

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

ARTIT WANGPERAWONG,)	
Complainant,)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00124
META PLATFORMS, INC.,)	
Respondent.)	

NOTICE OF CASE ASSIGNMENT FOR COMPLAINT
ALLEGING UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

1. A complaint was filed on August 19, 2024, against Meta Platforms, Inc. (Respondent) by Artit Wangperawong (Complainant). A copy of the complaint is attached to this Notice of Case Assignment (NOCA).¹ This case is assigned to the Honorable Andrea R. Carroll-Tipton, Administrative Law Judge (ALJ).

2. Proceedings in this matter will be conducted according to the OCAHO rules appearing at 28 C.F.R. pt. 68 and the applicable case law.² It is imperative that you obtain a copy of the rules immediately and comply with their requirements in this case. A Portable Document Format (PDF)

¹ OCAHO does not typically publish a NOCA. *United States v. Liberty Constructors, LLC*, 18 OCAHO no. 1495, 1 n.1 (2023). “However, OCAHO will publish a NOCA when it contains an update to the standard information provided in order to enhance transparency and better inform stakeholders with an interest in OCAHO proceedings.” *Id.* For similar reasons, OCAHO may also publish a NOCA to address an unusual procedural question or to clarify a general issue present at the initiation of a case. In the instant case, because the complaint is predicated, in part, on matters related to another case currently pending before OCAHO involving the same Complainant and Respondent, *see* Compl. at 11, OCAHO is publishing this NOCA to clarify issues regarding both the specific potential interplay between the two cases and OCAHO’s general practices for handling related cases. *See infra* ¶¶ 9-13.

² Published OCAHO decisions may be accessed on the Executive Office for Immigration Review’s (EOIR) website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>, or in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO.” Hard copy volumes of OCAHO decisions up to and including volume 8 may be located at federal depository libraries nationwide, which may be located at <http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp>. All volumes after 8 are only available online.

copy (32 pages) is available on the OCAHO webpage at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>. If you are unable to access the webpage or print a copy, you may call our office at 703-305-0864 and request that a copy be mailed to you at no charge.

Attorneys and unrepresented parties are advised to read the relevant rules in their entirety prior to filing documents. Attorneys are advised that the OCAHO rules sometimes differ from the Federal Rules of Civil Procedure.

Additionally, attorneys and unrepresented parties are encouraged to review and consult OCAHO's Practice Manual. OCAHO's Practice Manual is available at the following link, and provides an outline of the procedures and rules applicable to OCAHO cases: <https://www.justice.gov/eoir/reference-materials/ocaho>.

All representatives and parties are also required to maintain a current address with OCAHO and to timely file a notice of a change of address with the presiding ALJ (or with the Chief Administrative Hearing Officer (CAHO) if the case either has not yet been assigned to an ALJ or is under administrative review by the CAHO) and must also serve such notice on the opposing party. *See United States v. Cordin Co.*, 10 OCAHO no. 1162, 4 (2012) ("It is the Respondent's responsibility (indeed, the responsibility of all parties before OCAHO) to file a notice of change of address or other contact information directly with the ALJ, as well as serving that notice on the opposing party."); *cf.* 28 C.F.R. § 68.6(a) ("Except as required by § 68.54(c) and [§ 68.6(c)],

service of any document upon any party may be made . . . by mailing a copy to the last known address.”).

3. OCAHO does not have authority to appoint counsel. 28 C.F.R. § 68.34. Unrepresented parties are encouraged to seek and obtain representation and, if appropriate, to avail themselves of available pro bono resources. Private parties may be represented by an attorney who is a member in good standing of the bar of the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States. 28 C.F.R. § 68.33(c)(1). Attorneys must file a Notice of Appearance as required by 28 C.F.R. § 68.33(f). In limited circumstances subject to the requirements of 28 C.F.R. § 68.33(c)(2), private parties may be represented by law students. Private parties may also be represented by certain non-attorney representatives in appropriate circumstances, in accordance with the requirements in 28 C.F.R. § 68.33(c)(3). Non-attorney representatives who wish to appear before the ALJ on behalf of a party must seek approval from the ALJ pursuant to 28 C.F.R. § 68.33(c)(3). Private parties may also represent themselves and should file a Notice of Appearance in accordance with 28 C.F.R. § 68.33(f) if they do so.

