UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

July 24, 2026

UNITED STATES OF AMERICA, Complainant, v. ZARCO HOTELS INCORPORATED, Respondent.	)	8 U.S.C. § 1324a Proceeding OCAHO Case No. 2024A00015

ORDER BY THE DEPUTY CHIEF ADMINISTRATIVE HEARING OFFICER[1]
VACATING THE ADMINISTRATIVE LAW JUDGE'S FINAL ORDER
AND REMANDING THE CASE FOR FURTHER PROCEEDINGS

I. BACKGROUND AND PROCEDURAL HISTORY[2]

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. The United States Department of Homeland Security (DHS or Complainant) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against the Respondent on November 9, 2023, alleging that the Respondent violated 8 U.S.C. § 1324a by failing to timely prepare and/or present employment eligibility verification forms (Forms I-9) for two individuals and failing to ensure that the

[1] The Deputy Chief Administrative Hearing Officer (Deputy CAHO) is generally authorized to perform the duties of the Chief Administrative Hearing Officer (CAHO) – including the CAHO's adjudicatory functions – when the CAHO is unavailable. *See United States v. ABS Staffing Solutions, LLC*, 21 OCAHO no. 1632, 8 n.6 (2025) (identifying the Deputy CAHO as the individual "who performs the duties of the CAHO when the CAHO is absent or when the position is vacant"); *United States v. Impact Staffing, LLC*, 21 OCAHO no. 1635, 8 (2025) (noting that one of the functions of the Deputy CAHO is to "perform the functions of the CAHO, including the CAHO's case processing and adjudicatory functions, when the CAHO is on leave or otherwise unavailable"); *see also United States v. Cabello Enters. LLC*, 21 OCAHO no. 1640 (2025) (order by the Deputy Chief Administrative Hearing Officer acknowledging that the Deputy CAHO had been formally appointed by the Acting Attorney General "and therefore may perform the functions of the CAHO in the CAHO's absence"). As the CAHO remains detailed outside of the OCAHO, the Deputy CAHO is currently performing the duties of the CAHO, including the CAHO's adjudicatory duties and authority under 28 C.F.R. § 68.54.

[2] This case has a more lengthy and complex procedural history than is recounted here. This order summarizes only those events within that procedural history that are most directly relevant to the questions at issue in this order. Previous published decisions in this case, contained within Volume 18 of OCAHO's published decisions (https://www.justice.gov/eoir/listing-volume-18-decisions), contain a more complete summary of the full procedural history of the case. *See United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518 et seq. (2024-2026).

employee properly completed Section 1 of the Form I-9 for ten individuals. The case was assigned to Administrative Law Judge (ALJ) Andrea Carroll-Tipton.

The Respondent filed an answer to the complaint and a motion to dismiss the complaint for failure to state a claim upon which relief can be granted. In its answer and motion to dismiss, the Respondent denied that it failed to prepare and/or present the relevant Forms I-9, and denied that it failed to meet the requirements of 8 U.S.C. § 1324a with respect to the other alleged violations. The answer and motion to dismiss also generally asserted that the complaint did not state a claim upon which relief could be granted.

On September 26, 2024, the Complainant filed a motion for leave to amend the complaint and an amended complaint. This First Amended Complaint alleged in a single count that the Respondent violated 8 U.S.C. § 1324a by failing to prepare and/or present the Form I-9, or in the alternative failed to properly complete Section 2 of the Form I-9 and/or correct technical failures with respect to nine individuals hired for employment. On October 24, 2024, the ALJ issued an order summarizing a prehearing conference and granting the Complainant's motion to amend the complaint.[3]

On November 20, 2024, the Respondent filed an answer to the First Amended Complaint denying that it failed to prepare and/or present the Form I-9, failed to properly complete Section 2 of the Form I-9, or failed to correct technical failures on the forms for the nine individuals in the single count of the amended complaint. The Respondent's answer also asserted that the DHS auditor refused to accept Forms I-9 for the nine individuals in question on five different occasions.[4]

The Respondent subsequently filed a motion to dismiss the First Amended Complaint for failure to state a claim upon which relief could be granted. The Complainant filed a response to the motion to dismiss, and the parties subsequently filed a flurry of additional motions and replies related to the motion to dismiss. Ultimately, the ALJ denied the Respondent's motion to dismiss, finding that the complaint was not barred by the statute of limitations, the alleged violations were not "technical or procedural" (and thus did not require an opportunity to cure), and the complaint appropriately stated a claim for violation of 8 U.S.C. § 1324a(a)(1)(B). *See United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518h, 3-6 (2025). In the order denying the Respondent's motion to dismiss, the ALJ noted that the "Respondent here asks the Court to evaluate factual issues through a[] tool (motion to dismiss) ill-suited for such a proposition," pointing out that summary decision was the appropriate "mechanism through which parties may ask the Court to evaluate evidence and use that evidence to resolve factual disputes." *Id.* at 6.

