

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. 2024A00026
TEXAS EXCEL PROPERTY	)	
MANAGEMENT SERVICES CORP.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Colin Maguire, Esq., for Complainant  
Ahmet Kalkan, pro se Respondent<sup>1</sup>

ORDER TO FILE RESPONDENT'S REQUEST FOR HEARING AND  
GRANTING COMPLAINANT LEAVE TO AMEND COMPLAINT

I. BACKGROUND AND PROCEDURAL HISTORY

This case arises under the employment eligibility verification provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a. On December 19, 2023, 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, Texas Excel Property Management Services Corp., violated 8 U.S.C. § 1324a(a)(1)(B) when it failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) at the time of hire,

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<sup>1</sup> Complainant's counsel has identified Katie Santmyer, Esq., as Respondent's counsel, and Ms. Santmyer stated via email that she is representing Respondent in this case. However, Ms. Santmyer has yet to file a notice of appearance in this matter as required by 28 C.F.R. § 68.33(f). As a courtesy, the Court has included Ms. Santmyer on this Order's certificate of service, but reminds her that she must enter her appearance as Respondent's counsel.

or in a timely manner, for individuals identified in the attached the Notice of Intent to Fine pursuant to Section 274A of the INA (NIF), it personally served on Respondent through Mr. Ahmet Kalkan on May 1, 2023, seeking a fine of \$59,460 for the alleged violations. Compl. Ex. A. In accordance with 8 C.F.R. § 274a.9(d)(1)(ii)(C), the NIF advised Respondent that, “[i]f you desire to contest this Notice, you must: 1. Submit a written request for a hearing before an [ALJ] within 30 days from the service of this Notice . . . either in person or by certified mail to . . . Office of the Chief Counsel, DHS/ICE.” *Id.*, ¶¶ 1–2.

Attached as Exhibit B to the complaint were Respondent’s email dated June 12, 2023, denying the allegations in the NIF but seeking to cooperate with DHS, and the government auditor’s email dated November 29, 2023, in which the auditor indicated that the government was prepared to file a complaint with OCAHO. Compl. Ex. B.

Complainant asked OCAHO to serve the complaint on Respondent through its registered agent and director, Mr. Ahmet R. Kalkan. Compl. Attach. (citing 28 C.F.R. § 68.7.).<sup>2</sup>

## II. REGULATORY AND LEGAL STANDARDS

### A. Timely Request for a Hearing before OCAHO

An employer who has been served with a Notice of Intent of Fine Pursuant to Section 274A of the INA by the government may “request . . . within a reasonable time (of not less than 30 days . . . ) of the date of the notice, a hearing respecting the violation.” 8 U.S.C. § 1324a(e)(3)(A). This hearing “shall be conducted before an administrative law judge [ALJ].” *Id.* § 1324a(e)(3)(B). DHS regulations likewise specify that “[i]f a respondent [employer] contests the issuance of a [NIF], the respondent must file . . . within thirty days of the service of the [NIF], a written request for a hearing before an [ALJ].” 8 C.F.R. § 274a.9(e).

If a respondent employer fails to timely request a hearing before an ALJ, the government shall issue the final order statutorily authorized for the employer’s violations. *See* 8 U.S.C. §§ 1324a(e)(4)–(6). There is no appeal from this final order. *See* 8 C.F.R. § 274a.9(f). Indeed, the regulations specify that, if the respondent fails to request a hearing within thirty days of the NIF’s service, “the final order issued by

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<sup>2</sup> OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024), are available on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

DHS shall not be subject to a hearing before an [ALJ] under 28 CFR part 68,” being OCAHO’s Rules of Practice and Procedure for Administrative Hearings. *Id.* § 1274a.9(f).

## B. OCAHO’s Regulatory Requirements for Complaints

OCAHO’s Rules of Practice and Procedure for Administrative Hearings, which generally govern these proceedings, set forth the pleading standards for complaints which include the “alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred.” 28 C.F.R. § 68.7(b)(3). OCAHO’s Rules also require that complaints brought pursuant to 8 U.S.C. § 1324a “be accompanied by a copy of the Notice of Intent to Fine and Request for Hearing.” *Id.* § 68.7(c). As the Chief Administrative Hearing Officer (CAHO) has explained, “This requirement was added to OCAHO’s rules in 1989 ‘to allow [OCAHO] to confirm proper jurisdiction.’” *United States v. A&D Maint. Leasing and Repairs, Inc.*, 19 OCAHO no. 1568a, 5 (2024) (CAHO Order) (citing 54 Fed. Reg. 48,593, 48,594 (Nov. 24, 1989)).<sup>3</sup> It is “[t]he original request for hearing” that “triggers OCAHO jurisdiction,” while the copy attached to the complaint “aids in confirming that jurisdiction already exists.” *Id.* As a result, the requirement to attach a copy of the request for hearing “is best understood as a nonjurisdictional claim-processing rule.” *Id.* at 6.

However, “parties cannot waive jurisdiction, nor can they manufacture it by consent, such as agreeing that a request for hearing was filed when one was not actually filed.” *A&D Maint.*, 19 OCAHO no. 1568a, at 5 n.6. OCAHO ALJs “[have] both the authority, and the duty, to determine sua sponte if [they have] subject matter jurisdiction.” *Sinha v. Infosys*, 14 OCAHO no. 1373, 2 (2020). As a result, where there is a “question as to whether Respondent, in fact, requested a hearing . . . nothing . . . prohibits the presiding ALJ . . . from inquiring further as to the existence of a

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

request for hearing in order satisfy [herself] that jurisdiction exists.” *A&D Maint.*, 19 OCAHO no. 1568a, at 5 n.6.

