

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. 2023A00068
ALCO CONSTRUCTION, INC.,	)	
	)	
Respondent.	)	
	)	

Appearances: Ricardo A. Cuellar, Esq., for Complainant  
Terri Corbett, corporate representative for Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. On June 23, 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) against Respondent, ALCO Construction, Inc. Complainant alleged that Respondent failed to prepare and/or present Employment Eligibility Verification Forms (Forms I-9) for fifty-four individuals 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 forty-six individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶ 6. Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it personally served on Respondent through its president, Terri Corbett, on December 10, 2018. *Id.* Ex. A. Through the NIF, Complainant notified Respondent that it was seeking a fine for the above-referenced allegations totaling \$190,195.05. *Id.* Respondent, through its president, contested the NIF and requested a hearing

before this Court by letter dated December 14, 2018 (request for hearing).<sup>1</sup> *Id.* Ex. B. After filing the complaint, Complainant asked OCAHO to serve it on Respondent, through its president, at an address in San Antonio, Texas.<sup>2</sup> *Id.* at 11. *See* 28 C.F.R. § 68.7.<sup>3</sup>

On June 27, 2023, OCAHO's Chief Administrative Hearing Officer (CAHO) served Respondent via United States Postal Service (USPS) certified mail with the following documents: (a) the complaint, (b) a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), (c) the NIF, and (d) Respondent's request for hearing (together, the Complaint package). The CAHO sent the Complaint package to the mailing address for Respondent listed on the 28 C.F.R. § 68.7 attachment to the complaint. Through the NOCA, the CAHO informed Respondent that proceedings in this case would be conducted according to OCAHO's Rules of Practice and Procedure for Administrative Hearings and applicable case law. Notice Case Assign. ¶ 2. Links to OCAHO's Rules and the OCAHO Practice Manual<sup>4</sup> were provided to Respondent, *id.*, along with contact information for OCAHO. *Id.* at 4–5. The CAHO advised Respondent that it had the right to file an answer to the complaint and that, pursuant to 28 C.F.R. § 68.9(a), its answer must be filed within thirty days after it was served with the complaint. *Id.* ¶ 4. The CAHO warned Respondent that if it failed to file a timely answer, it may be deemed to have waived its right to appear and contest the allegations of the complaint and that “the Administrative Law Judge [ALJ] may enter a judgment by default along with any and all appropriate relief.” *Id.* (citing 28 C.F.R. § 68.9(b)).

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<sup>1</sup> Respondent's President, Terri Corbett, entered an appearance as a corporate representative for Respondent in this matter by signing Respondent's request for hearing. *See* 28 C.F.R. §§ 68.33(c)(3)(iv), (f).

<sup>2</sup> The address Complainant provided to OCAHO in the complaint is the same street address listed in Respondent's request for hearing. *Id.* Ex. B.

<sup>3</sup> OCAHO's Rules for Practice and Procedures for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2025), generally govern these proceedings and are available on OCAHO's homepage on the United States Department of Justice's website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

<sup>4</sup> The OCAHO Practice Manual, which is part of the Executive Office for Immigration Review's Policy Manual, explains the procedures and rules applicable to OCAHO cases. *See* <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

The USPS website indicated that the Complaint package was delivered to Respondent and left with an individual on July 3, 2023. The Court also received a signed USPS certified mail return receipt (PS Form 3811) for the delivery. As such, service was perfected, and Respondent had thirty days to file its answer to the complaint. *See* 28 C.F.R. § 68.9(a). Respondent however did not file an answer and did not contact OCAHO.