4. The Respondent has the right to file an answer to the complaint. The answer (and two copies) must be filed within thirty (30) days after receipt of the attached complaint by either Respondent or its attorney (or representative) of record. 28 C.F.R. §§ 68.3(b), 68.9. The answer is considered filed on the date when OCAHO receives the filing. 28 C.F.R. § 68.8(b). If the Respondent fails to file an answer within the time provided, the Respondent may be deemed to

have waived its right to appear and contest the allegations of the complaint, and the ALJ may enter a judgment by default along with any and all appropriate relief. 28 C.F.R. § 68.9(b).

5. All documents filed by either party, including letters, must be filed and served as follows: (i) File one original signed document and two copies, **including** attachments, with the ALJ, and serve one copy on each person on the attached Service List. 28 C.F.R. § 68.6(a);

(ii) Effort should be made to avoid filing by facsimile. Filing by facsimile is permitted only to toll a deadline. 28 C.F.R. § 68.6(c). Exhibits and attachments are never to be filed by facsimile; and

(iii) Include a certificate of service indicating the recipient(s), manner and date of service with every filing. 28 C.F.R. § 68.6(a). A document that does not have a certificate of service will be returned to the party filing it.

6. Procedures for conducting discovery are governed by OCAHO rules and applicable case law. *See generally* 28 C.F.R. §§ 68.6(b), 68.18–68.23. The parties should not initiate discovery until the presiding ALJ has set a discovery schedule or otherwise authorized the start of discovery. *See Ferrero v. Databricks*, 18 OCAHO no. 1505, 4-8 (2023). Should either party believe it is necessary to begin discovery prior to that time, it may seek leave from the presiding ALJ to do so through the filing of a motion. *See id.*

7. OCAHO operates a Settlement Officer Program (SOP), which is a voluntary program through which the parties can use a settlement officer to mediate settlement negotiations as a means

of alternative dispute resolution. The settlement officer may convene and oversee settlement conferences and negotiations, may confer with the parties jointly and/or individually, and will seek voluntary resolution of issues. The parties may request that the presiding ALJ refer the case to a settlement officer at any time while proceedings are pending, up to thirty days before the date scheduled for a hearing in the matter. More information about the SOP can be found in the OCAHO Practice Manual: <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>.

8. Should the ALJ determine that a hearing is required, the Respondent would have the right to appear in person and give testimony at the place and time fixed for the hearing. 28 C.F.R. § 68.39. Due regard shall be given to the convenience and necessity of the parties, their representatives, and witnesses in selecting a time and place for the hearing. *See* 5 U.S.C. § 554(b); 28 C.F.R. § 68.5(b).

9. Complainant previously filed a separate complaint against Respondent on October 3, 2023, and that case remains pending before OCAHO under case number 2024B00007. *See generally Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510 (2023) *et seq.* In assigning ALJs to new cases, although OCAHO generally “assign[s] [ALJs] to cases in rotation so far as practicable,” 5 U.S.C. § 3105, it does also consider practicability factors such as geographic convenience, *see, e.g.*, 5 U.S.C. § 554(b) (requiring administrative agencies like OCAHO to give “due regard . . . for the convenience and necessity of the parties or their representatives” in setting a location for a hearing); *see also* 28 C.F.R. § 68.5(b) (outlining OCAHO’s consideration of factors in determining the location of a hearing), and workload balance among ALJs, *cf.* 28 C.F.R. § 68.26

