

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. 2023A00045
MUNIZ CONCRETE)	
& CONTRACTING, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Emily B. Swanson, Esq., for Complainant
Adrian Ciechanowicz, Esq., and James Hicks, Esq.,¹ for Respondent

ORDER GRANTING JOINT MOTION AND RESETTING DATES FOR
PREHEARING STATEMENTS AND PREHEARING CONFERENCE

I. PROCEDURAL HISTORY

On February 28, 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, Muniz Concrete & Contracting, 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. On April 19, 2023, Respondent, through counsel, filed an answer.

¹ OCAHO shall serve this Order by ordinary mail on James Hicks, Esq., who is not a registered electronic filer and who has not been participating in the case. If he no longer represents Respondent, he must file a motion to withdraw that comports with 28 C.F.R. § 68.33(g).

On January 24, 2024, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference through which it ordered the parties to make their initial disclosures and file prehearing statements by February 14, 2024, and set an initial telephonic prehearing conference for February 20, 2024. Neither party filed its prehearing statement as ordered by the Court.

The Court held the initial prehearing conference on February 20, 2024, pursuant to 28 C.F.R. § 68.13,² and issued an order memorializing the conference on February 27, 2024, in accordance with 28 C.F.R. § 68.13(c). DHS Assistant Chief Counsel (ACC) Ricardo A. Cuellar appeared on behalf of Complainant, and Mr. Adrian Ciechanowicz appeared as counsel on behalf of Respondent. Order Memorializing Initial Prehr'g Conf. 1. During the conference, the Court granted the parties' oral joint motion to extend the deadline for the filing of prehearing statements by thirty days to allow them to continue their settlement discussions. *Id.* at 2-3. The Court ordered the parties to file their prehearing statements by March 21, 2024, by the means set forth in 28 C.F.R. part 68 and email OCAHO courtesy copies of their prehearing statements by 5:00 p.m. Eastern Standard Time on March 21, 2024. *Id.* The Court further scheduled another telephonic prehearing conference for March 26, 2024. *Id.*

On March 21, 2024, Respondent's counsel emailed OCAHO and represented that, given the parties' continued active engagement in settlement negotiations, they might request a short continuance of the prehearing conference. Respondent's counsel further represented that DHS Acting Deputy Chief Counsel (Acting DCC) Emily B. Swanson would be representing DHS in this matter, not ACC Cuellar. Respondent's counsel copied DHS Acting DCC Swanson on his email to OCAHO.

On March 22, 2024, the parties filed a courtesy copy by email and facsimile of an Agreed Motion for Second Continuance of the Prehearing Conference. Through their jointly signed filing, the parties moved the Court to "continue the case again for at least 35 days, or until April 30, 2024, because they need additional time to continue and complete their ongoing settlement negotiations, which have been fruitful."

² Proceedings in this case will generally be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024). 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>.

Agreed Mot. for Second Continuance of Prehr’s Conf. 2. The parties represented that their request was not for delay, “but so that justice may be done.” *Id.*

On March 25, 2024, the Court issued an Order Granting Parties’ Agreed Motion to Continue Second Prehearing Conference and Extending Deadline to File Prehearing Statements. *See United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535 (2024).³ Through that Order, the Court granted the parties’ Agreed Motion for Second Continuance of the Prehearing Conference and canceled the prehearing conference scheduled for March 26, 2024. *Id.* at 4, 6. The Court further extended the parties’ deadline to file prehearing statements to May 1, 2024, and scheduled a prehearing conference for May 8, 2024. *Id.*

On March 25, 2024, Adrian Ciechanowicz, counsel for Respondent, notified OCAHO staff by email that the parties had reached a settlement in this matter.

