

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. 2023A00057
DJ'S TRANSPORT,	)	
	)	
Respondent.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

Appearances: Hazel L. Gauthier, Esq., for Complainant  
 Juan Quinones, pro se, for Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the employment eligibility verification provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. On May 4, 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). The complaint alleges that Respondent, DJ's Transport, failed to prepare and/or present Employment Eligibility Verification Forms (Forms I-9) for three employees (Count One) and failed to ensure that employees properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Forms I-9 for four employees (Count Two), all in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶ 3.

Complainant attached to the complaint a Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act (NIF) dated July 15, 2022. Compl. Ex. A. The NIF notified Respondent that DHS was seeking a fine for the above-referenced allegations totaling \$14,917. *Id.* On August 4, 2022, Respondent requested a hearing before this Court (request for hearing). *Id.* Ex. B.

On July 19, 2023, after OCAHO encountered difficulties serving the complaint, the Court issued an Order Directing Complainant to Serve Complaint. *See United States v. DJ's Transport*, 18 OCAHO no. 1488 (2023).<sup>1</sup> The Court ordered Complainant to serve Respondent personally with the complaint, a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) from OCAHO's Chief Administrative Hearing Officer (CAHO), the NIF, and Respondent's request for hearing (collectively, the Complaint package) in a manner that complied with 28 C.F.R. § 68.3(a)(1).<sup>2</sup> *Id.* at 5; *see also* 28 C.F.R. § 68.3(c) ("the Administrative Law Judge may direct that a party execute service of process" where there has been "difficulty with perfecting service"). The Court further ordered Complainant to file proof that it perfected service in accordance with 28 C.F.R. § 68.3(b) and to provide a functional United States mailing address for Respondent. *DJ's Transport*, 18 OCAHO no. 1488, at 5.

On August 11, 2023, Complainant filed a Notification of Service of Process. In its filing, Complainant represented that it personally served Respondent with the Complaint package on August 7, 2023. Notification Serv. Process at 1. As proof of service, Complainant attached the affidavit of a special agent with the United States Immigration and Customs Enforcement, Homeland Security Investigations (HSI). *Id.* Ex. 2. The HSI special agent attested that he personally served the complaint

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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 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 in the Westlaw database "FIM-OCAHO," the LexisNexis database "OCAHO," or 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 are the provisions contained in 28 C.F.R. part 68 (2024). OCAHO's Rules are available online, including through 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>.

and accompanying materials on Respondent, through its owner Juan Quinones, at its place of business in El Paso, Texas (Address A).<sup>3</sup> *Id.* According to the HSI special agent, Mr. Quinones acknowledged receipt of the Complaint package by signing a certificate of service. *Id.* Complainant attached to its filing the certificate of service reflecting the date, manner, and location of its personal service of the Complaint package on Respondent; the certificate bears signatures for both the HSI special agent and Mr. Quinones. *Id.* Ex. 1. According to the HSI special agent, Mr. Quinones kept his copy of the Complaint package and said that he would review the documents. *Id.* Ex. 2. According to Complainant, Mr. Quinones also provided the HSI special agent with a functional mailing address for Respondent. *Id.* at 1.

Through the NOCA with which Respondent was served on August 7, 2023, the CAHO explained that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings and that, under OCAHO's Rules, Respondent had thirty days to file an answer to the complaint. Notice Case Assign. ¶ 4 (citing 28 C.F.R. §§ 68.3(b), 68.9). The CAHO also warned Respondent that if it failed to file a timely answer, the Court might deem Respondent to have waived its right to appear and contest the allegations of the complaint and that a judgment by default and other appropriate relief might follow. *Id.* (citing 28 C.F.R. § 68.9(b)). Respondent did not file an answer.

