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

January 17, 2025

LASZLO VASKO, Complainant, v. UBER TECHNOLOGIES, INC., Respondent.	))))))	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2025B00023

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

1. A complaint was filed on December 2, 2024, against Uber Technologies, Inc. (Respondent) by Laszlo Vasko (Complainant). A copy of the complaint is attached to this Notice of Case Assignment (NOCA).[1] This case is assigned to the Honorable Andrea Carroll-Tipton, Administrative Law Judge.

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

[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." *Wangperawong v. Meta Platforms, Inc*, 20 OCAHO no. 1613, 1 n.1 (2024). OCAHO may also publish a NOCA as a declaratory order "to terminate a controversy or remove uncertainty." 5 U.S.C. § 554(e). In the instant case, OCAHO is publishing this NOCA to explain a change in its policy regarding cases arising under 8 U.S.C. § 1324b. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change."). In such cases—and unless ordered otherwise by the presiding adjudicator—OCAHO will no longer automatically serve every order, notice, and other decision issued, including a NOCA, on the Immigrant and Employee Rights Section (IER), the investigatory and sometimes-prosecuting authority for alleged violations of 8 U.S.C. § 1324b, if IER is not a party to the case; further, OCAHO will no longer automatically expect or require the non-IER parties in such a case to serve each of their pleadings on IER if it is not a party to the case. *See infra* ¶¶ 10-15.

[2] Published OCAHO decisions may be accessed on the Executive Office for Immigration Review's (EOIR) website at

immediately and comply with their requirements in this case. A Portable Document Format (PDF) 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 Administrative Law Judge (or with the Chief Administrative Hearing Officer (CAHO) if the case either has not yet been assigned to an Administrative Law Judge 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

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.

OCAHO) to file a notice of change of address or other contact information directly with the [Administrative Law Judge], 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.").

Parties wishing to appear anonymously (or pseudonymously) or to use their initials in the case caption rather than their name should be aware of applicable law on that issue when making any such request to the presiding OCAHO adjudicator. *See generally United States v. Wallcon, LLC*, 21 OCAHO no. 1630, 3-5 (2025) (discussing OCAHO's consideration of such requests).

Parties wishing to raise arguments in OCAHO proceedings sounding in constitutional law should be aware of both the expectations and limitations of OCAHO's consideration of such arguments. *See generally United States v. ABS Staffing Sols*., *LLC*, 21 OCAHO no. 1632, 7-17 (2025). Parties should also be aware that such arguments may be waived or forfeited if not timely raised. *See id*. at 16-17.

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 Administrative Law Judge on behalf of a party must seek approval from the Administrative Law Judge 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 Administrative Law Judge 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 Administrative Law Judge, 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. OCAHO operates an electronic filing pilot program.[3] For cases enrolled in the program, the parties can file and serve case documents by email and will receive decisions and orders issued by OCAHO by email. More information about the electronic filing program can be found on OCAHO's website at the following location: https://www.justice.gov/eoir/ocaho-filing. Participation in the program is strongly encouraged in order to minimize the delays inherent in filing and service of hard copy documents by mail or other delivery service. Although participation is voluntary and typically allowed only when both parties in a case elect to participate and complete the necessary certification, OCAHO adjudicators may, in certain circumstances, require the parties in a particular case to electronically file documents even if the case is not enrolled in the pilot program. *See, e.g.*, *A&D Maint. Leasing & Repairs, Inc.*, 19 OCAHO no. 1568a, 9 (2024) (decision by the CAHO noting that pursuant to an Administrative Law Judge's authority to "[t]ake other

[3] "The pilot program was originally in effect until November 26, 2014, and was subsequently extended until May 29, 2015. Due to the overall success of the electronic filing pilot program, the pilot program has now been extended indefinitely while OCAHO works toward implementation of a permanent e-filing system." *OCAHO Filing*, U.S. DEP'T OF JUST., https://www.justice.gov/eoir/ocaho-filing (last updated June 4, 2021). After nearly two years of delay, in November 2022, EOIR's Office of Information Technology indicated that work on implementation of a permanent OCAHO electronic filing system would begin that fiscal year. However, no work was apparently ever initiated, and implementation has been further delayed since then without an official explanation. A current expected completion date—or even a current expected initiation date—is unknown.

appropriate measures necessary to enable him or her to discharge the duties of the office," 28 C.F.R. § 68.28(a)(8), an Administrative Law Judge may, "in certain circumstances," require parties to file documents electronically even if their case is not enrolled in OCAHO's electronic filing program); *Zajradhara v. Kang Corp.*, 19 OCAHO no. 1555 (2024) (converting a case to electronic filing absent objection from the parties due to "significant delays inherent with mail filing" between the parties' location and OCAHO's offices).

