

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

April 22, 2024

UNITED STATES OF AMERICA,)	
Complainant,)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2024A00094
TERRAPOWER, LLC,)	
Respondent.)	

NOTICE OF CASE ASSIGNMENT FOR COMPLAINT
ALLEGING UNLAWFUL EMPLOYMENT

1. A complaint was filed on March 27, 2024, against TerraPower, LLC (Respondent) by the United States of America (Complainant). Attached to this Notice¹ is a copy of the complaint, the Notice of Intent to Fine (NIF) issued by the Department of Homeland Security (DHS), and the

¹ For a number of years, the Office of the Chief Administrative Hearing Officer’s (OCAHO) standard Notice of Case Assignment (NOCA) included a footnote indicating that the NOCA also served as a “Notice of Hearing” referenced in 28 C.F.R. § 68.3. *See, e.g., Nazarenko v. SupportYourApp, Inc.*, 19 OCAHO no. 1532, 1 n.1 (2024). This footnote was added several years ago following a change in the title of the NOCA, which was previously styled as a “Notice of Hearing.” *See, e.g., United States v. U.S. Style, Inc.*, 6 OCAHO no. 827, 52, 53 (1995) (noting that a “Notice of Hearing on the Complaint” was sent to the respondent along with a copy of the complaint at the outset of an OCAHO case). The reason for initially labeling a NOCA as a “Notice of Hearing” is unclear, as 28 C.F.R. § 68.3 addresses the service of documents by OCAHO in general and does not suggest any basis for equating a NOCA and a notice of hearing. In any event, enough time has passed since the change in the title of the NOCA that the footnote referencing a “Notice of Hearing” and 28 C.F.R. § 68.3 is no longer necessary. Moreover, designating the NOCA, which is typically issued by the Chief Administrative Hearing Officer, *see* 28 C.F.R. §§ 68.2, 68.26, as a notice of hearing under 28 C.F.R. § 68.3 risks unnecessary confusion for the parties with the notice of the “date, time, and place” of a hearing—*i.e.*, a notice of hearing—issued by an Administrative Law Judge pursuant to 28 C.F.R. § 68.5(a). Accordingly, OCAHO is deleting that footnote from its standard NOCA beginning with the instant case. Finally, OCAHO does not typically publish a NOCA. *United States v. Liberty Constructors, LLC*, 18 OCAHO no. 1495, 1 n.1 (2023). “However, OCAHO will publish a NOCA when it contains an update to the standard information provided in order to enhance transparency and better inform stakeholders with an interest in OCAHO proceedings.” *Id.* In the instant case, OCAHO is publishing the NOCA both to acknowledge the deletion of the footnote discussed above and to provide updated language in paragraph eight clarifying the factors considered in selecting the time and place for a hearing for a case arising under 8 U.S.C. § 1324a.

Respondent's request for a hearing pursuant to 8 U.S.C. § 1324a(e)(3). This case is assigned to the Honorable Andrea Carroll-Tipton, Administrative Law Judge.

2. Proceedings in this matter will be conducted according to the OCAHO rules appearing at 28 C.F.R. pt. 68 and the applicable case law.² It is imperative that you obtain a copy of the rules immediately and comply with their requirements in this case. A Portable Document Format (PDF) copy (32 pages) is available on the OCAHO webpage at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>. If you are unable to access the webpage or print a copy, you may call our office at 703-305-0864 and request that a copy be mailed to you at no charge.

Attorneys and unrepresented parties are advised to read the relevant rules in their entirety prior to filing documents. Attorneys are advised that the OCAHO rules sometimes differ from the Federal Rules of Civil Procedure.

Additionally, attorneys and unrepresented parties are encouraged to review and consult OCAHO's Practice Manual. OCAHO's Practice Manual is available at the following link, and provides an outline of the procedures and rules applicable to OCAHO cases: <https://www.justice.gov/eoir/reference-materials/ocaho>.

² Published OCAHO decisions may be accessed on the Executive Office for Immigration Review's (EOIR) website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>, or in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO." Hard copy volumes of OCAHO decisions up to and including volume 8 may be located at federal depository libraries nationwide, which may be located at <http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp>. All volumes after 8 are only available online.

