

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. 2025A00020
	)	
	)	
ABS STAFFING SOLUTIONS, LLC,	)	
Respondent.	)	
	)	

ORDER FINDING DEFAULT JUDGMENT, BIFURCATING
PROCEEDINGS, & DIRECTING PARTIES TO ADVISE AS TO DAMAGES

I. PROCEDURAL HISTORY

This case arises under the employment eligibility verification provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. On January 23, 2024, Respondent requested a hearing before this forum. Compl., Ex. B.

On November 29, 2024, 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 ABS Staffing Solutions, LLC, failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for 251 individuals in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl., Ex. A.

The Court served Respondent on March 11, 2025. The tracking information for the Complaint and Notice of Case Assignment (NOCA) indicates that it was delivered and left with an individual on March 11, 2025. The Court also received a signed return receipt dated March 10, 2025.¹ Following 28 C.F.R. § 68.3(b), the NOCA advised that Respondent must file an answer to the Complaint by no later than 30 days from receipt, or by Friday, April 11, 2025. The NOCA further advised that should Respondent fail to respond by the due date, Respondent may waive its right to appear and contest the allegations in the Complaint. NOCA, p. 4.

On July 11, 2025, the Court issued its Order Granting Substitution of Counsel and Order to Show Cause – Answer. The Order noted that Respondent had, to date, failed to file an answer

¹ For clarity, the Court will utilize the date of the mail tracking information and presume the date on the return receipt was an error.

contesting the allegations in the Complaint. The order directed that Respondent shall, by no later than 30 days from the issuance of the order, file its answer and a submission demonstrating good cause for the untimely filed answer. The Court advised that Respondent's failure to respond to the order may result in a default judgment order, pursuant to 28 C.F.R. § 68.9(b). Alternately, the Court may conclude that Respondent has abandoned its request for a hearing and dismiss the request pursuant to 28 C.F.R. § 68.37(b).

On December 09, 2025, Complainant filed its Motion for Summary Decision. Complainant noted that Respondent had not filed an answer; the Agency sought an order finding liability for 102 of the 251 persons identified in its Notice of Intent to Fine. Mot. Summ. Dec. 2.

To date, Respondent has filed neither an answer nor a submission demonstrating good cause for its untimely filings.

II. ORDER GRANTING DEFAULT JUDGMENT

The purpose of default judgment is to protect a diligent party from interminable delay caused by an unresponsive party. United States v. Continental Forestry Serv., Inc., 6 OCAHO No. 836 (1996). Upon the failure of a Respondent to file an answer, and to otherwise explain their failure to participate in the litigation, the Respondent will be deemed to have waived their opportunity to controvert the allegations in the Complaint and those allegations will be considered true. United States v. Aquino, 5 OCAHO No. 818, 2 (1995). *See also* 28 C.F.R. 68.9(b) ("Failure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations in the complaint. The Administrative Law Judge may enter a judgment by default.").

In the matter presently before this Court, default judgment appears to be the only appropriate result available under the circumstances. Respondent is nine months overdue with regard to its answer, and five months tardy with regard to its response to the order to show cause. It has not responded to repeated requests to produce an answer or to explain its unwillingness to do so. Respondent has also not responded to the Government's Motion for Summary Decision, notwithstanding that the response deadline was December 26, 2025. Respondent's nonparticipation in these proceedings, even after an Order to Show Cause, necessitate an order finding that Respondent is in default.

It is well established that DHS, in the exercises of its prosecutorial discretion, may charge some but not all violations. United States v. El Paso Paper Box, Inc., 17 OCAHO No. 1451b, 6 (2023). Consequently, the Government may, even during default judgment proceedings, reduce the claims that it will pursue from the 251 initially charged in the Complaint to the 102 persons identified in the Motion for Summary Judgment. With regard to all claims the violations are limited to one per Form I-9. United States v. Alpine Staffing, Inc., 12 OCAHO No. 1303, 21 n. 11 (2017).

The Court ORDERS that Respondent is in default. The factual assertions in the Complaint are deemed ADMITTED with regard to the 102 persons identified in the Motion for Summary Decision.