7. 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 Administrative Law Judge 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 Administrative Law Judge to do so through the filing of a motion. *See id*.

8. OCAHO operates a Settlement Officer Program, 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 Administrative Law Judge 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 Settlement Officer Program can be found in the OCAHO Practice Manual: https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7.

9. Should the Administrative Law Judge 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 also be given to the convenience and necessity of the parties or their representatives in selecting a time and place for the hearing. *See* 5 U.S.C. § 554(b); 28 C.F.R. § 68.5(b).

10. The Immigrant and Employee Rights Section (IER)[4] is part of the Civil Rights Division of the Department of Justice (DOJ) and is headed by a Special Counsel for Immigration-Related Unfair Employment Practices (Special Counsel).[5] 28 C.F.R. § 0.53(a). IER is responsible for receiving, investigating, and, as appropriate, prosecuting before OCAHO alleged violations of 8 U.S.C. § 1324b. *See* 8 U.S.C. §§ 1324b(c)(2), (d)(1); 28 C.F.R. §§ 0.53(b)(1)-(3); 28 C.F.R. §§ 44.302-44.304.

11. For at least the past twelve years, if not longer, OCAHO has routinely served IER with a copy of all notices, orders, and other decisions issued by its adjudicators in cases arising under 8 U.S.C. § 1324b, even in cases where IER is *not* a party (either as an original party or an intervenor). In turn, because OCAHO lists IER on its certificate of service in all cases under 8 U.S.C. § 1324b,

[4] IER was previously known as the Office of Special Counsel for Immigration-Related Unfair Employment Practices—often shortened to either the Office of Special Counsel or OSC—but changed its name to the Immigrant and Employee Rights Section in January 2017. *See* Standards and Procedures for the Enforcement of the Immigration and Nationality Act, 81 Fed. Reg. 91768, 91769 (Dec. 19, 2016) (implementing the name change effective January 18, 2017).

[5] By statute, the Special Counsel, is appointed by the President and confirmed by the Senate. 8 U.S.C. § 1324b(c)(1). However, there has not been a Senate-confirmed Special Counsel in many years. Consequently, the authorities of the position in recent years are typically exercised by either an Acting Special Counsel, *see*, *e.g.*, *id.* (authorizing the President to "designate the officer or employee who shall act as Special Counsel during [a] vacancy"), or the Deputy Special Counsel in IER.

the private, non-IER parties in such cases also routinely serve copies of their pleadings and other filings with OCAHO on IER in cases where IER is not a party.

12. Both the provenance of this practice and its continued appropriateness are unclear. There is no statutory or regulatory requirement for either OCAHO or private parties to serve IER with any documents when it is not a party to a proceeding or has not filed a motion.[6] To the contrary, OCAHO rules require service only "to all parties of record," and not to any non-parties. 28 C.F.R. § 68.6(a). Although an Administrative Law Judge may require service to individuals or entities beyond the parties of record, an Administrative Law Judge's general orders typically track the language of 28 C.F.R. § 68.6(a) and require service only to the parties of record. *See*, *e.g.*, *Zajradhara v. Ranni's Corp*., 16 OCAHO no. 1426, 2-3 (2022) ("All filings in this matter should be accompanied by a certification indicating *service to all parties of record* and identifying the date and manner of service." (emphasis added)). Further, OCAHO is unaware of any other adjudicatory body, or court system in general, which routinely serves a non-party, investigating and prosecuting authority with all copies of its decisions and—at least suggestively, if not expressly[7]—obligates the actual parties to file all copies of their pleadings with that authority as

[6] Although it has rarely done so in recent years, IER may move to intervene as a party in a particular case. *See* 8 U.S.C. § 1324b(e)(3); 28 C.F.R. § 68.15. IER may also move to submit a brief as an amicus curiae. *See* 28 C.F.R. § 68.17; *see also infra* note 14. In such cases, any party's response to an IER motion, as well as OCAHO's eventual order on the motion, would, of course, necessarily be served on IER. Further, in any case which is dismissed pursuant to a settlement agreement, IER is a third-party signatory to that agreement, and the presiding Administrative Law Judge has reviewed the agreement, *see generally* 28 C.F.R. § 68.14, OCAHO will also serve IER with a copy of the order of dismissal.

