

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. 2023A00065
LEYENDECKER CONSTRUCTION, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Ariel Chino, Esq., for Complainant  
Michael V. Galo, Jr., Esq., for Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

On June 6, 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) alleging that Respondent, Leyendecker Construction, Inc., violated the employer sanctions provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Complainant specifically alleges that Respondent violated 8 U.S.C. § 1324a(a)(1)(B) by failing to ensure that employees properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Employment Eligibility Verification Forms (Forms I-9) for sixty-one individuals. Compl. ¶ 5.

Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it served on Respondent on February 8, 2019.<sup>1</sup> Compl. Ex. A. Through the NIF, Complainant notified Respondent that it was seeking a fine for the above-referenced allegations totaling \$111,347.60. *Id.* By letter

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<sup>1</sup> The Court notes that the government filed the complaint in this matter over four years after it served the NIF on Respondent.

dated February 15, 2019, Respondent requested a hearing before OCAHO. *Id.*, Ex. B.

After the complaint was filed before this Court, counsel for Respondent filed both a Notice of Appearance and Respondent's Original Answer on July 19, 2023. On November 21, 2023, the Court issued an Order on Electronic Filing permitting the parties to file electronically all filings in this case.

On January 24, 2024, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference. The Court ordered the parties to make their initial disclosures and file their prehearing statements within twenty-one days of the date of issuance of the Order. Order Prehr'g Statements & Scheduling Prehr'g Conf. 6–8. The Court authorized the parties to begin their discovery at any time. *Id.* at 3. The Court described the OCAHO Settlement Officer Program and provided the parties with links to the Executive Office for Immigration Review's Policy Memorandum 20-16 and Chapter 4.7 in OCAHO's Practice Manual, both of which describe the policies and procedures for the use of Settlement Officers in OCAHO cases. *Id.* at 5. The Court directed the parties to confer regarding the OCAHO Settlement Officer Program and to indicate in their prehearing statements whether they were interested in a referral to the program. *Id.* at 7. Neither party filed a prehearing statement as ordered.

On February 20, 2024, the parties filed a Joint Motion for and Consent to Referral to Settlement Officer Program. On February 21, 2024, Complainant filed a Notice of Appearance and Motion to Substitute Counsel and a registration and certification form for OCAHO's Electronic Filing Pilot Program.

On February 22, 2024, the Court conducted an initial telephonic prehearing conference pursuant to 28 C.F.R. § 68.13<sup>2</sup> and issued an Order Memorializing Initial Prehearing Conference on February 26, 2024, in accordance with 28 C.F.R. § 68.13(c). During the conference, the Court accepted Complainant's Notice of Appearance, granted its Motion to Substitute Counsel pursuant to 28 C.F.R. § 68.33(g), substituted DHS Assistant Chief Counsel (ACC) Ariel Chino for Leslie M. Vera as counsel for Complainant, and extended electronic filing privileges to ACC Chino. Order Memorializing Initial Prehr'g Conf. 1–3. The Court then discussed the OCAHO Settlement Officer Program, and both parties responded affirmatively when asked if

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<sup>2</sup> These proceedings are governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained at 28 C.F.R. pt. 68 (2025). OCAHO's Rules 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>.

they understood the policies and procedures for the program and consented to their use. *Id.* at 2. After giving both parties an opportunity to ask questions about the program, the Court granted the parties' Joint Motion for and Consent to Referral to Settlement Officer Program, finding that the case was appropriate for an initial referral of sixty days with the parties' consent. *Id.* at 2–3. Lastly, the Court extended the deadline for the filing of prehearing statements. *Id.* at 2.

On February 29, 2024, the Court issued an Order Referring Case to the OCAHO Settlement Officer Program and Designating Settlement Officer. *See United States v. Leyendecker Constr., Inc.*, 19 OCAHO no. 1528 (2024).<sup>3</sup> The Court designated an OCAHO Administrative Law Judge as the Settlement Officer and referred the case to the Settlement Officer Program for sixty days. *Id.* at 4.

The sixty-day referral of this case to the OCAHO Settlement Officer Program concluded on April 29, 2024. On May 9, 2024, the Settlement Officer informed the Court that the parties had made significant progress toward a settlement through the program. The Settlement Officer did not request an extension of time of the referral. The Court then issued an Order for Joint Status Report through which it ordered the parties to file a joint status report providing a case update and describing the status of their settlement negotiations by June 24, 2024. Order Joint Status Report 4.

On June 18, 2024, the parties filed a Joint Status Report in which they stated that the parties “have come to a full agreement . . . and a settlement agreement has been drafted.” Joint Status Report 1. The parties stated that they were in the process of obtaining the necessary signatures and planned to file a motion to dismiss. *Id.*

On January 16, 2025, the Court issued a Second Order for Joint Status Report, directing the parties to file an updated joint status report regarding the case by January 27, 2025. Second Order Joint Status Report 4.

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<sup>3</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 OCAHO’s homepage on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

On January 23, 2025, the parties filed a Joint Status Report in which they indicated that the parties “have come to a full agreement . . . a settlement agreement has been drafted,” and the parties planed to “file a motion to dismiss[.]” Joint Status Report 1.

On February 3, 2025, the parties submitted a Joint Motion to Dismiss with Prejudice. The parties represent that they “have come to a full agreement and now ask the court to dismiss this matter with prejudice” pursuant to 28 C.F.R. § 68.14(a)(2). Joint Mot. Dismiss 1.