On January 11, 2024, the Court issued an Order to Show Cause. *United States v. ALCO Constr., Inc.*, 18 OCAHO no. 1517 (2024).<sup>5</sup> The Court ordered Respondent, within twenty days of the date of the Order, to file an answer to the complaint that comported with 28 C.F.R. § 68.9(b) and a response in which it provided facts sufficient to show good cause for its failure to timely answer the complaint. *Id.* at 4–5. The Court put Respondent on notice of the consequences should it fail to respond to the Order. Specifically, the Court explained that pursuant to 28 C.F.R. § 68.37(b)(1), a party may be deemed to have abandoned its request for hearing if the party fails to respond to the Court’s orders. *Id.* The Court cautioned that abandonment may result in dismissal of Respondent’s request for hearing. *Id.* The Court advised Respondent that “[a] final order of dismissal based on abandonment is analogous to entry of a default judgment under the Federal Rules of Civil Procedure.” *Id.* at 4 (citing *United States v. Vilardo Vineyards*, 11 OCAHO no. 1248, 4 (Vacation by the Chief Admin. Hr’g Officer of the A.L.J.’s Final Dec. and Order of Dismissal and Remanding for Further Proceedings) (4/15/15) (citing *United States v. Greif*, 10 OCAHO no. 1183, 6 (2013))). The Court also repeated the CAHO’s warning in the NOCA that, should no answer be filed, the Court may enter a default judgment against Respondent pursuant to 28 C.F.R. § 68.9(b). *Id.* at 3, 5. The Court further explained that, if a default judgment was entered, Respondent’s request for hearing would be dismissed and judgment would be entered for Complainant without a hearing. *Id.* at 3 (citing *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004)). Despite these warnings, Respondent failed to

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<sup>5</sup> Citations to OCAHO precedents in bound Volumes 1 through 8 include the volume and case number of the particular decision, followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the relevant 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,” and on the United States Department of Justice website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

file an answer or a response showing good cause for its failure to file a timely answer. Both filings were due by February 1, 2024.

As of the date of this Order, Respondent has not filed an answer, responded to the Court's orders, or communicated with OCAHO.

## II. LEGAL AND REGULATORY STANDARDS

OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that "[a] complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it." 28 C.F.R. § 68.37(b). In cases where a party or its representative "fails to respond to orders issued by the [ALJ]," 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). Although appropriately viewed as a severe sanction, dismissal with prejudice has been upheld where the party is pro se "so long as the court has warned the party that noncompliance can result in dismissal." *Rodriguez v. Tyson Foods, Inc.*, 9 OCAHO no. 1109, 3 (2004) (dismissing complaint for abandonment due to complainant's failure to respond to the court's orders and comply with discovery orders). "If the Court deems Respondent's request for hearing abandoned, 'the [NIF] becomes the final order, and the NIF service date would be the date of assessment.'" *United States v. MSNF Foods 4 LLC*, 17 OCAHO no. 1459d, 2 (quoting *United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1470b, 6 n.9 (2023)).

OCAHO's Rules of Practice and Procedure for Administrative Hearings also provide that the Court has discretion to enter a default judgment as to both liability and penalties against Respondent "because it will have waived its right to appear and contest the allegations of the complaint by failing to timely answer the complaint." *United States v. Dubose Drilling, Inc.*, 18 OCAHO no. 1487a, 4 (2023) (first citing 28 C.F.R. § 68.9a(b); and then citing *United States v. Hui*, 3 OCAHO no. 479, 826, 829 (1992)).

## III. DISCUSSION AND ANALYSIS

Respondent requested a hearing before this Court but has chosen not to participate in this litigation. OCAHO served Respondent, through its president, Terri Corbett, with the Complaint package and the Order to Show Cause in accordance with OCAHO's Rules of Practice and Procedure for Administrative Hearings. *See* 28 C.F.R. § 68.3(a)(3). Despite being provided with OCAHO's contact information through the NOCA, *see* Notice Case Assign. 5, and the certificate of

service attached to the Court's Order to Show Cause, Respondent has not communicated with OCAHO.

The Court finds that Respondent has been warned of the potential consequences, including dismissal for abandonment, should it not respond to the Court's orders. First, the CAHO explained to Respondent and its president 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 a timely answer, 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)). The CAHO explained that "[t]he answer (and two copies) *must* be filed within thirty (30) days after receipt of the attached complaint." *Id.* (citing 28 C.F.R. §§ 68.3(b), 68.9) (emphasis added).