III. ORDER BIFURCATING PROCEEDINGS

The Complaint asserts that the Respondent failed to prepare or present Forms I-9 for the persons charged, in violation of 8 U.S.C. § 1324a(a)(1)(B). Complaint 5-6. The Government asserts that it charged each person with a civil monetary penalty of \$2,296.00 for each violation, or \$234,192.00 in total for the subset of 102 persons for whom it intends to move forward to damages. *Id.* at 6. It assesses these fines based on its own fine schema, which is produced by “dividing the number of substantive violations by the number of Forms I-9 presented (plus those that should have been presented) for inspection to obtain a violation percentage.” Mot. Summ. Dec. 7. However, the Complainant’s penalty calculations are not binding on OCAHO; the court may examine the penalties de novo as appropriate. United States v. Ice Castles Daycare Too., 10 OCAHO No. 1142, 6 (2011).

The regulatory framework for OCAHO’s assessment of penalties for § 1324a cases is set forth in 8 C.F.R. § 274a.2(a)(3) and 28 C.F.R. § 85.5. In assessing a civil penalty, the court is obliged to set a meaningful penalty without being unduly punitive. United States v. 3679 Commerce Place, 12 OCAHO No. 1296, 7 (2017). The court must, in setting the fine amount, consider 1) the size of the employer’s business, 2) the employer’s good faith, 3) the seriousness of the violation, 4) whether or not the individual at issue was an unauthorized alien, and 5) the employer’s history of previous violations. 8 U.S.C. § 1324a(e)(5). The court may also consider non-statutory factors in assessing the penalty, such as the Respondent’s ability to pay the fine. United States v. Cityproof Corp., 15 OCAHO No. 1392a, 2 (2022). The date of the assessment of the penalty is the date that the court determines the penalty, rather than the date that the Government issues its notice of intent to fine. United States v. Edgemont Group, LLC, 17 OCAHO 1470b, 11 (2023).

One of the effects of the default judgment order is that Respondent has no information with which to review the statutory and non-statutory factors in assessing the damages. A strain of prior OCAHO caselaw has, in the few cases for which there is a complete order of default judgment, issued an order finding liability and assessing the Complainant’s requested damages in the same action. *See, e.g.*, United States v. Twiggy’s Garden Ctr., 2 OCAHO No. 301, 1 (1991); United States v. Jackson Assoc., 1 OCAHO No. 84, 1 (1989); United States v. Michael’s Greek Village, 1 OCAHO No. 86, 1 (1989). Others have taken a more measured approach—bifurcating proceedings and providing the Respondent with one last opportunity to influence the outcome of the case by presenting any arguments, as it deems appropriate, on the statutory and non statutory factors relevant to the assessment of damages. *See, e.g.*, United States v. Kodiak Oilfield Svcs., 16 OCAHO No. 1436a, 1 (2023); United States v. Koy Chinese & Sushi Rest., 16 OCAHO No. 1416d, 6 (2023) (CAHO Order discussing the two methods of addressing default judgment in § 1324a cases).

This Court finds that the latter approach is more consistent with the language of §1324a, specifically with the directive to consider the statutory factors in assessing the fine. 8 U.S.C. § 1324a(e)(5)(“In determining the amount of the penalty, due consideration *shall be given* [to the statutory factors]”) (emphasis added). While, to be sure, a party may through their own inaction lose the ability to present evidence supporting a lessening of damages, the lack of any evidence addressing these factors, as well as the lack of a prior order specifically advising the parties that the Court will assess a fine in the following order, militates towards a more cautious approach. Moreover, as noted by the CAHO in Koy Chinese, the latter approach mirrors the process outlined in Federal Rule of Civil Procedure 55(b)(2). Koy Chinese, 16 OCAHO No. 1416d, n. 9 (2023).

IV. ORDER

Consequently, the Court ORDERS that these proceedings will be bifurcated into liability and damages phases.

The Court further ORDERS that Respondent is in default with regard to the liability phase of the proceedings for the 102 persons identified in Complainant’s Motion for Summary Decision.

The parties may, within 14 days of this order, file any submissions addressing damages as they deem appropriate. Respondent is further advised that should it fail to submit a filing addressing damages, the Court may deem that Respondent has abandoned its request for a hearing and thereafter issue an order vacating these proceedings. 28 C.F.R. § 68.37(b); United States v. Milwhite, Inc., 17 OCAHO No. 1469a, 2 (2023).

SO ORDERED

Dated and entered February 02, 2026.

Honorable John A. Henderson
Administrative Law Judge