

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

FINAL ORDER OF DISMISSAL

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 (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Compl. ¶ 6. The complaint alleged that Respondent knowingly continued to employ an individual who was unauthorized for employment in the United States, in violation of 8 U.S.C. § 1324a(a)(2) (Count I), failed to prepare and/or present the Employment Eligibility Verification Forms (Forms I-9) for thirty-three individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B) (Count II), failed to prepare the Forms I-9 at the time of hire or in a timely manner for twelve individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B) (Count III), and failed to ensure that forty-six employees properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Forms I-9, in violation of 8 U.S.C. § 1324a(a)(1)(B) (Count IV). *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 June 7, 2022. Compl. Ex. A. Through the NIF, Complainant notified Respondent that it was seeking a fine for the above-referenced allegations totaling \$243,488.30. *Id.* By letter dated July 7, 2022, Respondent requested a hearing before this Court. *Id.*, Ex. B. After the complaint was filed before this Court, Respondent, through counsel, filed an answer on April 19, 2023.

On January 24, 2024, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference through which it ordered the parties to make their initial disclosures and file prehearing statements by February 14, 2024, and set an initial telephonic prehearing conference for February 20, 2024. Neither party filed its prehearing statement as ordered by the Court.

The Court held an initial prehearing conference with the parties on February 20, 2024, pursuant to 28 C.F.R. § 68.13,¹ and issued an order memorializing the conference on February 27, 2024, in accordance with 28 C.F.R. § 68.13(c). DHS Assistant Chief Counsel (ACC) Ricardo A. Cuellar appeared on behalf of Complainant, and Mr. Adrian Ciechanowicz appeared as counsel on behalf of Respondent. Order Memorializing Initial Prehr'g Conf. 1. During the conference, the Court granted the parties' oral joint motion to extend the filing deadline for prehearing statements by thirty days. *Id.* at 2-3. The Court ordered the parties to file their prehearing statements by March 21, 2024, by the means set forth in 28 C.F.R. part 68 and to email OCAHO courtesy copies of their prehearing statements by March 21, 2024. *Id.* The Court further scheduled another telephonic prehearing conference for March 26, 2024. *Id.*

On March 22, 2024, the parties filed a courtesy copy by email and facsimile of an Agreed Motion for Second Continuance of the Prehearing Conference.² Through their jointly signed filing, the parties moved the Court to "continue the case again for

¹ 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>.

² The parties' formally filed their Agreed Motion for Second Continuance of the Prehearing Conference on April 2, 2024.

at least 35 days, or until April 30, 2024, because they need additional time to continue and complete their ongoing settlement negotiations, which have been fruitful.” Agreed Mot. for Second Continuance of Prehr’s Conf. 2. The parties represented that their request was not for delay, “but so that justice may be done.” *Id.*

On March 25, 2024, the Court issued an Order Granting Parties’ Agreed Motion to Continue Second Prehearing Conference and Extending Deadline to File Prehearing Statements. *See United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535 (2024).³ Through that order, the Court granted the parties’ Agreed Motion for Second Continuance of the Prehearing Conference and canceled the prehearing conference scheduled for March 26, 2024. *Id.* at 4, 6. The Court further extended the parties’ deadline to file prehearing statements to May 1, 2024, and scheduled a prehearing conference for May 8, 2024. *Id.*

On March 25, 2024, counsel for Respondent notified OCAHO staff by email that the parties had reached a settlement in this matter.

On April 2, 2024, Complainant filed a Notice of Appearance and Motion for Substitution for Emily B. Swanson. On April 16, 2024, the Court granted Complainant’s motion and substituted ACC Swanson for ACC Cuellar as Complainant’s counsel of record and enrolled the case in OCAHO’s Electronic Filing Pilot Program.⁴ *United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no.

³ 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 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 “FIMOCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

⁴ 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 Manual also describes the program. *See* <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-3/7>.

1535a, 7 (2024). Because the parties had not filed any formal notice of settlement or a joint motion to dismiss, the Court kept the dates for the filing of prehearing statements and the prehearing conference. *Id.* at 6, 8. If the parties needed additional time to finalize a settlement agreement before the scheduled prehearing conference, the Court gave them the option of filing a joint status report by May 1, 2024, and proposing new dates for the filing of prehearing statements and a prehearing conference. *Id.* at 6-7.

On May 1, 2024, Complainant's counsel emailed OCAHO and represented that the parties "continue to negotiate a settlement agreement" and anticipate finalizing an agreement soon. Counsel stated that, "the parties jointly request an extension of the filing deadline for prehearing statements and propose May 15th as the date for a rescheduled prehearing conference." Complainant's counsel copied Respondent's counsel on the email to OCAHO.

On May 7, 2024, the Court issued an order accepting the email as a filing, despite its noncompliance with OCAHO's regulations. *United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535b, 6 (2024). Construing the joint request as a motion, the Court granted it and then extended the filing deadline for prehearing statements and rescheduled the prehearing conference. *Id.* at 5-7.

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

On July 23, 2024, the Court issued an Order on Complainant's Motion to Substitute and Electronic Filing. *United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535c (2024). Through that order, the Court granted Complainant's motion, substituted ACC Bermudez for ACC Swanson as Complainant's counsel of record, and granted electronic filing privileges to ACC Bermudez. *Id.* at 5.

