

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. 2024A00054
A-1 ROOFING & CONSTRUCTION, CO.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Hazel L. Gauthier, Esq., for Complainant
A-1 Roofing & Construction, Co., Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. On February 23, 2024, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, A-1 Roofing & Construction, Co. The complaint alleges that Respondent failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for two individuals and failed to timely prepare the Form I-9 for two individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶ 3.

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 Mr. Felipe Martinez on July 6, 2022, seeking a fine of \$8,524 for the alleged violations, and a request for a hearing before an Administrative Law Judge (ALJ) signed by Mr. Martinez on behalf of Respondent on July 13, 2022 (“request for hearing”). Compl. Exs. A–B. Complainant also attached to the complaint a request that OCAHO serve

the complaint on Respondent through Mr. Martinez at an address in El Paso, Texas.¹ *Id.* at 6 (citing 28 C.F.R. § 68.7). Complainant did not identify Mr. Martinez’s relationship to the Respondent business.

On February 28, 2024, using the United States Postal Service (USPS) certified mail, the Chief Administrative Hearing Officer (CAHO) mailed the complaint, the NIF, the request for hearing, and a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) (together, the “Complaint package”) to Mr. Martinez at the El Paso, Texas, address for the Respondent business listed in the complaint’s attachment.

The USPS certified mail tracking service reflected that on March 4, 2024, Respondent’s address was “vacant,” but also that the Complaint package was “delivered, left with individual.” OCAHO did not receive a USPS Domestic Return Receipt Form (PS Form 3811) for the Complaint package mailed to Respondent.

Consequently, on April 10, 2025, the Court issued an Order Directing Complainant to Serve Complaint. *United States v. A-1 Roofing & Constr., Co.*, 21 OCAHO no. 1657 (2025).² Because “the record [was] ambiguous as to service of the Complaint package on Respondent at the address provided by Complainant,” the Court ordered Complainant “to personally serve the Complaint package on Respondent in a manner that complies with 28 C.F.R. § 68.3(a)(1).” *Id.* at 4 (citing *United States v. DJ’s Transp.*, 18 OCAHO no. 1488, 4–5 (2023)). Additionally, the Court ordered Complainant to “file proof of personal service with the Court” once service was accomplished. *Id.* This proof was to include: (a) an attestation of the personal service, (b) the name and title of the individual who served the complaint, (c) the name, title, and relationship to Respondent of the individual served, (d) the date of service, and (e) that service was made in accordance with 28 C.F.R. § 68.3(b).

¹ This address matched the address on the request for hearing and the address at which DHS personally served the NIF on Respondent.

² 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>.

Id. at 4–5 (citing *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431, 4 (2022); *United Staes v. Dolan*, 2 OCAHO no. 388, 727, 728 (1991)). Finally, the Court ordered Complainant “to confirm in its filing whether the El Paso, Texas, address listed in the attachment to the complaint is the best address for Respondent or, if it is not, to provide OCAHO with a functional U.S. mailing address for Respondent . . .” *Id.* at 5 (citing *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431a, 3 (2022)). The Court directed Complainant to personally serve Respondent with the Complaint package no later than thirty days from the date of the Order and required it to file its submission with the Court five days after service. *Id.*

On May 14, 2025, Complainant filed a Notification of Service of Process, along with the cover letter dated May 13, 2025, in which it explained that it had to resubmit the filing “[d]ue to a clerical error” that resulted in the incorrect case number being used. Not. Serv. Process 6.³ Complainant explained that “[i]t was not undersigned counsel’s intention not to comply with the court’s scheduling order.” *Id.* Complainant’s Notification of Service of Process affirmed that, on April 30, 2025, Complainant personally served the Complaint package on Respondent, through Mr. Felipe Martinez, at the El Paso, Texas, address listed on the attachment to the complaint. *Id.* at 1. According to Complainant, Mr. Martinez confirmed that the address in El Paso, Texas, on file with the Court was Respondent’s correct mailing address. *Id.*

On July 15, 2025, the Court issued an Order on Service of Complaint and Notice and Order to Show Cause Regarding Answer. *United States v. A-1 Roofing & Constr., Co.*, 21 OCAHO no. 1657a (2025). Through the Order, the Court first exercised its discretion pursuant to 28 C.F.R. § 68.11(b) and accepted Complainant’s untimely filed Notification of Service of Process. *Id.* at 3–4. With the filing accepted, the Court then found that Complainant had demonstrated that it had perfected service of the complaint on Respondent through its owner, Mr. Felipe Martinez, on April 30, 2025. *Id.* at 4. Given that Respondent had not filed an answer by the regulatory deadline of May 30, 2025, the Court ordered Respondent to show good cause for its failure to file a timely answer and to file an answer to the complaint by August 4, 2025. *Id.* at 4–6.