On November 9, 2023, the Court issued an Order to Show Cause. After finding that Complainant perfected personal service of the Complaint package upon Respondent on August 7, 2023, the Court ordered Respondent, within twenty days of the date of its order, to file an answer to the complaint and a response providing facts sufficient to show good cause for its failure to timely answer the complaint. Order Show Cause 5. The Court further ordered Respondent to provide the Court with its best mailing address, including ZIP code, because of an issue with the mailing address that Mr. Quinones provided the HSI special agent.<sup>4</sup> *Id.*

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<sup>3</sup> Address A is the address where Complainant asked OCAHO to serve the complaint on Respondent in accordance with 28 C.F.R. § 68.7(b)(5). Compl. 5.

<sup>4</sup> Specifically, Mr. Quinones provided the HSI special agent with the street address, city, and state that Respondent listed on its request for a hearing before OCAHO (Address B), *see DJ's Transport*, 18 OCAHO no. 1488, at 2, but gave the ZIP code for Address B as 79936, rather than 79938. Notification Serv. Process at 1. This information conflicted with the applicable ZIP code for Address B given on the United States Postal Service website, namely, 79938-4360. *See* <https://tools.usps.com/zip-code-lookup.htm?byaddress>. Given the conflicting information as to ZIP codes for

Through the Order to Show Cause, the Court twice put Respondent on notice that, if it failed to respond to the Court's orders, the Court might find that it had abandoned its request for hearing and dismiss its request pursuant to 28 C.F.R. § 68.37(b)(1). Order Show Cause 5-6 (citations omitted). Quoting an order by the CAHO, the Court explained that a final order of dismissal based on a finding of abandonment was analogous to the entry of a default judgment under the Federal Rules of Civil Procedure. *Id.* at 5 (quoting *United States v. Vilarado Vineyards*, 11 OCAHO no. 1248, at 4 (2015)) (citing *United States v. Greif*, 10 OCAHO no. 1183, 6 (2013)). The Court repeated the CAHO's warning in the NOCA that the Court might enter a default against Respondent pursuant to 28 C.F.R. § 68.9(b) if Respondent failed to respond as ordered or could not show good cause for its failure to file a timely answer to the complaint. *Id.* at 4, 6. Despite these warnings, Respondent did not file an answer or a response showing good cause for its failure to file a timely answer. It also did not provide its best mailing address.<sup>5</sup>

On January 11, 2024, the Court issued a Notice and Second Order to Show Cause. *United States v. DJ's Transport*, 18 OCAHO no. 1488a (2024). The Court ordered Respondent to show good cause for its failure to respond to the Court's Order to Show Cause dated November 9, 2023, and to advise the Court whether it intended to pursue its request for hearing. *Id.* at 5. The Court further ordered Respondent to show good cause for failing to respond to the complaint and to file with the Court an answer to the complaint. *Id.* Citing OCAHO precedent and 28 C.F.R. § 68.37(b)(1), the Court put Respondent on notice that its failure to respond to the Notice and Second Order to Show Cause would "result in a dismissal for abandonment, as the Court [would] consider Respondent to have abandoned its request for a hearing" and the NIF would become the final agency order. *Id.* The Court also repeated the warning that it had the discretion to enter a default judgment as to both liability and penalties against Respondent should it fail to file an answer. *Id.* (citing 28 C.F.R. § 68.9(b)). Respondent's filings and response to the Notice and Second Order to Show Cause were due by January 26, 2024. *Id.*

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Address B and to ensure proper service on Respondent, OCAHO sent copies of the Court's order to Respondent at Addresses A and B, including both ZIP codes for Address B.

<sup>5</sup> OCAHO mailed copies of the Court's Order to Show Cause and its Notice and Second Order to Show Cause to Respondent at Addresses A and B, including both ZIP codes for Address B. OCAHO will likewise serve Respondent with this Order at those addresses in accordance with 28 C.F.R. § 68.3(a)(3).

As of the date of this Order, Respondent has not responded to the Court's Notice and Second Order to Show Cause dated January 11, 2024. It did not file an answer or a filing showing good cause. Respondent has not communicated with OCAHO since DHS filed the complaint in this case on May 4, 2023.