On April 2, 2024, Complainant filed a Notice of Appearance and Motion for Substitution for Emily B. Swanson, now using the title of DHS Assistant Chief Counsel.⁴ On April 16, 2024, the Court granted Complainant’s motion and substituted ACC Swanson for ACC Cuellar as Complainant’s counsel of record and enrolled the case in OCAHO’s Electronic Filing Pilot Program. *United States v. Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535a, 7 (2024). Given that the parties had not filed any formal notice of settlement or a joint motion to dismiss, the Court kept the dates for the filing of prehearing statements and the prehearing conference. *Id.* at 6, 8. Should the parties need additional time to finalize a settlement agreement before the scheduled prehearing conference, the Court gave

³ 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 through the Westlaw database “FIMOCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

⁴ Complainant submitted a courtesy copy of this filing by email to OCAHO and opposing counsel on March 25, 2024.

them the option to file a joint status report by May 1, 2024, and to propose new dates for the filing of prehearing statements and a rescheduled prehearing conference. *Id.* at 6-7.

On May 1, 2024, Complainant’s counsel emailed OCAHO and represented that the parties “continue to negotiate a settlement agreement” and anticipate finalizing an agreement soon. Counsel stated that, “the parties jointly request an extension of the filing deadline for prehearing statements and propose May 15th as the date for a rescheduled prehearing conference.” Complainant’s counsel copied Respondent’s counsel, Adrian Ciechanowicz, on the email to OCAHO.

II. DISCUSSION AND ANALYSIS

The Court ordered the parties to file prehearing statements or a joint status report on settlement no later than 5:00 p.m. on May 1, 2024. *Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535a, at 6-8. They did not do so. Instead, Complainant’s counsel sent an email to OCAHO staff on May 1, 2024, and copied Respondent’s counsel on the email. The body of the email contained an update on settlement and proposed new dates for the filing of prehearing statements and a prehearing conference. The Court must decide whether to accept—or reject—the email as a filing in this case.

Cases enrolled in OCAHO’s Electronic Filing Pilot Program are permitted to email filings to the Court, but those filings must be in the form specified in 28 C.F.R. § 68.7 and must be submitted in Portable Document Format (PDF). OCAHO Electronic Filing Pilot Program, 79 Fed. Reg. 31143, 31144 (May 30, 2014); OCAHO Practice Manual, Chapters 3.3, 3.7(d)(4) (March 13, 2023).⁵ While the email can serve as a cover letter for the attached pleading, it does not constitute a filing. OCAHO PM, Chap. 3.7(d)(3). OCAHO’s Electronic Filing Pilot Program also provides that “[a]ll documents submitted under this pilot that require a signature under 28 C.F.R. § 68.7, including motions, briefs, and other pleadings, must include a . . . signature.” OCAHO Electronic Filing Pilot Program, 79 Fed. Reg. at 31144; *see also* OCAHO PM,

⁵ The OCAHO Practice Manual, which outlines procedures and provides recommendations regarding practice before OCAHO, is available on the Executive Office for Immigration Review’s Reference Materials page on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/reference-materials/ocaho>.

Chap. 3.7(d)(6) (“[c]ase-related documents submitted by email must include a signature.”). Further, as the Court has explained to the parties, all filings—including filings in cases enrolled in OCAHO’s Electronic Filing Pilot Program—must be accompanied by a certificate of service. *See Muniz Concrete & Contracting, Inc.*, 19 OCAHO no. 1535a, at 6-7 (enrolling case in electronic filing and explaining that “[a]ll filings must be accompanied by a certificate of service.”); *see also* OCAHO PM, Chap. 3.7(d)(8) (“A certificate of service must be included in all case-related documents filed electronically.”).

Here, the parties emailed OCAHO staff on May 1, 2024, and requested that the Court extend case deadlines to permit them additional time to finalize a settlement. Their requests were contained in the body of the email; no formal filing was attached. As such, there are clear grounds to reject the parties’ email as a deficient filing. Despite these deficiencies, given the posture of this case and the nature of the requests in the email, being extensions of time, the Court will exercise its discretion and accept the parties’ email dated May 1, 2024, as a filing in this case and consider the requests made therein. *See* 28 C.F.R. § 68.36 (providing for the receipt of communications from parties for purposes of requesting extensions of time); *see, e.g., Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462c, 3 (2023) (exercising discretion and accepting as a filing a request contained in the body of an email). The parties however must familiarize themselves with the rules governing OCAHO’s Electronic Filing Pilot Program and ensure that their filings comply with those rules. Should they fail to do so, the Court may reject their filings or revoke electronic filing privileges. *See, e.g., United States v. Pasquel Hermanos, Inc.*, 18 OCAHO no. 1506a, 3 (2024) (revoking electronic filing status due to counsel’s failure to comply with the requirements of the electronic filing program).

