

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. 2023A00058
PJ'S OF TEXAS, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Oscar J. Montemayor, Esq., for Complainant
Kevin R. Lashus, Esq., for Respondent

ORDER ON COMPLAINANT'S NOTICE OF APPEARANCE, MOTION FOR
SUBSTITUTION, AND ELECTRONIC FILING

I. PROCEDURAL HISTORY

On May 9, 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, PJ's of Texas, Inc. The complaint alleges that Respondent 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 June 21, 2023, Respondent filed a Special Appearance, Special Exceptions, and Answer.

On May 2, 2025, after the parties' participation in the OCAHO Settlement Officer Program¹ concluded without a settlement agreement, the Court issued an

¹ The Executive Office for Immigration Review (EOIR) Policy Memorandum 20-16 sets forth the OCAHO Settlement Officer Program and is available at <https://www.justice.gov/eoir/page/file/1300746/download>. Chapter 4.7 of the OCAHO Practice Manual also describes the program and may be found at <https://www.justice.gov/eoir/eoir-policy-manual/iv/4/7>.

Order for Prehearing Statements and Scheduling Prehearing Conference. Through that Order, the Court scheduled a prehearing conference in this matter for June 3, 2025, and required the parties to file prehearing statements by May 27, 2025. May 2, 2025, Order for Preh'g Statements and Scheduling Preh'g Conf. 5–6.

On May 23, 2025, DHS Deputy Chief Counsel (DCC) Oscar J. Montemayor filed a Notice of Appearance and Motion for Substitution. DCC Montemayor attached to his motion a completed and signed Attorney Registration Form and Certification for OCAHO's Electronic Filing Pilot Program. Notice Appearance & Mot. Substitution Ex. A. Also, on May 23, 2025, DHS filed Complainant's Supplemental Initial Disclosures and Prehearing Statement. On May 27, 2025, Respondent filed Respondent's Updated Prehearing Statement and Initial Disclosures.

II. LEGAL STANDARDS AND DISCUSSION

Complainant has filed a Notice of Appearance and Motion for Substitution. Through this filing, DHS DCC Oscar J. Montemayor enters a Notice of Appearance on behalf of Complainant. Notice Appearance & Mot. Substitution 1. OCAHO's Rules of Practice and Procedure for Administrative Hearings require each attorney to file a notice of appearance. *See* 28 C.F.R. § 68.33(f). As explained in 28 C.F.R. § 68.33(f), a notice of appearance must "indicate the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made," and shall be "signed by the attorney, and accompanied by [a certificate of service]." Complainant's Notice of Appearance meets these regulatory requirements. Therefore, the Court finds that DCC Oscar J. Montemayor has entered his appearance in this matter.

In its Motion for Substitution, Complainant moves the Court, pursuant to 28 C.F.R. § 68.33(g), to substitute DHS DCC Oscar J. Montemayor as lead counsel for Complainant in place of DHS Assistant Chief Counsel (ACC) Nain Martinez, Jr. Notice Appearance & Mot. Substitution 1. Complainant does not explain the reason for the change in counsel.

Complainant did not indicate Respondent's position on its motion, and Respondent has not filed any response. According to Complainant's certification, it served Respondent with the motion using electronic mail on May 23, 2025. Notice Appearance & Mot. Substitution 2. Given that it is close of business on the tenth day since Respondent was served with the motion, it is ripe for a ruling. *See* 28 C.F.R. § 68.11(b) ("Within ten (10) days after a written motion is served . . . any party to the proceeding may file a response in support of, or in opposition to, the motion.").

OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that "[w]ithdrawal or substitution of an attorney or representative may be

permitted by the Administrative Law Judge upon written motion. The Administrative Law Judge shall enter an order granting or denying such motion for withdrawal or substitution.” 28 C.F.R. § 68.33(g). Given ACC Martinez’s entry of appearance as Complainant’s counsel, the posture of this case, and Respondent’s lack of opposition, the Court grants Complainant’s Motion for Substitution pursuant to 28 C.F.R. § 68.33(g). *See, e.g., United States v. Oil Patch Petroleum, Inc.*, 18 OCAHO no. 1508a, 3–4, 8 (2024) (granting unopposed motion to substitute where DHS counsel was reassigned within the agency); *United States v. El Camino, LLC*, 18 OCAHO no. 1479b, 2 (2023) (granting motion to substitute counsel where a new ACC took over all new and existing employment-based cases, and the motion was unopposed); *United States v. Spring & Soon Fashion Inc.*, 8 OCAHO no. 1003, 102, 128–29 (1998) (granting a motion to substitute government counsel, finding that the request was “reasonable,” and noting that the respondents had not objected to the request).²

DHS DCC Oscar J. Montemayor is substituted for DHS ACC Martinez, Jr., as Complainant’s counsel of record in these proceedings. ACC Nain Martinez, Jr., shall be removed from the service list in this case after service of this Order. Respondent shall serve all filings on Complainant through DCC Montemayor at the address on the Certificate of Service.

The Court also received DHS DCC Montemayor’s signed and completed Attorney Registration Form and Certification for OCAHO’s Electronic Filing Pilot Program. Notice Appearance & Mot. Substitution Ex. A. As this case was previously enrolled in OCAHO’s Electronic Filing Pilot Program by Order dated August 11, 2023, and DCC Montemayor has submitted the necessary registration and certification, he now may electronically file all filings in this case. OCAHO shall serve case-related documents electronically on DCC Montemayor and Respondent’s counsel shall copy DCC Montemayor on all filings to, and all communications with, the Court. Complainant’s counsel shall likewise ensure that Respondent’s counsel is copied on all filings to, and all communications with, the Court. All filings must include a certificate of service. Given the substitution of counsel for Complainant, OCAHO and

² 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 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 “FIM-OCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website: <http://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Respondent's counsel shall remove the email address for ACC Nain Martinez, Jr., from the service list after he is served with this Order.

III. ORDERS

IT IS SO ORDERED that the Notice of Appearance and Motion for Substitution filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, is GRANTED. DHS Deputy Chief Counsel Oscar J. Montemayor is substituted for DHS Assistant Chief Counsel Nain Martinez, Jr., as counsel of record for Complainant in this matter.

IT IS FURTHER ORDERED that DHS Deputy Chief Counsel Oscar J. Montemayor is extended electronic filing privileges in this case. Counsel for both parties shall include each other on all filings to, and communications with, the Court and abide by the rules of OCAHO's Electronic Filing Pilot Program. DHS Assistant Chief Counsel Nain Martinez, Jr., shall be removed from the service list in this matter after service of this Order.

SO ORDERED.

Dated and entered on June 2, 2025.

Honorable Carol A. Bell
Administrative Law Judge