

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

July 25, 2024

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2023A00079
)	
DUNCAN FAMILY FARMS, INC.,)	
Respondent.)	
_____)	

Appearances: James Harmony, Esq., for Complainant
Julie A. Pace, Esq., and Heidi Nunn-Gilman, Esq., for Respondent

AMENDED ORDER SUMMARIZING PREHEARING CONFERENCE

The Court issued an Order Summarizing Prehearing Conference in the above-captioned case on June 26, 2024. This Amended Order Summarizing Prehearing Conference amends the order dated June 26, 2024, and corrects solely for a typographical error. The substance of the order (and the deadlines) remains unchanged.

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Duncan Family Farms, Inc., violated § 1324a(a)(1)(B).

On September 11, 2023, Respondent filed an Answer to Complaint Regarding Unlawful Employment.

On June 25, 2024, the Court held a telephonic prehearing conference with the parties to discuss Respondent's pending motions and other discovery-related issues.¹ The conference centered on the role of (and the potential evidence held by) a third-party—ADP, Inc.

To better assist the parties in having a meaningful case management discussion, the Court previewed for the parties that it will not permit Respondent to assert a third-party complaint against ADP, Inc.

While the Court will not permit Respondent to file a third-party complaint against ADP, Inc., it was convinced by Respondent's proffer that this entity may have relevant evidence and information. Specifically, Respondent outlined that ADP, Inc. (with whom Respondent-business appears to have contracted for Form I-9-related human resources services) may have documentary evidence and may employ individuals with personal knowledge of relevant facts. Separately, Complainant concurred that such evidence could be relevant to, at a minimum, the Court's penalty assessment should liability be established.

The Court next outlined a proposed order of operations rooted in OCAHO's Rules of Practice and Procedure for Administrative Hearings.² Specifically, "[a]ny party desiring to take the deposition of a witness shall give notice in writing to the witness and other parties of the time and place of the deposition, and the name and address of each witness." If documents are requested, the notice shall include a written request for the production of documents. 28 C.F.R. § 68.22(a). When individuals are deposed, they are expected to testify under oath, and are subject to cross-examination. 28 C.F.R. § 68.22(b)(2). A deposition taken under these regulations must be recorded, as it may become part of the record. 28 C.F.R. § 68.22(b)(1).

The Court expects entities with evidence or information relevant to the proceedings to work with the requesting party to ensure parties to the litigation can create a thorough and complete evidentiary record.

Consistent with the Administrative Procedures Act (APA), the Court has a duty to ensure a thorough and complete record is created as the Court's decisions must be "supported by reliable and probative evidence." 28 C.F.R. § 68.52(b); *see also* 5 U.S.C. § 556(d) (an ALJ's decision that constitutes an "order" or imposes a "sanction" must consider "the whole record or those parts thereof cited by a party" and must be "supported by and in accordance with the reliable, probative,

¹ As the Court explained during the conference, it will provide separate written rulings on each pending motion (Respondent's Motion to Assert Third-Party Complaint and requests for subpoenas).

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

and substantial evidence”); *United States v. Fasakin*, 15 OCAHO no. 1375c, 3 (2021)³ (discussing record development); *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001) (referencing the administrative law judge’s “duty to develop the record fully” in APA proceedings.).

To that end, “upon . . . request of . . . a party . . . [the Administrative Law Judge] may issue subpoenas.” 28 C.F.R. § 68.25(a). “Such a subpoena may require attendance and testimony of witnesses and production of things including, but not limited to, papers, books, documents, records, correspondence, or tangible things in their possession and under their control and access to such things for the purposes of examination and copying.” 28 C.F.R. § 68.25(a). “Upon the failure of any person to comply with an order to testify or a subpoena issued under this section, the Administrative Law Judge may, where authorized by law, apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena.” 28 C.F.R. § 68.25(e).

The Court scheduled a prehearing conference for August 28, 2024 at 10:30am PST/1:30pm EST to receive an update on Respondent’s engagement with ADP, Inc. The parties shall call ###-###-####, and use conference room ###-###-####, and security code #####.

Based on the nature of the outstanding issues in discovery and record development, the Court felt it prudent to stay all discovery and dispositive motion deadlines, which may be reset at the next prehearing conference.

SO ORDERED.

Dated and entered on July 25, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

³ Citations to OCAHO precedents in bound volumes one through eight 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 eight, 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>.