

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. 2022A00035
VECTOR XPRESS, INC., D/B/A	)	
VECTOR XPRESS, LLC,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Martin Celis, Esq., for Complainant  
Carlos Estrada, pro se Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

On March 9, 2022, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Vector Xpress, Inc., doing business as Vector Xpress, LLC, alleging that Respondent violated the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Compl. ¶ 3. The complaint alleges that Respondent violated 8 U.S.C. § 1324a(a)(1)(B) by failing to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for sixteen individuals (Count I) and by failing to ensure that the employee properly completed Section 1 and/or failing to properly complete Section 2 or 3 of the Form I-9 for eighteen individuals (Count II). *Id.*

Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it served on Respondent on January 22, 2020. Compl. Ex. A. Through the NIF, Complainant notified Respondent that it was seeking a fine for the above-referenced allegations totaling \$56,297.20. *Id.* On

February 7, 2020, Respondent, through Mr. Carlos Estrada, requested a hearing before this Court (“request for hearing”). *Id.*, Ex. B.

On May 18, 2022, after OCAHO encountered difficulties serving the complaint, the Court issued an Order Directing Complainant to Serve Complaint. *See United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431 (2022).<sup>1</sup> The Court ordered Complainant to serve Respondent with the complaint, a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the NIF, and Respondent’s request for hearing (the “Complaint package”). *Id.* at 5 (citing 28 C.F.R. § 68.3(a)(1)).<sup>2</sup> The Court further ordered Complainant to file proof of service and provide a functional United States mailing address for Respondent. *Id.* (citing 28 C.F.R. § 68.3(b)).

On June 15, 2022, Complainant filed an Attestation of Service of Complaint and Notice of Case Assignment. In its filing, Complainant represented that it personally served Respondent with the Complaint package on June 5, 2022. Attest. Serv. Compl. 1-2; *see id.*, Ex. A. As proof of service, Complainant attached a signed affidavit from a special agent with ICE’s Homeland Security Investigations (HSI) attesting that he personally served Respondent with the complaint and the NOCA through Mr. Carlos Estrada at Mr. Estrada’s residence in El Paso, Texas (“service

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<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-OCAHO,” the LexisNexis database “OCAHO,” or on OCAHO’s homepage on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

<sup>2</sup> OCAHO’s Rules of Practice and Procedure for Administrative Hearings generally govern these proceedings and 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>.

address”).<sup>3</sup> *Id.* at 2, Ex. B. In the affidavit, the special agent noted that Mr. Estrada kept the documents handed to him and said that he would be contacting his attorney.<sup>4</sup> *Id.*, Ex. B. Complainant also attached to its filing a Texas Secretary of State Form 201, Certificate of Formation – For-Profit Corporation, identifying Carlos Estrada as Respondent’s registered agent and director. *Id.*, Ex. C. Complainant provided OCAHO with the service address as Respondent’s functional mailing address to which to direct orders in this case. *Id.* at 1-2.

On August 3, 2022, the Court issued a Notice and Order to Show Cause Regarding Answer. *See United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431a (2022). The Court found that Complainant effectuated personal service of the Complaint package on Respondent on June 5, 2022. *Id.* at 3. The Court explained that under OCAHO’s Rules of Practice and Procedure for Administrative Hearings, Respondent’s answer to the complaint was due no later than July 5, 2022, being thirty days after Complainant effectuated personal service of the complaint. *Id.* at 4 (citing 28 C.F.R. § 68.9(a)). The Court noted that Respondent had failed to file a timely answer. *Id.*

Following this discussion, the Court repeated a warning the Chief Administrative Hearing Officer (CAHO) made in the NOCA that Respondent’s failure to file an answer may lead the Court to enter a judgment by default. *Vector Xpress, Inc.*, 16 OCAHO no. 1431a, at 4 (citing NOCA at 3, *citing to* 28 C.F.R. § 68.9(b)). The Court informed Respondent that, as the Acting CAHO had explained in *United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444 (1989), Respondent would need to demonstrate good cause to avoid entry of default. *Id.* at 4-5. The Court ordered Respondent, within twenty days of the issuance of that order, to file an answer and show good cause for its failure to file a timely answer. *Id.* at 5.