All representatives and parties are also required to maintain a current address with OCAHO and to timely file a notice of a change of address with the presiding Administrative Law Judge (or with the Chief Administrative Hearing Officer (CAHO) if the case either has not yet been assigned to an Administrative Law Judge or is under administrative review by the CAHO) and must also serve such notice on the opposing party. *See United States v. Cordin Co.*, 10 OCAHO no. 1162, 4 (2012) (“It is the Respondent’s responsibility (indeed, the responsibility of all parties before OCAHO) to file a notice of change of address or other contact information directly with the [Administrative Law Judge], as well as serving that notice on the opposing party.”); *cf.* 28 C.F.R. § 68.6(a) (“Except as required by § 68.54(c) and [§ 68.6(c)], service of any document upon any party may be made . . . by mailing a copy to the last known address.”).

3. OCAHO does not have authority to appoint counsel. 28 C.F.R. § 68.34. Unrepresented parties are encouraged to seek and obtain representation and, if appropriate, to avail themselves of available pro bono resources. Private parties may be represented by an attorney who is a member in good standing of the bar of the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States. 28 C.F.R. § 68.33(c)(1). Attorneys must file a Notice of Appearance as required by 28 C.F.R. § 68.33(f). In limited circumstances subject to the requirements of 28 C.F.R. § 68.33(c)(2), private parties may be represented by law students. Private parties may also be represented by certain non-attorney representatives in appropriate circumstances, in accordance with the requirements in 28 C.F.R. § 68.33(c)(3). Non-attorney representatives who wish to appear before the Administrative Law Judge on behalf of a party must seek approval from the Administrative Law Judge pursuant to 28 C.F.R. § 68.33(c)(3). Private

parties may also represent themselves and should file a Notice of Appearance in accordance with 28 C.F.R. § 68.33(f) if they do so.

4. The Respondent has the right to file an answer to the complaint. The answer (and two copies) must be filed within thirty (30) days after receipt of the attached complaint by either Respondent or its attorney (or representative) of record. 28 C.F.R. §§ 68.3(b), 68.9. The answer is considered filed on the date when OCAHO receives the filing. 28 C.F.R. § 68.8(b). If the Respondent fails to file an answer within the time provided, the Respondent may be deemed to have waived its right to appear and contest the allegations of the complaint, and the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief. 28 C.F.R. § 68.9(b).

5. All documents filed by either party, including letters, must be filed and served as follows: (i) File one original signed document and two copies, **including** attachments, with the Administrative Law Judge, and serve one copy on each person on the attached Service List. 28 C.F.R. § 68.6(a);

(ii) Effort should be made to avoid filing by facsimile. Filing by facsimile is permitted only to toll a deadline. 28 C.F.R. § 68.6(c). Exhibits and attachments are never to be filed by facsimile; and

(iii) Include a certificate of service indicating the recipient(s), manner and date of service with every filing. 28 C.F.R. § 68.6(a). A document that does not have a certificate of service will be returned to the party filing it.

6. Procedures for conducting discovery are governed by OCAHO rules and applicable case law. *See generally* 28 C.F.R. §§ 68.6(b), 68.18–68.23. The parties should not initiate discovery until the presiding Administrative Law Judge has set a discovery schedule or otherwise authorized the start of discovery. *See Ferrero v. Databricks*, 18 OCAHO no. 1505, 4-8 (2023). Should either party believe it is necessary to begin discovery prior to that time, it may seek leave from the presiding Administrative Law Judge to do so through the filing of a motion. *See id.*

7. OCAHO operates a Settlement Officer Program, which is a voluntary program through which the parties can use a settlement officer to mediate settlement negotiations as a means of alternative dispute resolution. The settlement officer may convene and oversee settlement conferences and negotiations, may confer with the parties jointly and/or individually, and will seek voluntary resolution of issues. The parties may request that the presiding Administrative Law Judge refer the case to a settlement officer at any time while proceedings are pending, up to thirty days before the date scheduled for a hearing in the matter. More information about the Settlement Officer Program can be found in the OCAHO Practice Manual: <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>.

8. Should the Administrative Law Judge determine that a hearing is required, the Respondent would have the right to appear in person and give testimony at the place and time fixed for the hearing. 28 C.F.R. § 68.39. The hearing shall be held at the nearest practicable place to the place where the Respondent resides or the place where the alleged violation occurred. *See* 8 U.S.C. § 1324a(e)(3)(B); 28 C.F.R. § 68.5(b). Due regard shall also be given to the convenience

and necessity of the parties or their representatives in selecting a time and place for the hearing.

See 5 U.S.C. § 554(b).

9. All parties in OCAHO proceedings are expected to act with integrity and in an ethical manner and shall conform their conduct to the Standards of Conduct. 28 C.F.R. § 68.35.

Notice Given By:

James McHenry
Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041