

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. 2023A00045
MUNIZ CONCRETE	)	
& CONTRACTING, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Ryan F. Bermudez, Esq., for Complainant  
Adrian Ciechanowicz, Esq., for Respondent

ORDER ON COMPLAINANT'S MOTION TO SUBSTITUTE AND  
ELECTRONIC FILING

I. PROCEDURAL HISTORY

On February 28, 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) alleging that Respondent, Muniz Concrete & Contracting, Inc., 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. On April 19, 2023, Respondent, through counsel, filed an answer.

On April 26, 2023, OCAHO invited the parties to participate in its Electronic Filing Pilot Program<sup>1</sup> through which they can electronically file all filings in this case

---

<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). Chapter 3.7 of OCAHO's Practice

and accept electronic service of case-related documents from OCAHO and the opposing party. On May 16, 2023, OCAHO received a signed Attorney/Participant Registration Form and Certification for Adrian Ciechanowicz, counsel for Respondent. Complainant then filed a signed Attorney/Participant Registration Form and Certification for DHS Assistant Chief Counsel (ACC) Emily B. Swanson on April 2, 2024. The Court enrolled this case in OCAHO's Electronic Filing Pilot Program by order dated April 16, 2024. *United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535a, 7 (2024).<sup>2</sup>

Complainant filed a Notice of Appearance and Motion for Substitution on June 24, 2024. Through its filing, DHS Assistant Chief Counsel Ryan F. Bermudez entered an appearance as counsel for Complainant. Notice Appearance & Mot. Substitution 1. Complainant represented that DHS ACC Emily B. Swanson "will be taking extended leave from her employment and will no longer be handling cases before [OCAHO]." *Id.* As such, Complainant moved the Court pursuant to 28 C.F.R. § 68.33(g)<sup>3</sup> to substitute ACC Ryan F. Bermudez as counsel for Complainant. *Id.* Complainant also requested that the Court "update the Email Filing Program representative, from Emily B. Swanson to Ryan F. Bermudez." *Id.* at 2. Complainant

---

Manual also describes the program. See <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-3/7>.

<sup>2</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 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 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>3</sup> OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2023), 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>.

attached to the filing a signed Attorney/Participant Registration Form and Certification for ACC Bermudez. *Id.*, Ex. A.

## II. LEGAL STANDARDS AND DISCUSSION

### A. Complainant's Notice of Appearance and Motion to Substitute

Complainant has filed a Notice of Appearance and Motion to Substitute for DHS Assistant Chief Counsel Ryan F. Bermudez in this matter and moves the Court, pursuant to 28 C.F.R. § 68.33(g), to substitute as counsel ACC Bermudez for ACC Emily B. Swanson. Notice Appearance & Mot. Substitution 1. Complainant represents that substitution is necessary because ACC Swanson “will be taking extended leave from her employment and will no longer be handling cases before [OCAHO].” *Id.*

Complainant did not indicate Respondent's position on its Motion to Substitute, and Respondent has not filed a response pursuant to 28 C.F.R. § 68.11(b). According to Complainant's certification, it served Respondent with the motion by United States Postal Service mail on June 14, 2014. Notice Appearance & Mot. Substitution 3. Given that more than ten days have passed since Respondent was served with the motion, it is ripe for a ruling. *See* 28 C.F.R. § 68.11(b) (“Within ten (10) days after a written motion is served . . . any party to the proceeding may file a response in support of, or in opposition to, the motion.”).

Each attorney must file a notice of appearance under OCAHO's Rules of Practice and Procedure for Administrative Hearings. *See* 28 C.F.R. § 68.33(f). The Notice of Appearance filed by DHS ACC Bermudez comports with OCAHO's Rules as it is signed and identifies “the name of the case or controversy, the case number . . . and the party on whose behalf the appearance is made.” *Id.* It also is accompanied by “a certification indicating that such notice was served on all parties of record.” *Id.* Complainant's Notice of Appearance fulfills the requirements of 28 C.F.R. § 68.33(f) and is accepted.

OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that “[w]ithdrawal or substitution of an attorney or representative may be permitted by the Administrative Law Judge [ALJ] upon written motion. The [ALJ] shall enter an order granting or denying such motion for withdrawal or substitution.” 28 C.F.R. § 68.33(g). OCAHO has granted motions to substitute counsel for DHS in

similar situations, including where the agency has assigned a different counsel to handle OCAHO cases or where the counsel of record ceased to work as an ACC for the agency. *See, e.g., United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535a, 4, 7 (2024) (granting motion to substitute where a different agency attorney was assigned to handle OCAHO cases); *United States v. El Camino, Inc.*, 18 OCAHO no. 1479b, 2 (2023) (accord); *see also United States v. Upright Installation Servs., Corp.*, 18 OCAHO no. 1494, 3 (2023) (granting motion to substitute where complainant's counsel was leaving DHS).

Given Complainant's representation that ACC Emily B. Swanson will be taking extended leave from her employment and will no longer handling cases before OCAHO, the entry of appearance by ACC Ryan F. Bermudez, the reasonableness of the requested substitution, and the lack of opposition to the motion, the Court grants Complainant's motion for substitution pursuant to 28 C.F.R. § 68.33(g). *See, e.g., United States v. Spring & Soon Fashion Inc.*, 8 OCAHO no. 1003, 102, 128-29 (1998) (granting motion to substitute government counsel because it was reasonable and unopposed); *see also Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535a, at 5 (granting DHS counsel's unopposed motion to substitute where counsel of record changed positions and was no longer handling OCAHO cases) (citation omitted). ACC Bermudez is substituted for ACC Swanson as Complainant's counsel of record.

#### B. Electronic Filing Pilot Program

The Court enrolled this case in OCAHO's Electronic Filing Pilot Program by order dated April 16, 2024. Through Complainant's Notice of Appearance and Motion to Substitute, ACC Bermudez seeks the Court's approval to participate in OCAHO's Electronic Filing Pilot Program. Notice Appearance & Mot. Substitution at 2. Complainant attached to the filing a signed and dated Attorney/Participant Registration Form and Certification for OCAHO's Electronic Filing Pilot Program for ACC Bermudez. *Id.*, Ex. A. The Court now grants Complainant's request.

OCAHO shall add DHS ACC Bermudez to the electronic service list for this case and shall remove DHS ACC Swanson from the service list.<sup>4</sup> ACC Bermudez shall electronically file all filings in this case in accordance with the program instructions unless otherwise permitted by the Court or its designee. The parties shall copy all electronic filers on their filings to the Court. All filings must be accompanied by a certificate of service.

---

<sup>4</sup> OCAHO shall serve this Order by email on DHS ACC Emily B. Swanson.

### III. ORDERS

IT IS SO ORDERED that the Notice of Appearance and Motion for Substitution filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, is GRANTED. DHS Assistant Chief Counsel Ryan F. Bermudez is substituted for Assistant Chief Counsel Emily B. Swanson as Complainant's counsel of record in this matter.

IT IS FURTHER ORDERED that DHS ACC Bermudez is added to the electronic service list for this case and DHS ACC Swanson is removed from the service list. DHS ACC Bermudez shall electronically file all filings in this case in accordance with the program instructions for OCAHO's Electronic Filing Pilot Program. Counsel for Respondent, Muniz Concrete & Contracting, Inc., shall copy DHS ACC Bermudez on Respondent's filings to the Court. All filings must be accompanied by a certificate of service.

SO ORDERED.

Dated and entered on July 23, 2024.

---

Honorable Carol A. Bell  
Administrative Law Judge