[7] OCAHO's typical certificate of service for a NOCA in a case arising under 8 U.S.C. § 1324b states, in bold and all capital letters, that "**ALL FURTHER DOCUMENTS RELATING TO THIS CASE ARE TO BE MAILED TO THE FOLLOWING:"** and then lists IER first as an entity to be served, even as a non-party. Whether this language constitutes an explicit order is arguable, but at the least, it sends a clear message to the private parties to serve their pleadings on IER even when there is no clear legal requirement to do so.

well. At best, the practice is a vestigial curiosity[8]; at worst, it raises significant questions about the appropriate amount of separation between OCAHO and IER.

13. Although there is nothing inherently improper in having a prosecuting and investigating authority and an adjudicatory body co-located within the same administrative agency, *see*, *e.g.*, *Marcello v. Bonds*, 349 US 302, 311 (1955) (describing a challenge to an agency structure where an adjudicator was subject to supervision and control by officials with investigating and prosecuting functions within the same agency as "without substance"); *Withrow v. Larkin*, 421 U.S. 35, 47-55 (1975) (rejecting a claim that combining investigative, prosecutorial, and adjudicatory functions within one person in an agency is inherently a violation of due process), OCAHO is nevertheless sensitive to perceptions and concerns about its independence because both it and IER are located within DOJ. Further, even though the co-location of an adjudicatory body and an investigative-prosecutorial body within the same agency is not inherently violative of due process, both the Administrative Procedure Act (APA) and OCAHO regulations make clear that an employee performing investigative or prosecutorial functions for an agency should generally not participate or advise in the adjudication of cases (or factually-related cases) based on such investigations, except as a witness or counsel. *See* 5 U.S.C. § 554(d) (flush language); 28 C.F.R. § 68.31.[9]

[8] Even if only a curiosity, this practice "imposes time and resource costs on both the parties and on OCAHO, and such costs should generally be borne only when legally necessary." *A&D Maint. Leasing & Repairs, Inc.*, 19 OCAHO no. 1568, 5 n.6 (2024). As discussed further herein, such costs do not appear to be legally necessary in all cases arising under 8 U.S.C. § 1324b.

[9] To be sure, the APA exempts from this general rule "the agency or a member or members of the body comprising the agency." 5 U.S.C. § 554(d) (subparagraph (C) of flush language). However, "the agency" cannot be broadly read to include *every* employee within an agency; otherwise, the application of the initial prohibition in 5 U.S.C. § 554(d)

14. Consequently, because IER employees are, at the least, unquestionably engaged in investigative functions in all cases arising under 8 U.S.C. § 1324b, *see supra* ¶ 10, the routine service of documents on them as a non-party by both OCAHO and private parties in every case arising under 8 U.S.C. § 1324b raises, at a minimum, a public-perception question[10] of whether IER is also actually participating in such cases as other than a witness or counsel. [11] Although OCAHO need not definitively resolve that legal question at the present, it nevertheless has determined that a change in its procedures is due to ensure there remains an appropriate separation of functions between OCAHO and IER.[12]

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to an "employee" of an agency would be a nullity. *See Loughrin v. United States*, 573 U.S. 351, 358 (2014) (noting the "'cardinal principle' of [statutory] interpretation that courts 'must give effect, if possible, to every clause and word of a statute"' (quoting *Williams v. Taylor*, 529 U.S. 362, 404 (2000))). Rather, "[t]he exemption from 554(d) was created only for those positions in which involvement in all phases of a case is dictated by the very nature of administrative agencies, where the same authority is responsible for both the investigation-prosecution and the hearing and decision of cases." *Grolier v. FTC*, 615 F.2d 1215, 1220 (9th Cir. 1980) (internal quotations and citations omitted). In short, the exemption in 5 U.S.C. § 554(d) would not apply to employees of IER.

