

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

January 17, 2025

UNITED STATES OF AMERICA,)	
Complainant,)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2025A00022
IMPACT STAFFING, LLC,)	
Respondent.)	

ORDER OF THE CHIEF ADMINISTRATIVE HEARING OFFICER AND NOTICE OF CASE
ASSIGNMENT FOR COMPLAINT ALLEGING UNLAWFUL EMPLOYMENT

1. A complaint was filed on November 27, 2024, against Impact Staffing, LLC (Respondent) by the United States of America (Complainant). Attached to this Order of the Chief Administrative Hearing Officer (Order) and Notice of Case Assignment (NOCA) (collectively, Order and NOCA) is a copy of the complaint, the Notice of Intent to Fine (NIF) issued by the Department of Homeland Security (DHS), and the Respondent’s request for a hearing pursuant to 8 U.S.C. § 1324a(e)(3).¹

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, the NOCA is being published as part of a larger order addressing a substantive change in OCAHO’s position regarding its ability, *inter alia*, to process new case complaints and to remove uncertainty regarding the authority of certain of its officers. *See infra* ¶¶ 11-14. Accordingly, the larger order, including the NOCA part of it, warrants publication in order to explain this change in OCAHO’s policy. *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.”).

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) 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

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.

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 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

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.

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 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. The hearing shall be held at the nearest practicable place to the place where the Respondent resides or the place where the alleged violation occurred. *See* 8 U.S.C. § 1324a(e)(3)(B); 28 C.F.R. § 68.5(b). 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).

10. 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 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.

11. Although OCAHO's formal organizational structure has had a position for a Deputy Chief Administrative Hearing Officer (Deputy CAHO) for many years, that position, prior to 2023, had been vacant for approximately a decade, if not longer. In January 2023, as part of a component reorganization, OCAHO selected a new Deputy CAHO. In addition to traditional management and supervisory functions of OCAHO's administrative support staff, the Deputy CAHO would also perform the functions of the CAHO, including the CAHO's case processing and adjudicatory functions, when the CAHO is on leave or otherwise unavailable. *See, e.g., ABS Staffing Sols.*, 21 OCAHO no. 1632, at 8 n.6 (noting that the Deputy CAHO "performs the duties of the CAHO when the CAHO is absent or when the position is vacant"). In light of the CAHO's career appointment to a permanent position, adjudicatory authority, and supervisory authority over OCAHO's administrative law judges, *see* 28 C.F.R. § 0.118; 28 C.F.R. § 68.2, the CAHO is unquestionably an inferior officer for purposes of the Appointments Clause, Article II, Section 2, Clause 2, of the Constitution. *See generally ABS Staffing Sols.*, 21 OCAHO no. 1632, at 7-8 n.4 (discussing the definition of an inferior officer and the multiple potential types of such officers within the federal government). Thus, the CAHO is appointed by the Attorney General, "the Head[] of [a] Department[]," U.S. CONST., art. II, § 2, cl. 2, to avoid any potential constitutional issue with his authorities. Consequently, the Deputy CAHO, who occupies a career, permanent position, would also be an inferior officer when she performs the functions of the CAHO in the CAHO's absence. *See ABS Staffing Sols.*, 21 OCAHO no. 1632, at 8 n.6 (noting the Deputy CAHO and her status as an inferior officer). To that end, OCAHO requested that the Deputy CAHO be appointed as such by the Attorney General to ensure there would be no constitutional concerns—

as well as to ensure operational continuity and the avoidance of any disruption to OCAHO's case processing—when the Deputy CAHO exercised the authority of the CAHO in the CAHO's absence.⁴

12. For unknown reasons, EOIR's Office of Administration (OA), including the Assistant Director for Administration (Assistant Director), objected to the Deputy CAHO's appointment.⁵ In doing so, OA, which does not contain any attorney positions and is not authorized to provide legal advice—including advice on constitutional law issues—asserted that *only* key Senior Executive Service (SES) positions were required to be appointed by the Attorney General, and the Deputy CAHO position was not an SES position. The Assistant Director also asserted, contrary to EOIR's historic practice, that EOIR was not required to follow the position of the DOJ Office of Legal Counsel, though he did not explain why a deviation from that practice was warranted. Following further discussions among relevant senior managers, EOIR sustained OA's objections over the positions of OCAHO and the DOJ Office of Legal Counsel.⁶ Accordingly, although the

⁴ The Department of Justice's (DOJ's) Office of Legal Counsel agreed with OCAHO's view and also indicated that the Deputy CAHO should be appointed by the Attorney General.