## II. LEGAL STANDARDS AND DISCUSSION

Pending before the Court is the parties’ Joint Motion to Dismiss with Prejudice. For the reasons set forth herein, the Court grants the parties’ joint motion and approves dismissal of this case.

Under OCAHO’s Rules of Practice and Procedure for Administrative Hearings, there are two avenues for leaving the forum when the parties have entered into a settlement agreement. *See* 28 C.F.R. § 68.14. The parties either may submit consent findings or a filing seeking dismissal. *Id.* § 68.14(a). Here, the parties have chosen to proceed pursuant to 28 C.F.R. § 68.14(a)(2) by filing a Joint Motion to Dismiss with Prejudice. OCAHO’s regulation requires the parties to notify the Administrative Law Judge (ALJ) that they “have reached a full settlement and have agreed to dismissal of the action.” *Id.* § 68.14(a)(2). The presiding ALJ may require the parties to file their settlement agreement and must approve dismissal of the action. *Id.*

The Court has reviewed the parties’ Joint Motion to Dismiss with Prejudice and finds that the parties have complied with the requirements of 28 C.F.R. § 68.14(a)(2). In their joint motion, the parties represent that they “have come to a full agreement[.]” Joint Mot. Dismiss 1. The parties ask the Court to “dismiss this matter with prejudice” pursuant to 28 C.F.R. § 68.14(a)(2). *Id.* Counsel for both parties signed the motion. *Id.*

The parties did not attach their settlement agreement to their Joint Motion to Dismiss with Prejudice or otherwise file it with the Court. As explained above, the Court may exercise its discretion under 28 C.F.R. § 68.14(a)(2) and require the parties to file their settlement agreement before it rules on their Joint Motion to Dismiss with Prejudice. *See, e.g., United States v. Torres Mexican Food, Inc.*, 4 OCAHO no. 596, 88, 89 (1994) (explaining that 28 C.F.R. § 68.14(a)(2) neither requires ALJs to review parties’ settlement agreements nor precludes them from doing so). Considering the nature of these proceedings and the record before it, the Court will not require the filing of the parties’ settlement agreement. In reaching this decision,

the Court has considered that both parties have been represented by counsel since the filing of the answer in this case on July 19, 2023. Further, both parties and their counsel have been actively participating in this matter, including during a prehearing conference and in mediating a resolution through the OCAHO Settlement Officer Program. *See, e.g., United States v. Chilitto Pikin LLC*, 18 OCAHO no. 1486c, 4 (2024) (declining to require the parties to file their settlement agreement given the nature of the proceedings, the record before the ALJ, and the parties' representation by counsel and participation in the case, including by mediating a settlement through the OCAHO Settlement Officer Program); *see also United States v. Dilligas Corp.*, 19 OCAHO no. 1526, 3 (2024) (declining to require the filing of a settlement agreement where "both parties are represented by counsel and have been actively participating in this matter[.]")

The parties jointly seek a dismissal with prejudice. Joint Mot. Dismiss 1. The Court finds that dismissal with prejudice is appropriate here where the parties jointly seek it after entering into a full settlement agreement to resolve the allegations raised in the complaint. *See, e.g., United States v. Eco Brite Linens, LLC*, 18 OCAHO no. 1485c, 1–2 (2024) (dismissing case with prejudice where the parties jointly requested dismissal with prejudice and represented through counsel that they had signed a settlement agreement); *Chilitto Pikin LLC*, 18 OCAHO no. 1486c, at 4 (finding dismissal with prejudice appropriate where the parties jointly sought it after coming to a full settlement). Dismissal with prejudice will bring finality to this litigation and the allegations the government has raised against Respondent. This finality is fitting given the stage of these proceedings. This case has been pending for over twenty months and the Court authorized the parties to begin discovery approximately thirteen months ago. Compl. Ex. A; Order Prehr's Statements & Scheduling Prehr's Conf. 3. OCAHO precedent has found dismissal with prejudice appropriate in cases in a similar posture. *See, e.g., United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535d, at 6 (2024) (dismissing with prejudice a case that had been pending for seventeen months with over six months of discovery available to the parties); *Chilitto Pikin LLC*, 18 OCAHO no. 1486c, at 4 (dismissing with prejudice a case that had "been pending for sixteen months with over three months of discovery available to the parties."); *Huesca v. Rojas Bakery*, 4 OCAHO no. 654, 550, 557 (1994) (basing a finding of dismissal with prejudice in part on the fifteen-month pendency of the case and the advanced stage of discovery).

Given the Court's findings that the parties have sought dismissal in conformity with 28 C.F.R. § 68.14(a)(2) and that dismissal with prejudice is appropriate, the Court now grants the parties' Joint Motion to Dismiss with Prejudice and dismisses this case with prejudice.

### III. ORDERS

Upon consideration of the Joint Motion to Dismiss with Prejudice filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, Leyendecker Construction, Inc.,

IT IS SO ORDERED that the parties' Joint Motion to Dismiss with Prejudice is GRANTED; and

IT IS FURTHER ORDERED that, pursuant to 28 C.F.R. § 68.14(a)(2), this case, namely OCAHO Case No. 2023A00065, is DISMISSED with prejudice.

SO ORDERED.

Dated and entered on March 3, 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.