When a timely answer was not filed, the Court gave Respondent an opportunity to show good cause and file a belated answer to the complaint. *See ALCO Constr., Inc.*, 18 OCAHO no. 1517, at 4–5. Citing OCAHO precedent and 28 C.F.R. § 68.37(b)(1), the Court put Respondent on notice that, if it failed to respond to the Court's orders, "the Court may find that it has abandoned its request for a hearing and dismiss it." *Id.* at 4 (citing *United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023)). The Court again cited 28 C.F.R. § 68.37(b) and repeated this warning to Respondent later in its Order. *Id.* at 5. The Court also warned Respondent that if it failed to file an answer in response to the Court's Order, Respondent may waive its right to appear and contest the complaint's allegations. *Id.* at 4–5 (citing 28 C.F.R. § 68.9(b)). Respondent was put on notice that a judgment may be entered for Complainant without a hearing. *Id.* at 3 (quoting *Nickman*, 9 OCAHO no. 1106, at 1). At the end of its Order to Show Cause, the Court cautioned that it "may enter a default judgment against Respondent as to both liability and penalties" pursuant to 28 C.F.R. § 68.9(b) if Respondent failed to file an answer and contest the allegations of the complaint. *Id.* at 5.

OCAHO ALJs have ordered dismissals for abandonment in situations like this one where respondents have failed to respond to the Court's orders. For example, in *United States v. Louie's Wine Dive, LLC*, 15 OCAHO no. 1404, 2 (2021), an OCAHO ALJ found that a pro se respondent who failed to submit an answer or respond to an order to show cause had abandoned its request for hearing pursuant to 28 C.F.R. § 68.37(b)(1) and dismissed the case. *See also United States v. Milwhite, Inc.*, 17 OCAHO no. 1469a, 2 (2023) (dismissing case when respondent did not file an answer or respond to an 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). This approach has been affirmed by the CAHO. *United States v. Cordin Co.*, 10 OCAHO no. 1162, 4 (2012) (holding that it was “entirely appropriate” for an [ALJ] to conclude that a respondent abandoned a request for a hearing under 28 C.F.R. § 68.37(b) when the respondent did not file an answer or respond to an order to show cause).

Although this Court recognizes that Respondent may be operating without counsel’s assistance, its corporate representative, namely, President Terri Corbett, never contacted OCAHO for assistance or to communicate whether Respondent intended to file an answer to the complaint, comply with the Order to Show Cause, or pursue its request for hearing. This leaves the Court with little choice but to follow the dictates of 28 C.F.R. § 68.37(b). That regulation clearly states that “[a] party shall be deemed to have abandoned its complaint or request for hearing if,” inter alia, that “party or his or her representative fails to respond to orders issued by the [ALJ].” 28 C.F.R. §§ 68.37(b)–(b)(1). The wording of the regulation “suggests that a finding of abandonment is mandatory” when a party fails to respond to an ALJ’s orders. *United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416d, 5 (2023); see also *Cordin Co.*, 10 OCAHO no. 1162, at 3 (explaining that “[t]he procedures governing abandonment and dismissal provide that ‘[a] party *shall* be deemed to have abandoned’ a request for a hearing if the party ‘fails to respond to orders issued by the [ALJ].’” (citing 28 C.F.R. § 68.37(b)(1)).

Therefore, pursuant to 28 C.F.R. §§ 68.37(b)–(b)(1), the Court finds that dismissal is warranted due to Respondent’s abandonment of its request for hearing dated December 14, 2018, through its failure to respond to this Court’s orders or participate in this litigation by filing an answer to the complaint. Accordingly, the complaint filed in this matter on June 23, 2023, is dismissed, which renders the NIF that DHS served on Respondent on December 10, 2018, the final agency order.

#### IV. ORDERS

IT IS SO ORDERED that, pursuant to 28 C.F.R. §§ 68.37(b)–(b)(1), the Court deems Respondent, ALCO Construction, Inc., to have ABANDONED its request for hearing dated December 14, 2018, by failing to respond to the Court’s orders in this case;

IT IS FURTHER ORDERED that, pursuant to 28 C.F.R. § 68.37(b), the complaint filed on June 23, 2023, with the Office of the Chief Administrative Hearing Officer by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, against Respondent, ALCO Construction, Inc., giving rise to OCAHO Case No. 2023A00068, 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, ALCO Construction, Inc., on December 10, 2018, is rendered the final agency order.

SO ORDERED.

Dated and entered on January 23, 2025.

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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.