⁵ Another senior EOIR manager characterized the Assistant Director's objections as "politics" but did not elaborate further. Whether those objections were politically or ideologically motivated—particularly in the context of a larger campaign of harassment by EOIR management toward OCAHO and the CAHO since 2021—is beyond the scope of this Order and NOCA.

⁶ EOIR maintained that the appointment of the Deputy CAHO was unnecessary because the risk of federal litigation was low. Although, concededly, it may have appeared low at the time, subsequent events, including two federal district-court injunctions of OCAHO proceedings based on arguments related to OCAHO's use of inferior officers, *see Space Expl. Techs. Corp. v. Bell*, 701 F. Supp. 3d 626 (S.D. Tex. 2023); *Walmart Inc. v. King*, CV 623-040, 2024 WL 1258223 (S.D. Ga. Mar. 25, 2024), suggest that perhaps the risk was actually somewhat greater. OCAHO further noted that not appointing the Deputy CAHO risked adjudicatory disruption, which came to pass subsequently, *see, e.g., United States v. Edgemont Grp., LLC*, 17 OCAHO no.1470b, 12 n.16 (2023) (alluding to "logistical and legal hurdles preclude[ing] a request for [amicus] briefs" during an administrative review, which was due to the inability of the Deputy CAHO to order the filing of such briefs while the CAHO was on leave), and has come to pass again, *see infra* ¶ 13. OCAHO's other points—*i.e.* the lack of appointment of the Deputy CAHO would inappropriately restrict

Deputy CAHO began serving in that position in April 2023, she was not appointed to it by the Attorney General.⁷

13. The CAHO is scheduled to be detailed outside of OCAHO beginning next week, leaving the Deputy CAHO to act as the head of OCAHO. However, because the Deputy CAHO has not been appointed to her position in conformity with the Constitution, she cannot exercise the authorities of an inferior officer position, such as the CAHO. Consequently, unless she is subsequently appointed by the Attorney General, while the CAHO is detailed, the Deputy CAHO will be unable to act on any case-related matters before OCAHO, including the issuance of NOCAs, or to provide supervision of the administrative law judge corps. Moreover, no other OCAHO employee is authorized to perform these functions.⁸ *See, e.g.*, 28 C.F.R. § 0.118 (assigning the CAHO authority to “provide general supervision to the Administrative Law Judges

the CAHO’s ability to take leave, contrary to the less restricted ability afforded other senior employees, due to the length of OCAHO’s timeline for conducting an administrative review, *see* 28 C.F.R. § 68.54, and EOIR’s historic practice of generally following the perspective of the DOJ Office of Legal Counsel—were equally unpersuasive. Moreover, once it became apparent that EOIR management intended to side with OA on the legal question—and after one EOIR senior employee implicitly threatened the CAHO by “hypothetically” alluding to his sudden departure or removal from EOIR—OCAHO withdrew its request for the appointment in order to avoid further conflict or retaliation. Finally, the appropriateness of EOIR’s reliance on the position of non-attorneys over that of attorneys on a question of constitutional law is beyond the scope of this Order and NOCA.