The Court also put Respondent on notice that “if it fail[ed] to respond to the Court’s orders, the Court [might] conclude that it has abandoned its request for hearing” pursuant to 28 C.F.R. § 68.37(b)(1), resulting in dismissal. *Vector Xpress, Inc.*, 16 OCAHO no. 1431a, at 5 (citing *United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777-78 (1994)). At the end of the order, the Court repeated

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<sup>3</sup> The service address matches the address found in the statement attached to the complaint in accordance with 28 C.F.R. § 68.7(b)(5). Compl. 6 (28 C.F.R. § 68.7 Attach.). The service address is likewise the same address to which the United States Postal Service delivered OCAHO’s certified mailing of the Complaint package on March 24, 2022.

<sup>4</sup> No attorney has entered an appearance on behalf of Respondent.

its warnings of the potential consequences of entry of a default pursuant to 28 C.F.R. § 68.9(b) and dismissal of Respondent’s request for hearing pursuant to 28 C.F.R. § 68.37(b) should the Court find that Respondent had abandoned its request for hearing by failing to respond to the Court’s orders. *Id.* at 5.

Respondent’s submissions in response to the Notice and Order to Show Cause Regarding Answer were due on August 23, 2022. To date, Respondent has not filed an answer, proffered good cause, or otherwise indicated to the Court that it intends to defend this action or pursue its request for a hearing.

## II. LEGAL AND REGULATORY STANDARDS

OCAHO’s Rules of Practice and Procedure for Administrative Hearings state that “[f]ailure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint” and, as a result, the Court “may enter a judgment by default.” 28 C.F.R. § 68.9(b). OCAHO’s Rules also provide that “[a] complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it.” *Id.* § 68.37(b). In cases where a party or its representative “fails to respond to orders issued by the Administrative Law Judge,” OCAHO’s Rules state that “[a] party *shall be deemed* to have abandoned a complaint or a request for hearing.” *Id.* §§ 68.37(b)-(b)(1) (emphasis added).

OCAHO Administrative Law Judges (ALJs) have deemed a respondent who has failed to submit an answer or respond to an order to show cause to have abandoned its request for hearing pursuant to 28 C.F.R. § 68.37(b)(1) and have dismissed the case pursuant to 28 C.F.R. § 68.37(b). *See, e.g., United States v. Milwhite, Inc.*, 17 OCAHO no. 1469a, 2 (2023) (dismissing case when respondent failed to file answer or respond to order to show cause); *United States v. Patmo Concrete, LLC*, 17 OCAHO no. 1448b, 2 (2022) (accord); *United States v. Triple Crown Rest. Grp. LLC*, 16 OCAHO no. 1444b, 2-3 (2022) (accord).

Although dismissal is a severe sanction, OCAHO ALJs have ordered dismissals based on abandonment where the party was appearing pro se if that party was “warned of the potential consequences, including dismissal for abandonment, should it not respond to the Court’s orders.” *United States v. Nash Patio and Garden Ltd.*, 19 OCAHO no. 1543, 5 (2024) (dismissing case for abandonment of respondent’s request for hearing after the ALJ warned respondent of the potential consequences of not responding to the ALJ’s orders); *see also Rodriguez v. Tyson Foods, Inc.*,

9 OCAHO no. 1109, 3 (2004) (dismissing complaint for abandonment due to complainant's failure to respond to the ALJ's orders and comply with discovery orders after warnings that "noncompliance can result in dismissal.").