[10] A prominent immigration advocacy organization and stakeholder for both IER and OCAHO has also recently raised concerns about this practice. Further, other stakeholders have also raised concerns about IER's investigative and prosecutorial practices in general. *See*, *e.g.*, Letter from Jim Jordan, Chairman, U.S. House of Representatives Comm. on the Judiciary, to The Honorable Kristen Clarke, Assistant Att'y Gen., Civ. Rts. Div., U.S. Dep't of Just. (Sept. 15, 2023), *available at* https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-09-15-jdj-to-doj-civil-rights-division.pdf. Although it would not be appropriate for OCAHO to comment on any specific concerns raised by stakeholders about IER—one of which, *see id*. at 1-2, involves an OCAHO case whose proceedings are currently enjoined, *see Space Expl. Techs. Corp. v. Bell*, 701 F.Supp. 3d 626 (S.D. Tex. 2023)—the existence of these concerns does reinforce the need to ensure a clear separation of functions between OCAHO and IER.

[11] Throughout OCAHO's history, its adjudicators have occasionally issued an "Order of Inquiry" to IER to obtain additional information about a case. *See*, *e g*., *Goel v. Indotronix Int'l Corp.*, 9 OCAHO no. 1102, 9 (2003) (noting that after the parties had briefed an issue, the Administrative Law Judge "issued an Order of Inquiry to [IER] asking for copies of any receipt cards, correspondence or written material in that office's possession which would" support a respondent's assertion about the timeliness of his charge). IER's response to such an Order places it in the position of being, arguably, both a witness and a counsel in the proceeding at issue. Accordingly, nothing in this NOCA should be construed as prohibiting or altering OCAHO's longstanding practice regarding IER's participation in a case following an Order of Inquiry addressed to it.

[12] OCAHO recognizes this change in its policies and, through this NOCA, provides a reasoned explanation for the change. *See Encino Motorcars, LLC*, 579 U.S. at 221 ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change.").

15. Accordingly, beginning with this NOCA and going forward, unless IER is a party to the case, OCAHO will no longer automatically serve IER with a copy of all notices, orders, or other decisions in cases arising under 8 U.S.C. § 1324b and will not generally require the private parties to such a case to serve IER with copies of their filings either.[13] However, nothing in this NOCA should be construed as restricting service on IER when it is a party to a case or when it has filed a motion[14] with the presiding adjudicator. Moreover, nothing in this NOCA should be

[13] The most plausible justification for OCAHO's prior practice regarding IER is that service of all orders by OCAHO and all pleadings by the parties facilitates IER's ability to seek intervention, *see* 8 U.S.C. § 1324b(e)(3); 28 C.F.R. § 68.15, or to file an amicus curiae brief, *see* 28 C.F.R § 68.17, in appropriate cases. However, the right to petition for intervention or to seek leave to file an amicus curiae brief is not unique or limited to IER, and OCAHO does not routinely attempt to facilitate any other potentially-interested person or entity's ability to intervene or file an amicus curiae brief in its cases. Further, both allowing intervention, *see* 8 U.S.C. § 1324b(e)(3); 28 C.F.R. § 68.15, and granting leave to file an amicus curiae brief, *see* 28 C.F.R. § 68.17, are discretionary determinations by the presiding Administrative Law Judge, so there is no right for IER (or any other potential interested party) to take such actions in any case. Moreover, while this argument may have had more persuasive force in the past because OCAHO published comparatively fewer decisions—though hardly dispositive force in light of the legal concerns discussed, *supra*—since 2021 OCAHO has an established policy, superseding any prior policies, of publishing almost all substantive decisions on its public website, *see 1.4(c)(3)(A) – Jurisdiction, Authority, and Priorities*, EXEC. OFF. OF IMMIGR. REV., https://www.justice.gov/eoir/reference-materials/general/chapter-1/4 (last visited Jan. 13, 2025). including all final orders and almost every other type of decision except routine or non-substantive notices and orders (*e.g.* scheduling orders, routine NOCAs, or non-substantive stays of proceedings). In fact, OCAHO published over 310 decisions in fiscal year 2024, which appears to be the highest number in one fiscal year in its history. Thus, IER—and any other interested party—is already presumably aware of the issues in pending OCAHO cases; consequently, even with this change in OCAHO policy, IER is in no danger of being unaware of a proceeding or issue on which it may wish to intervene or to file an amicus curiae brief. Moreover, as discussed herein, nothing in this NOCA restricts an Administrative Law Judge—in a case arising under 8 U.S.C. § 1324b in which IER is not a party—from requiring service on IER in a particular case (subject to notice and an opportunity to be heard), from sending IER an Order of Inquiry, or from soliciting amicus curiae briefs from any interested parties, including IER. Accordingly, the cessation of the practice of automatically serving IER with all documents will not prejudice it in fulfilling its important mission or functions under 8 U.S.C. § 1324b.