### III. DISCUSSION

OCAHO’s Rules of Practice and Procedure for Administrative Hearings specify that a complaint “shall be accompanied by a copy of the Notice of Intent to Fine and Request for Hearing.” 28 C.F.R. § 68.7(c). The NIF and the respondent’s timely request in writing for a hearing are “conditions precedent to an OCAHO proceeding in cases under 8 U.S.C. § 1324a.” *A&D Maint.*, 19 OCAHO no. 1568a, at 5. “[I]f a respondent does not timely file a request for hearing with DHS, OCAHO jurisdiction cannot be triggered, and a respondent is not entitled to a hearing.” *Id.* While Complainant filed the NIF in this case—which put Respondent on notice of the need to provide DHS with a written request for hearing within thirty days of its service—Complainant did not file a copy of Respondent’s request for hearing. Compl. Ex. A.

Rather, Complainant attached to the complaint two emails between Mr. Fercan E. Kalkan,<sup>4</sup> on behalf of Respondent, and a DHS auditor. *See* Compl., Ex. B. The first email is dated June 12, 2023—more than a month after the NIF’s service date—and was sent by Mr. Kalkan to the DHS auditor. *See id.* In that email, Mr. Kalkan identified the Respondent business as being his company and then stated that, while he “respectfully den[ies] all the charges,” he “would like to fully cooperate with [DHS] without an attorney.” *Id.* The second email is dated November 29, 2023, and was sent by the DHS auditor to Mr. Kalkan. *See id.* In that email, the auditor noted that the NIF was served on May 1, 2023, and that “[o]ur office has reached out to you on several occasions in an attempt to resolve this matter through negotiation discussions.” *Id.* Further, the auditor wrote that, “[Homeland Security Investigations] is prepared to move forward with filing a Complaint with the U.S. Department of Justice, Executive Office of [sic] Immigration Review, Office of the Chief Administrative Hearing Officer (OCAHO).” *Id.* The auditor then added, “Should you wish to open discussions regarding this matter, please contact me as listed below by December 1, 2023.” *Id.*

Respondent’s email on file with the Court does not constitute a timely, written request for hearing, and the government’s auditor had no authority to grant this respondent a hearing if one was not timely requested in accordance with the IRCA and applicable regulations. *See* 8 U.S.C. § 1324a(e)(3)(A); *see also* 8 C.F.R. § 274a.9(e). Given the insufficient information on file, the Court is obligated to

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<sup>4</sup> Mr. Fercan E. Kalkan’s relationship to the Respondent business and its registered agent and director, Mr. Ahmet R. Kalkan, is unclear.

inquire whether it has subject-matter jurisdiction in this case. *Sinha*, 14 OCAHO no. 1373, at 2.

Because DHS was required to issue a final order pursuant to 8 C.F.R. § 274a.9(f) if Respondent failed to timely request a hearing before this Court, and given that both parties assert that Respondent timely requested a hearing, *see* Compl. ¶ 2, Answer ¶ 2, the Court now affords Complainant thirty days to file a copy of Respondent's request for hearing to satisfy OCAHO's Rules and confirm OCAHO's jurisdiction over this case. Because Respondent is presumably aware of whether it made a timely, written request for hearing to DHS, the Court likewise affords Respondent thirty days to file a copy of its timely written request to DHS for a hearing before an ALJ.

OCAHO's Rules also specify that complaints shall contain "the alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred." 28 C.F.R. § 68.7(b)(3). The Court notes that there is a variance in the complaint between Count I's charging language which refers to "4 individuals" for whom Respondent failed to prepare and/or present Forms I-9 at the time of hire, or in a timely manner, and the referenced NIF which listed thirty individuals. Compl. 3; *id.*, Ex. A. Although Respondent did not move for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e),<sup>5</sup> the Court raises the issue sua sponte and, pursuant to 28 C.F.R. § 68.28, now gives Complainant thirty days to amend its complaint, if desired, to either align the charging language in the complaint with the NIF's allegations or to identify the four individuals for whom Respondent allegedly failed to prepare and/or present Forms I-9 at the time of hire, or in a timely manner, in violation of 8 U.S.C. § 1324a(a)(1)(B).

#### IV. ORDERS

IT IS SO ORDERED that, within thirty days of the date of this Order, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, shall file with this Court a copy of Respondent's timely, written request for a hearing before an Administrative Law Judge.

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<sup>5</sup> OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that, "[t]he Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation." 28 C.F.R. § 68.1.

IT IS FURTHER ORDERED that Respondent, Texas Excel Property Management Services Corp., has thirty days from the date of this Order to file with the Court a copy of its timely, written request for hearing.

IT IS FURTHER ORDERED that, within thirty days of the date of this Order, Complainant may file an amended complaint to satisfy the pleading requirements of 28 C.F.R. § 68.7(b)(3).

SO ORDERED.

Dated and entered on June 16, 2025.

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Honorable Carol A. Bell  
Administrative Law Judge