Although Complainant’s counsel sent the May 1, 2024, email to OCAHO, she copied Respondent’s counsel on the email. The body of the email represents that this is a joint status report as to settlement and a joint request, which the Court construes as a motion, to extend the deadline for the filing of prehearing statements and to reschedule the prehearing conference to May 15, 2024. In determining whether to grant the parties’ motion, the Court considers the agreed nature of the requests and the parties’ representations that their settlement discussions continue to be fruitful. Although this is the parties’ third request for additional time, the Court finds that the length of the extension of time for the prehearing conference being sought, namely seven days, is not so great as to impact substantially these proceedings. Rather, the requested extensions are reasonable and appropriate and do not appear to have been made for the purpose of delay or in bad faith. For these reasons, the Court finds that good cause exists to grant the parties’ joint motion to extend the deadline for the filing

of prehearing statements and to reschedule the prehearing conference to the agreed date of May 15, 2024. The Court now extends the deadline for the filing of the parties' prehearing statements of position from May 1, 2024, until 5:00 p.m. Eastern Standard Time on May 13, 2024. The telephonic prehearing conference scheduled for May 8, 2024, is canceled. The Court will hold a telephonic prehearing conference with the parties on Wednesday, May 15, 2024, at 11:00 a.m. Eastern Standard Time.

Should no formal notice of settlement or joint motion to dismiss be filed beforehand, the Court may use the prehearing conference to set a case schedule, including dates for the completion of discovery, the filing of dispositive motions and responses, and a hearing date. The Court's staff will provide the parties with the call-in information for the prehearing conference. The parties should refer to the Court's Order for Prehearing Statements and Scheduling Initial Prehearing Conference dated January 24, 2024, to ensure that they are fully prepared for the conference.

Should the parties reach a settlement agreement before the prehearing conference, they shall consult 28 C.F.R. § 68.14 to understand the two avenues for leaving this forum after settlement. If the parties enter into a settlement agreement, 28 C.F.R. § 68.14(a)(2) provides that the parties may jointly file a notice of full settlement and an agreed motion to dismiss. The Court may require the filing of the settlement agreement. The parties should indicate in their filing whether they seek dismissal with or without prejudice.

III. ORDERS

IT IS SO ORDERED that the parties' email dated May 1, 2024, containing a joint status report as to settlement and a joint motion to extend the deadline for the filing of prehearing statements and to reschedule the prehearing conference is ACCEPTED as a filing in this case;

IT IS FURTHER ORDERED that the parties' joint motion to extend the deadline for the filing of prehearing statements and to reschedule the prehearing conference is GRANTED;

IT IS FURTHER ORDERED that the deadline for the parties to file their prehearing statements of position with the Court is EXTENDED from May 1, 2024, until 5:00 p.m. Eastern Standard Time on May 13, 2024;

IT IS FURTHER ORDERED that the telephonic prehearing conference scheduled in this matter for May 8, 2024, is CANCELED;

IT IS FURTHER ORDERED that a telephonic prehearing conference will be held with Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, Muniz Concrete & Contracting, Inc., on Wednesday, May 15, 2024, at 11:00 a.m. Eastern Standard Time; and

IT IS FUTHER ORDERED that, should the parties reach a settlement, they shall proceed in accordance with 28 C.F.R. § 68.14.

SO ORDERED.

Dated and entered on May 7, 2024.

Honorable Carol A. Bell
Administrative Law Judge