## II. LEGAL 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 requested a hearing before this Court but has chosen not to participate in this litigation. Complainant personally served Respondent, through its owner Juan Quinones, with the Complaint package, and the Court served Respondent with its orders in accordance with OCAHO's Rules of Practice and Procedure for Administrative Hearings. *See* Notification Serv. Process Ex. 2; *see also* 28 C.F.R. §§ 68.3(a)(1), (3). Despite being provided with OCAHO's contact information through the NOCA, Respondent has not communicated with the Court. Notice Case Assign. 5.

The Court finds that Respondent, who is appearing *pro se*, has been given sufficient notice of both the rules governing this forum and the legal consequences should it fail to respond to the Court's orders. At the beginning of this case, the 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* Notice Case Assign. ¶ 2, and that, under those rules, if Respondent failed to file an answer within thirty days of its receipt of the complaint, the Court might deem it to have waived its right to appear and contest the allegations of the complaint and that "the [ALJ] may enter a judgment by default along with any and all appropriate relief." *Id.* ¶ 4 (citing 28 C.F.R. § 68.9(b)). OCAHO's Rules and OCAHO's Practice Manual,<sup>6</sup> links to which the CAHO gave Respondent, *id.* ¶ 2, also describe dismissal for abandonment pursuant to 28 C.F.R. § 68.37(b). The CAHO explained that "[t]he answer (and two copies) *must* be filed within thirty (30) days after receipt of the attached complaint." *Id.* ¶ 4 (citing 28 C.F.R. §§ 68.3(b), 68.9) (emphasis added). Despite this, Respondent failed to file an answer to the complaint.

The Court then put Respondent on notice that, should it fail to file an answer and show good cause for its failure to file a timely answer, the Court may order a dismissal or enter a default judgment. First, the Court explained through its Order to Show Cause, that, if Respondent did not respond to the Court's orders, it might conclude that Respondent had abandoned its request for a hearing and dismiss it. Order Show Cause 5 (citing 28 C.F.R. § 68.37(b)(1)). The Court also cautioned that it "may enter a default judgment against Respondent as to both liability and penalties"

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<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>.



should Respondent not file an answer. *Id.* at 6 (citing 28 C.F.R. § 68.9(b)). Second, the Court’s Notice and Second Order to Show Cause again ordered Respondent to file an answer and a response showing good cause for its failure to respond to the Court’s Order to Show Cause. *DJ’s Transport*, 18 OCAHO no. 1488a, at 5. The Court left Respondent no doubt as to the consequences should it fail to respond to the Court’s orders. Citing 28 C.F.R. § 68.37(b)(1) and OCAHO precedent, it warned Respondent that “[n]oncompliance will result in a dismissal for abandonment, as the Court will consider Respondent to have abandoned its request for a hearing.” *Id.* (citations omitted). It further cautioned that, “[a]bandonment will result in DHS’s NIF becoming the final order.” *Id.* (citing *United States v. Milwhite, Inc.*, 17 OCAHO no. 1469a, 2 (2023)). Lastly, the Court explained that it had discretion to “enter a default judgment as to both liability and penalties against Respondent.” *Id.* (citations omitted). These orders were met with silence.

The Court now 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, 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)).

Dismissal for abandonment 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 the Court repeatedly put Respondent on notice 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. Vector Xpress, Inc.*, 16 OCAHO no. 1431b, 5-8 (2024) (dismissing case for abandonment of a request for hearing pursuant to 28 C.F.R. §§ 68.37(b)-(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); *United States v. Sai Enter. Ltd.*, 18 OCAHO no. 1489a, 5-7 (2024) (accord); *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 May 4, 2023, and Respondent's request for hearing dated August 4, 2022. The Court finds further inquiry into the civil money penalty amount to be inappropriate because this dismissal is based on Respondent's abandonment. It renders the original NIF that Complainant served on Respondent on July 15, 2022, 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); *Vector Xpress, Inc.*, 16 OCAHO no. 1431b, at 7 (declining to inquire into the amount of the civil money penalty where dismissal was based on respondent's abandonment of its request for hearing); *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 May 4, 2023, 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 August 4, 2022, by Respondent, DJ's Transport, 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, DJ's Transport, on July 15, 2022, is rendered the final agency order.

SO ORDERED.

Dated and entered on August 27, 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.