### III. DISCUSSION AND ANALYSIS

Respondent has failed to participate in this litigation which arose from its request for hearing dated February 7, 2020. Complainant filed a complaint with this Court in response to Respondent's request<sup>5</sup> and then perfected service of the Complaint package, including the NOCA, on Respondent in accordance with OCAHO's Rules of Practice and Procedure for Administrative Hearings. See 28 C.F.R. § 68.3(a)(1). In the NOCA, OCAHO gave Respondent its contact information and links to both the Court's rules and OCAHO's Practice Manual.<sup>6</sup> See NOCA ¶ 2. Yet Respondent has not contacted OCAHO or filed an answer or response to the Court's Notice and Order to Show Cause Regarding Answer. It has ignored the Court's orders. As explained below, Respondent's inaction results in dismissal.

The Court finds that Respondent, who is appearing pro se, was put on notice of the rules governing this forum and has been given sufficient warnings of the consequences of its decision not to respond to the Court's orders. First, OCAHO's CAHO explained to Respondent that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings and applicable case law, see NOCA ¶ 2, and that, under OCAHO's Rules, if Respondent did not file a timely answer, the Court could deem it to have waived its right to appear and contest the allegations of the complaint and that "the [ALJ] may enter a

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<sup>5</sup> The Court notes that over two years elapsed between Respondent's request for hearing dated February 7, 2020, and Complainant's filing of the complaint against Respondent with OCAHO on March 9, 2022. Although this was a lengthy delay, it does not excuse Respondent's inaction. See, e.g., *United States v. Dubose Drilling, Inc.*, 18 OCAHO no. 1487b, 5 (2024) (although there was a "substantial" delay of three and a half years between respondent's request for a hearing and DHS's filing of the complaint, the ALJ explained that "once DHS filed the complaint and the NOCA was served, Respondent's participation in this litigation became necessary").

<sup>6</sup> The OCAHO Practice Manual, which is part of the Executive Office for Immigration Review's Policy Manual, provides an outline of the procedures and rules applicable to cases before OCAHO. It is likewise available on the United States Department of Justice's website. See <https://www.justice.gov/eoir/reference-materials/ocaho>.

judgment by default along with any and all appropriate relief.” *Id.* ¶ 4 (citing 28 C.F.R. § 68.9(b)). OCAHO’s Rules, a link to which the CAHO gave Respondent, also describe dismissal for abandonment pursuant to 28 C.F.R. § 68.37(b). Additionally, as noted above, the CAHO provided Respondent with contact information for OCAHO and a link to OCAHO’s Practice Manual. *Id.* ¶ 2. Respondent did not utilize these resources or heed the CAHO’s instruction and warning.

Second, through its Notice and Order to Show Cause Regarding Answer, the Court put Respondent on notice of the potential outcomes—including dismissal for abandonment or entry of a default judgment—if it failed to file an answer and respond to the Court’s orders. *See Vector Xpress, Inc.*, 16 OCAHO 1431a, at 4-5. The Court cited 28 C.F.R. §§ 68.37(b)-(b)(1) and twice warned Respondent that, if it failed to make the requisite filings, the Court might find that it had abandoned its request for hearing and dismiss its request for hearing. *Id.* at 5. The Court further cautioned that it might enter a default against Respondent pursuant to 28 C.F.R. § 68.9(b). *Id.* The Court reiterated the CAHO’s warning that Respondent would not receive the hearing it requested if it waived its right to appear and contest the allegations raised in the complaint by not filing an answer. *Id.* at 4 (citing 28 C.F.R. § 68.9(b)); *see also* NOCA ¶ 4. It explained that it would enter a judgment for Complainant without a hearing. *Id.* (citing *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004)).

These warnings and notices elicited no response from Respondent. It has not filed an answer, a response showing good cause, or any other filing indicating that it intends to defend this action and pursue its request for hearing. Complainant personally served Respondent, through its registered agent and director, with the Complaint package at the address to which the Court’s orders were directed in accordance with 28 C.F.R. § 68.3(a)(1). Attest. Serv. Compl. 1-2; *see id.*, Ex. A. When the HSI special agent served the complaint on Respondent, Mr. Estrada said that he would be contacting his attorney. *Id.*, Ex. B. Neither Respondent nor any attorney on behalf of Respondent has communicated with OCAHO during the pendency of this case. Although 28 C.F.R. § 68.9(b) instructs that an ALJ may enter a judgment by default, Complainant has not filed such a motion with the Court. The case has come to a standstill.

