibit disclosure of dispute resolution communications by parties and a settlement officer unless a specific enumerated exception applies." *Id.* Section IV.B.

As the Court explained in the Order Memorializing Initial Prehearing Conference, if 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. Order Memorializing Prehr's Conf. 6. The parties may consult 28 C.F.R. § 68.14, which sets forth the two avenues for leaving this forum upon settlement. If the parties enter into a settlement agreement, 28 C.F.R. § 68.14(a)(2) provides that the parties may file a notice of settlement and a joint motion to dismiss. If the parties pursue this avenue, the Court may require the filing of the parties' settlement agreement. The parties should state in their joint motion whether they are seeking dismissal with or without prejudice.

If the parties do not reach a settlement during the referral to the OCAHO Settlement Officer Program, they may seek an extension of the referral period for up to an additional thirty days. EOIR Policy Mem. 20-16, Section II.D.2. When the referral period ends, the Settlement Officer will terminate negotiations and return the case to the presiding ALJ. *Id.* Section V.B. Settlement negotiations before the Settlement Officer also will be terminated and the case will be returned to the presiding ALJ if a party unambiguously indicates that it does not wish to

participate or if the Settlement Officer determines that further negotiations would be unproductive or inappropriate. *Id.* Section V.C.

#### IV. ORDERS

IT IS SO ORDERED that the Joint Motion for and Consent to Referral to the Settlement Officer Program filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, PJ's of Texas, Inc., is GRANTED;

IT IS FURTHER ORDERED that, pursuant to EOIR Policy Memorandum 20-16, Section II.C, this case is referred to the OCAHO Settlement Officer Program for settlement negotiations for sixty days beginning on April 25, 2024, and continuing through June 24, 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 April 23, 2024.

---

Honorable Carol A. Bell  
Administrative Law Judge