(authorizing the Chief ALJ to reassign cases among ALJs “to promote administrative efficiency”); *Liberty Constructors, LLC*, 18 OCAHO no. 1495, at 1 n.1 (noting the CAHO’s authority to reassign cases among ALJs to ensure efficient adjudication of cases). Similarly, for related cases³—and absent exceptional circumstances, such as an abnormal volume of related cases filed close in time or a specific recusal or conflict concern for an ALJ present in one related case but not another—OCAHO will generally assign a new, related case to the same ALJ already assigned to the pending, related case. *See* 28 C.F.R. § 68.2 (authorizing the CAHO to, *inter alia*, “[d]irect the conduct of employees assigned to OCAHO to ensure the efficient disposition of all pending cases, including the authority to regulate the initial assignment of [ALJs] to cases”). Accordingly, as related cases, both the pending case, number 2024B00007, and the instant case have been assigned to the same ALJ for adjudication.

10. Furthermore, because the instant case is based, in part, on issues raised by the already-pending case, *see* Compl. at 11, the two related cases may warrant consolidation. *See* 28 C.F.R. §

³ Most federal trial courts have local rules requiring the assignment of a new case related to a pending case to the same judge presiding over the pending case if the cases’ related status is known at the time the new case is filed. *See, e.g.*, D.D.C. Civ. R. 40.5(c). OCAHO follows a similar practice, though it has not previously published a specific case or rule regarding the assignment of related cases. Further, OCAHO does not have a codified definition of “related cases,” and definitions among federal courts vary considerably; thus, whether cases are related is assessed on a case-by-case basis at the time a new case is filed with OCAHO. The parties in a new case do not necessarily have to be identical to parties in a pending case for the cases to be related, but where they are identical and the new case is based on common or overlapping facts with a pending case, OCAHO will generally treat the cases as related. Otherwise, cases involving common parties and facts, including common events or transactions, may also be treated as related. Complainants are also encouraged to flag pending cases that may be related at the time of filing a new case, though the ultimate determination of whether cases are related will be made by OCAHO.

68.16⁴; *see also United States v. Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475d, 8 (2023) (“When considering whether to consolidate cases, courts often consider factors such as the interest of justice, expeditious results, conservation of resources, and avoiding inconsistent results, and conversely, whether consolidation would risk confusion, delay, or prejudice.”); *Guzman v. Yakima Fruit & Cold Storage*, 9 OCAHO no. 1063, 3 (2000) (“There is ample OCAHO case precedent for consolidating cases involving common parties, issues, and/or witnesses.”); *cf.* Fed. R. Civ. P. 42 (authorizing federal courts to consolidate civil cases in certain circumstances); 28 C.F.R. § 68.1 (noting that the Federal Rules of Civil Procedure may be used as general guidelines in OCAHO proceedings). However, consolidation of the two cases in their present postures would not be appropriate through a NOCA.

11. Aside from consideration of certain interlocutory appeals, *see* 28 C.F.R. § 68.53, the authority to reassign cases among ALJs “to ensure the efficient disposition of all pending cases,” 28 C.F.R. § 68.2; *see also Liberty Constructors, LLC*, 18 OCAHO no. 1495, at 1 n.1, and the need to refer a case to a different ALJ “[i]n the event of disqualification or recusal of the Chief [ALJ],” 28 C.F.R. § 68.30(d), the CAHO generally is not authorized to address issues in a case after an ALJ has been assigned and prior to the issuance of a final order. However, the CAHO “is authorized to act on non-adjudicatory matters relating to a proceeding” prior to the assignment of an ALJ. 28 C.F.R. § 68.11(a). Such non-adjudicatory matters could include, *inter alia*, requests to

⁴ Although the regulation speaks solely of consolidating hearings, OCAHO has long held “[t]hat same authority by implication permits consolidation [of cases] for preliminary matters as well[.]” *United States v. Carpio-Lingan*, 6 OCAHO no. 914, 1076, 1077 (1997). Thus, pending cases may be consolidated before the hearing stage, if appropriate.