The Court finds that Respondent has abandoned its request for hearing before OCAHO by failing to respond to the Court’s orders. 28 C.F.R. § 68.37(b)(1). OCAHO’s Rules of Practice and Procedure for Administrative Hearings specify that “[a] party *shall be deemed* to have abandoned a complaint or a request for hearing” when “a party of his or her representative fails to respond to orders issued by the [ALJ].” *Id.*

§ 68.37(b)-(b)(1) (emphasis added). The CAHO has explained that 28 C.F.R. § 68.37(b) “suggests that a finding of abandonment is mandatory in certain circumstances.” *United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416d, 5 (2023); *see also United States v. Cordin Co.*, 10 OCAHO no. 1162, 1, 3-4 (2012) (noting that “[t]he procedures governing abandonment and dismissal provide that ‘[a] party *shall* be deemed to have abandoned’ a request for hearing if the party ‘fails to respond to orders issued by the [ALJ].’”) (citing 28 C.F.R § 68.37(b)(1)).

Given this abandonment, dismissal is “entirely appropriate under 28 C.F.R. § 68.37(b)” as the CAHO found in a similar case where the respondent did not file an answer or a response to an order to show cause. *Cordin Co.*, 10 OCAHO no. 1162, at 4 (citations omitted). Respondent’s pro se status does not alter this finding given that it was warned of the potential consequences of dismissal for abandonment or entry of a default judgment should it fail to file an answer and ignore the Court’s orders. *See, e.g., United States v. Sai Enter. Ltd.*, 18 OCAHO no. 1489a, 5-7 (2024) (dismissing case for abandonment of a request for hearing pursuant to 28 C.F.R. § 68.37(b)(1) where pro se respondent did not file an answer or a response to an order to show cause and was warned of the consequences of dismissal for abandonment and entry of default); *Nash Patio and Garden Ltd.*, 19 OCAHO no. 1543, at 5-6 (accord); *United States v. Louie’s Wine Dive, LLC*, 15 OCAHO no. 1404, 2 (2021) (accord).

Pursuant to 28 C.F.R. §§ 68.37(b)-(b)(1), the Court now dismisses this case which arose from the complaint filed on March 9, 2022, and Respondent’s request for hearing dated February 7, 2020. Given that this dismissal is based on Respondent’s abandonment, the Court finds further inquiry into the civil money penalty amount to be inappropriate and now renders the original NIF that DHS served on Respondent on January 22, 2020, the final agency order. *See, e.g., United States v. Hui*, 3 OCAHO no. 479, 826, 828-29 (1992) (treating respondent’s abandonment of a request for hearing as a default judgment on liability and the penalty amount and noting that bifurcating the case to take evidence or argument on penalty would “result in delay, without providing any benefit to Respondent” where respondent was unavailable); *Sai Enter. Ltd.*, 18 OCAHO no. 1489a, at 7 (accord).

#### IV. ORDERS

IT IS SO ORDERED that, pursuant to 28 C.F.R. §§ 68.37(b)-(b)(1), this case which arose from the complaint filed on March 9, 2022, with the Office of the Chief Administrative Hearing Officer by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and the request for

hearing dated February 7, 2020, by Respondent, Vector Xpress, Inc., doing business as Vector Xpress, LLC, is DISMISSED; and

IT IS FURTHER ORDERED that Complainant's Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act served on Respondent, Vector Xpress, Inc., doing business as Vector Xpress, LLC, on January 22, 2020, is rendered the final agency order.

SO ORDERED.

Dated and entered on July 16, 2024.

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Honorable Carol A. Bell  
Administrative Law Judge

### Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.