On July 29, 2025, pursuant to 28 C.F.R. § 68.14(a)(2), the parties filed a Joint Notice of Settlement and Request for Dismissal. In their filing, the parties represented that they “have reached a full and final settlement in this case and have agreed to dismissal of the action.” Joint Notice Settlement and Req. Dismissal 1–2. The parties move the Court to dismiss this case without prejudice. *Id.* at 2.

³ Pinpoint citations to Complainant’s Notification of Service of Process are to the page numbers of the PDF version of the Notification on file with the Court.

II. LEGAL STANDARDS AND ANALYSIS

Pending before the Court is the parties’ Joint Notice of Settlement and Request for Dismissal. For the reasons set forth below, the Court grants the parties’ joint request 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 may either submit an agreement containing consent findings or file a notice of settlement and seek dismissal. *Id.* § 68.14(a). Here, the parties have filed a Joint Notice of Settlement and Request for Dismissal pursuant to 28 C.F.R. § 68.14(a)(2). That 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 Notice of Settlement and Request for Dismissal in this case and finds that they have complied with the requirements of 28 C.F.R. § 68.14(a)(2). In their joint notice, the parties explain that they “have reached a full and final settlement in this case and have agreed to dismissal of the action.” Joint Notice Settlement and Req. Dismissal 1–2. Additionally, pursuant to 28 C.F.R. § 68.14(a)(2), the parties “request that the [ALJ] dismiss the pending action without prejudice.” *Id.* at 2. Both Complainant’s counsel and Mr. Martinez—on behalf of the Respondent business—signed the motion. *Id.*

Although the parties have represented that they have reached a full and final settlement in this case, they did not file with the Court a copy of any formal settlement agreement. Although it is within the Court’s discretion to require the parties to file their settlement agreement for its review before it rules on the dismissal request, *see* 28 C.F.R. § 68.14(a)(2), the Court declines to do so here. Although Respondent has been proceeding pro se, the Court gives weight to the parties’ jointly signed notification of settlement and agreement to dismiss this action. The Court also has considered the nature of these proceedings, the early stage of this case, and the record in this matter. *See, e.g., United States v. Dilligas Corp.*, 19 OCAHO no. 1526, 3 (2024) (declining to require the filing of the settlement agreement “[a]fter considering the nature of [the] proceedings and the record before the Court”).

Lastly, the Court notes that the parties seek a dismissal without prejudice, despite their “full and final settlement” of this case. Joint Notice Settlement and Req. Dismissal 1; *see id.* at 2. The parties’ filing—containing just two sentences—does not explain their reasoning for requesting a dismissal without prejudice as opposed to a dismissal with prejudice. A dismissal without prejudice allows a complainant to refile a complaint as if it had never been filed. *See* 9 Charles Alan Wright & Arthur R.

Miller, *Federal Practice and Procedure* § 2367 (4th ed. 2023) (an order dismissing without prejudice “permits the initiation of a second action[.]”); *see also United States v. Sahara Wireless Int’l, Inc.*, 11 OCAHO no. 1262, 2 (2015) (noting that dismissal without prejudice “leaves the parties as if no action had been brought at all”) (citation omitted). In contrast, a dismissal with prejudice has “both res judicata and collateral estoppel consequences.” *Id.* (citation omitted). It would bar another prosecution based on identical facts. *See United States v. G.L.C. Rest., Inc.*, 3 OCAHO no. 439, 459, 466 (1992). Although a dismissal without prejudice could result in Respondent facing another lawsuit, the parties’ intent and agreement are clear. Given the parties’ joint agreement as to dismissal (which comes before an answer was filed in this case) and the lack of any assertion of plain legal prejudice, the Court approves a dismissal without prejudice. *See, e.g., United States v. R&V Steel Erectors Sys., Inc.*, 18 OCAHO no. 1501b, 1–2 (2024) (granting joint request for dismissal without prejudice brought pursuant to 28 C.F.R. § 68.14(a)(2) after entry into a settlement agreement between the government and pro se respondent).

III. ORDERS

IT IS SO ORDERED that the Joint Notice of Settlement and Request for Dismissal filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, A-1 Roofing & Construction, Co., is GRANTED; and

IT IS FURTHER ORDERED that, pursuant to 28 C.F.R. § 68.14(a)(2), this case, namely OCAHO Case No. 2024A00054, is DISMISSED without prejudice.

SO ORDERED.

Dated and entered on September 29, 2025.

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.