initiate discovery, *see Ferrero*, 18 OCAHO no. 1505, at 7, clarification of the appropriate subjects or parties and their correct addresses for service, the substitution or addition of counsel or clarification of questions of representation for one or both parties, and the appropriateness of consolidating cases. Thus, although the CAHO likely could—with appropriate notice and if otherwise warranted under applicable law—consolidate cases filed simultaneously (or within close temporal proximity) prior to the assignment of an ALJ in all such cases subject to consolidation, whether the CAHO could consolidate cases in which at least one has already been assigned to an ALJ is less clear. Nevertheless, even if consolidation in such circumstances could be authorized based on a request made pursuant to 28 C.F.R. § 68.11(a), the better practice appears to be to assign the new case to the same ALJ presiding over the related, already-pending case and to allow that ALJ to address the question of consolidation if warranted. Consequently, absent unusual circumstances, OCAHO will adhere to that practice when receiving a new case related to a pending one in which an ALJ has already been assigned. Accordingly, because the pending case, number 2024B00007, related to the instant case has already been assigned to an ALJ, the CAHO will not consolidate the cases in their present posture. However, nothing in this determination precludes either party or the presiding ALJ from subsequently seeking consolidation of the two cases pursuant to 28 C.F.R. § 68.16 if otherwise warranted under applicable law.

12. Additionally, the complaint in the instant case makes reference to what may be settlement communications between Complainant and Respondent in March 2024 in the already-pending case. Compl. at 11. To be clear, the undersigned makes no finding as to whether such

allegations were, in fact, settlement communications or whether they would be admissible in the instant case. However, to the extent that those communications may become an issue in the present case, both parties should be aware of applicable law—which is perhaps not as clear as it would initially appear—regarding the potential admissibility or inadmissibility in OCAHO proceedings of evidence related to settlement discussions, including unaccepted offers of settlement, conducted outside of OCAHO’s SOP.⁵ *Compare* Fed. R. Evid. 408 (generally prohibiting the admissibility in federal court of evidence related to settlement negotiations, subject to certain exceptions) *and* 28 C.F.R. § 68.40(a) (noting that “[u]nless otherwise provided by statute or [OCAHO’s] rules, the Federal Rules of Evidence will be a general guide to all [OCAHO] proceedings”) *with* 28 C.F.R. § 68.40(b) (noting that “[a]ll relevant material and reliable evidence is admissible [in OCAHO proceedings], but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues”) *and* *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1093, 8 (2003) (“It is proper for a party to cite the [Federal Rules of Evidence (FRE)] as persuasive authority, and evidence that would be admissible under the FRE clearly will be accepted in an OCAHO case. However, the converse is not necessarily true; i.e. evidence will not necessarily be excluded in an OCAHO proceeding simply because it does not meet the standards established by the FRE.”). *Cf.* Fed. R. Civ. P. 68(b) (noting that evidence of an unaccepted offer of judgment is not admissible in

⁵ The admissibility of evidence related to settlement discussions conducted under the auspices of OCAHO’s SOP is much clearer. *See infra* ¶ 13.

federal court except to determine costs); 28 C.F.R. § 68.1 (noting that the Federal Rules of Civil Procedure may be used as general guidelines in OCAHO proceedings).

13. Further, both parties have unquestionably engaged in settlement discussions in the already-pending case since June 2024 through OCAHO's SOP. *See Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510h (2024) (referring the case to OCAHO's SOP). Thus, to the extent those discussions may also become an issue in the present case, both parties should be mindful of the confidentiality restrictions, including exceptions to those restrictions, governing OCAHO's SOP, *see generally* OCAHO Practice Manual, Chapter 4.7(d), <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>; *accord* 5 U.S.C. § 574, including the potential inadmissibility of "evidence regarding statements or conduct in the settlement proceedings under [the SOP] . . . in [either] the underlying proceeding or any subsequent administrative proceeding before OCAHO," OCAHO Practice Manual, § 4.7(d)(1), <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>.

14. All parties in OCAHO proceedings are expected to act with integrity and in an ethical manner and shall conform their conduct to the Standards of Conduct. 28 C.F.R. § 68.35.

Notice Given By:

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