[14] As discussed, *see supra* note 6, IER may move to intervene in a case or to submit a brief as an amicus curiae. IER sometimes also attempts to file with OCAHO what it labels a "statement of interest." *See, e.g., Zakarneh, v. Intel Corp*., 16 OCAHO no. 1414a, 2-3 (2022) (issuing an Order to Show Cause to IER to explain why its purported statement of interest should be accepted for filing despite non-compliance with the requirements of 28 C.F.R. § 68.17). Such statements of interest are often quite helpful to OCAHO adjudicators, but the procedural basis for filing them has come into question in recent years. *See id*. In filing a statement of interest, IER generally relies on 28 U.S.C. § 517 as authority to do so. *See, e.g., id.* at 2. In turn, that statute states:

> The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a

construed as restricting an Administrative Law Judge's authority to require service on IER—of either the Administrative Law Judge's orders or the parties' pleadings—if the Administrative Law Judge deems such service appropriate in a particular case. [15] However, in such situations, the Administrative Law Judge should generally provide the parties notice and an opportunity to respond before making such an order.

16. Finally, 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. Consistent with this expectation, parties and attorneys appearing before OCAHO who elect to use technological tools such as generative artificial intelligence in preparing their filings should be mindful of the ethical and professional responsibility implications of using such tools. *See generally Wallcon*, 21 OCAHO no. 1630, at 9-14 (discussing ethical and professional

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court of the United States, or in a court of a State, or to attend to any other interest of the United States. 28 U.S.C. § 517.

Although the head of IER is an officer of the DOJ, the statute directs an officer to go to any "State or district." *Id.* However, OCAHO is neither a State nor a district. Moreover, OCAHO is not a "court of the United States," as that term is defined for purposes of 28 U.S.C. § 517. *See* 28 U.S.C. § 451 ("The term 'court of the United States' includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior."). OCAHO is also unquestionably not a "court of a State." Consequently, 28 U.S.C. § 517 does not provide authorization for IER to file a statement of interest with OCAHO. Moreover, Administrative Law Judges, the Deputy CAHO, and the CAHO are all "officers of the Department of Justice" who act on behalf of the Attorney General. Thus, to the extent that the Attorney General needs OCAHO to attend to any interest of the United States, he or she may direct the officers of OCAHO to do so directly. Nevertheless, notwithstanding the misplaced reliance on 28 U.S.C. § 517, an IER statement of interest is "indistinguishable" from an amicus curiae brief. *See Zakarneh*, 16 OCAHO no. 1414a, at 2. Thus, OCAHO will generally treat such filings as potential amicus curiae briefs subject to acceptance with leave of the presiding Administrative Law Judge, *see* 28 C.F.R. § 68.17; further, regardless of the label attached, OCAHO expects IER filings as a non-party to conform to appropriate regulatory requirements, which generally include a requirement to file a motion for leave for the presiding adjudicator to accept such a filing.

[15] Further, nothing in this NOCA should be construed as prohibiting a party from voluntarily serving its pleadings on IER if it so wishes.

considerations regarding the use of generative artificial intelligence in OCAHO proceedings). The presiding ALJ may also provide further direction regarding the use of generative artificial intelligence in individual cases. *See id*. at 14, n.10.

Notice Given By:

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