⁷ Curiously, DOJ has taken a different position regarding deputies in the subcomponents most comparable to OCAHO. For example, the Deputy Chief Immigration Judges and the Deputy Chief Appellate Immigration Judges are appointed by the Attorney General. Further, the Special Counsel for Immigration-Related Unfair Employment Practices (Special Counsel)—*i.e.* the head of the Immigrant and Employee Rights Section (IER) of the Civil Rights Division, 28 C.F.R. § 0.53(a), who is integral to the investigation, review, and prosecution of charges alleging violations of 8 U.S.C. § 1324b—is unquestionably an inferior officer. By statute, 8 U.S.C. § 1324b(c)(1), the Special Counsel is a Presidentially-nominated and Senate-confirmed position, but it has been vacant for several years. As a result, the Deputy Special Counsel frequently performs the duties of the Special Counsel. Thus, to avoid any constitutional concern with the Deputy Special Counsel exercising the Special Counsel’s authority, the Attorney General formally appointed the Deputy Special Counsel to that position on July 26, 2024.

⁸ OCAHO regulations do provide a mechanism for the EOIR Director to conduct administrative reviews pursuant to 28 C.F.R. §§ 68.53 and 68.54 when the CAHO is “disqualified.” *See* 28 C.F.R. § 68.30(e). However, that procedure applies only to administrative reviews and not to other authorities of the CAHO.

in performance of their duties” and “the authority to review decisions as provided in [28 C.F.R. §§ 68.53, 68.54]”); 28 C.F.R. § 68.2 (assigning the CAHO authority to “[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 administrative law judges to cases”). Accordingly, following the issuance of this Order and NOCA, although OCAHO will continue to receive and accept new case complaints, it is compelled, *see* 28 C.F.R. § 68.2 (recognizing that “[s]ubject to the supervision of the [EOIR] Director, the CAHO shall be responsible for the management and direction of hearings and duties within the jurisdiction of OCAHO”), to temporarily halt issuing NOCAs for new cases and acting on any non-adjudicatory matters prior to the issuance of a NOCA, *see* 28 C.F.R. § 68.11(a).⁹

⁹ OCAHO recognizes that the suspension of initial case assignments and the issuance of NOCAs is a significant change in its policy that cannot be undertaken without acknowledgement of the change. *See, e.g., FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” (emphasis in original)). Such a change necessarily requires an explanation in order to comply with fundamental principles of administrative law, and, through this Order and NOCA, OCAHO is providing a reasoned explanation for the change. *See Encino Motorcars*, 579 U.S. at 223 (“Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change.”). Any facts underlying that explanation in this Order and NOCA, including dates, events, structures, procedures, and the existence of policies or practices, are either non-adjudicative, legislative facts which are “not an appropriate subject for a formalized judicial notice treatment,” Fed. R. Evid. 201 advisory committee’s note on proposed rules; *cf., e.g., US Tech Workers v. Northwestern Med.*, 19 OCAHO No. 1566, 1 (2024) (summarizing various facts related to the United States Postal Service’s handling of OCAHO mailings without taking formal judicial notice), or are facts otherwise subject to official notice, *see* 28 C.F.R. § 68.41; *United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416d, 4-5 n.5 (2023), as facts “not subject to reasonable dispute because [they]. . .[are] generally known within the . . . jurisdiction,” Fed. R. Evid. 201(b)(1). *See generally* 28 C.F.R. § 68.40(a) (noting that “[u]nless otherwise provided. . .the Federal Rules of Evidence will be a general guide to all [OCAHO] proceedings”). To the extent such facts may be subject to official notice, either party may file information to the contrary with OCAHO within 30 days of this Order and NOCA. *Cf.* 28 C.F.R. § 68.41. Normative questions about the implications of such facts are beyond the scope of this Order and NOCA. *Cf.* 5 U.S.C. § 2302(b)(8).

14. The initial assignment of an Administrative Law Judge after a new complaint is filed with OCAHO and the issuance of a NOCA based on a new complaint is hereby SUSPENDED until such time as either the Deputy CAHO or an acting CAHO is appointed by the Attorney General. The instant case is assigned to the Honorable Carol Bell, Administrative Law Judge.¹⁰

SO ORDERED.

James McHenry
Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

¹⁰ The CAHO “is authorized to act on non-adjudicatory matters relating to a proceeding prior to the [assignment] of an Administrative Law Judge.” 28 C.F.R. § 68.11(a). Thus, temporally and formally, the Order precedes the case assignment in the instant case.