The parties now have filed a Joint Motion to Dismiss with Prejudice. In the joint filing, they move the Court pursuant to 28 C.F.R. § 68.14 to dismiss the case with prejudice because “[t]he parties have come to a full settlement agreement.” Joint Mot. Dismiss Compl. with Prejudice 1.

II. LEGAL STANDARDS AND DISCUSSION

OCAHO’s Rules of Practice and Procedure for Administrative Hearings provide two avenues to parties seeking to leave this forum after entering into a settlement agreement: consent findings or dismissal. *See* 28 C.F.R. § 68.14. Here, the parties state that they have “come to a full settlement agreement” and seek dismissal “pursuant to 28 C.F.R. § 68.14(2) [sic].” Joint Mot. Dismiss Compl. with Prejudice 1. Given the representation that the parties have entered into a full settlement agreement and the reference to subsection 2 of 28 C.F.R. § 68.14, the Court understands the parties to be requesting dismissal pursuant to 28 C.F.R. § 68.14(a)(2). That regulation provides that, where the parties have entered into a settlement agreement, they shall “[n]otify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.” 28 C.F.R. § 68.14(a)(2).

After reviewing the parties’ Joint Motion to Dismiss with Prejudice, the Court finds that the parties have substantially complied with 28 C.F.R. § 68.14(a)(2). The parties represent in their motion that they “have come to a full settlement agreement” and jointly seek to “dismiss the instant matter with prejudice.” Joint Mot. Dismiss Compl. with Prejudice 1. Counsel for both parties signed the motion. *Id.*

The parties did not attach their settlement agreement to their Joint Motion to Dismiss with Prejudice. As explained above, the Court may exercise its discretion under 28 C.F.R. § 68.14(a)(2) and require the parties to file their settlement agreement before it rules on their Joint Motion to Dismiss with Prejudice. *See, e.g., United States v. Torres Mexican Food, Inc.*, 4 OCAHO no. 596, 88, 89 (1994) (explaining that 28 C.F.R. § 68.14(a)(2) neither requires Administrative Law Judges to review parties’ settlement agreements nor precludes them from doing so). Considering the nature of these proceedings and the record before it, the Court will not require the filing of the parties’ settlement agreement. In reaching this decision, the Court has considered that both parties have been actively participating in this matter, including during a prehearing conference, and have been represented by

counsel throughout these proceedings which date back to February 28, 2023. *See, e.g., United States v. Dilligas Corp.*, 19 OCAHO no. 1526, 3 (2024) (declining to require the filing of a settlement statement where “both parties are represented by counsel and have been actively participating in this matter[.]”) (citing *United States v. El Camino, LLC*, 18 OCAHO no. 1479d, 2 (2023)); *United States v. Chilitto Pikin LLC*, 18 OCAHO no. 1486c, 4 (2024) (explaining that the parties did not need to file their settlement agreement given the nature of the proceedings, the record before the Administrative Law Judge, and the parties’ representation by counsel and participation in the case).

The parties jointly seek a dismissal with prejudice. Joint Mot. Dismiss Compl. with Prejudice 1. The Court finds that dismissal with prejudice is appropriate here where the parties jointly seek it after entering into a full settlement agreement to resolve the allegations raised in the complaint. *See, e.g., United States v. Eco Brite Linens, LLC*, 18 OCAHO no. 1485c, 1-2 (2024) (dismissing case with prejudice where the parties jointly requested dismissal with prejudice and represented through counsel that they had signed a settlement agreement); *Chilitto Pikin LLC*, 18 OCAHO no. 1486c, at 4 (finding dismissal with prejudice appropriate where the parties jointly sought it after coming to a full settlement) (citation omitted). Dismissal with prejudice will bring finality to this litigation and the allegations the government has raised against Respondent. This finality is fitting given the stage of these proceedings. The Court notes that this case has been pending for seventeen months and discovery has been available for over six months. *See, e.g., Chilitto Pikin LLC*, 18 OCAHO no. 1486c, at 4 (dismissing with prejudice a case that had “been pending for sixteen months with over three months of discovery available to the parties.”) (citation omitted); *Huesca v. Rojas Bakery*, 4 OCAHO no. 654, 550, 557 (1994) (basing a finding of dismissal with prejudice in part on the fifteen-month pendency of the case and the advanced stage of discovery).

Given the Court’s findings that the parties have sought dismissal in conformity with 28 C.F.R. § 68.14(a)(2), that the parties’ settlement agreement need not be filed, and that dismissal with prejudice is appropriate, the Court now grants the parties’ Joint Motion to Dismiss Complaint with Prejudice and dismisses this case with prejudice.

III. ORDERS

Upon consideration of the Joint Motion to Dismiss with Prejudice filed by Complainant, the United States Department of Homeland Security, Immigration and

Customs Enforcement, and Respondent, Muniz Concrete & Contracting, Inc., and pursuant to 28 C.F.R. § 68.14(a)(2),

IT IS SO ORDERED that the parties' Joint Motion to Dismiss with Prejudice is GRANTED, and

IT IS FURTHER ORDERED that this case is DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated and entered on August 8, 2024.

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.