Shortly thereafter, the Respondent filed a motion for summary decision,[5] advancing a variety of arguments. First, the Respondent recounted the history of hire and termination dates for

[3] The ALJ's order is styled as an "Order Summarizing Prehearing Conference & Granting Motion to Dismiss in Part and Amend in Part the Complaint." *See United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518d (2024). As the ALJ notes in that order, she construed the Complainant's motion to amend the complaint as in effect a motion to dismiss Count I of the complaint in its entirety, reduce the number of alleged violations in Count II, and assert an alternate charging theory to the original theory outlined in the original complaint. *See id.* at 2. However styled, the practical effect of the order was to render the First Amended Complaint the operative complaint in this matter.
[4] The five occasions were identified by the Respondent as being in July and August of 2021.
[5] The Respondent filed two motions for summary decision. The first, filed on or about June 25, 2024, sought summary

the nine individuals whose Forms I-9 were at issue, as well as its interpretation of the relevant retention periods for the Forms I-9 for those employees. Mot. for Summ. Dec., at 6-7. Next, the Respondent argued that the Forms I-9 in question were all properly completed, prepared, and presented. *Id.* at 9. Additionally, the Respondent asserts that it was not the "proper" employer for purposes of Form I-9 compliance, asserting that those responsibilities were transferred to CPE, a third-party entity that was responsible for hiring, payroll, Form I-9 compliance, and taxes, among other things. *Id.* at 9-10. Furthermore, the Respondent argued that several of the Forms I-9 at issue in the complaint pertained to individuals who were not employees of the Respondent because those individuals had an ownership interest in and control over all or part of the enterprise. *See id.* at 10-11. Finally, the Respondent questioned whether the Complainant met its burden of proof with respect to the penalties proposed. *See id.* at 11-12. The Respondent attached four exhibits (numbered 1-4) to its motion for summary decision.

The Complainant subsequently filed an opposition to the Respondent's motion for summary decision, arguing that "there are genuine issues of material fact that necessitate the case to be set for a hearing[.]" Opp'n to Mot. for Summ. Dec., at 3. Specifically, the Complainant argues that the Forms I-9 in question were not provided to the DHS auditor upon request, but rather were only provided after the initial complaint in this matter was filed. *Id.* at 6. Furthermore, the Complainant argues that a genuine issue of material fact exists as to the exact hiring date for the employees in question. *Id.* at 7. Additionally, the Complainant counters the Respondent's arguments with respect to the individuals with an ownership interest, the appropriate retention period, the identity of the proper employer, applicability of the statute of limitations defense, and the propriety of the proposed penalties. *See id.* Complainant attached eight exhibits (numbered A-H) to its opposition to the motion for summary decision.

After being granted leave to do so by the ALJ, *see United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518k, 3 (2025), the Respondent filed a reply to the Complainant's opposition to the motion for summary decision. In its reply, the Respondent argued that the Complainant failed to identify any genuine issues of material fact, and asserted that the Respondent was entitled to judgment as a matter of law. The Respondent attached two exhibits (numbered 1-2) to its reply.

On May 4, 2026, the ALJ issued an Order Granting Respondent's Motion for Summary Decision, in Part, and Ordering Complainant to Show Cause. *See United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518*l* (2026). In the order, the ALJ granted the Respondent's motion for summary decision with respect to the three individuals with an ownership interest in the Respondent business, consistent with previous OCAHO case law. *See id.* at 10. Additionally, the ALJ found that the Respondent was not liable for any potential Form I-9 violations generated by CPE, the third-party entity that was considered the employer of the employees in question from 2003 to 2010. *See id.* at 11.

After resolving those issues, the sole remaining issues before the ALJ concerned the Forms I-9 for the other six individuals named in the First Amended Complaint that were prepared (or

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decision on counts I and II of the original complaint. The second, filed on or about May 18, 2025, sought summary decision as to the entirety of the First Amended Complaint. Unless otherwise specified, all references to the Respondent's motion for summary decision (and both the Complainant's opposition thereto and the ALJ's decisions thereon) intend to refer to the second motion for summary decision, filed on or about May 18, 2025.

should have been) in 2010. With respect to those Forms I-9, the ALJ found that all sections of those Forms (attached as Exhibit 1 to the Respondent's Motion for Summary Decision) were fully and properly completed, and accordingly granted the Respondent's motion for summary decision in part, in that the Respondent would not be held liable for "failure to prepare" the Forms I-9 in question.[6] *See id.* at 12.

Crucially, the ALJ noted that a question remained as to whether the six Forms I-9 that were properly completed were also presented to the DHS auditor at the time of inspection. On this question, the ALJ noted that the record established that 51 Forms I-9 were presented to the DHS auditor during his inspection, which appears to have occurred on August 19, 2019. *See id.* at 8, 12. However, the ALJ observed that the record did not make clear whether the six Forms I-9 in question were included in the 51 Forms I-9 originally presented to the DHS auditor. *Id.* at 12 ("It is possible these six Forms I-9 were included in the 51 presented Forms. It is also possible they weren't."). Given the relevant burdens at the summary decision phase, where the moving party (here, the Respondent) bears the burden of showing that there are no genuine issues of material fact and that they are therefore entitled to summary decision, and where all facts and reasonable inferences derived therefrom must be viewed in the light most favorable to the non-moving party (here, the Complainant), the ALJ noted that she "must defer" (to the Complainant) and therefore did not grant the Respondent's motion for summary decision with respect to the remaining six violations. *See id.*

However, the ALJ observed that the deference owed to the Complainant at the summary decision phase (as the non-moving party) "does not extend to the hearing, where it is Complainant who shall bear the burden of demonstrating those six Forms I-9 were not included in the 51 presented by Respondent business." *Id.* Noting that the only evidence produced by the Complainant thus far that spoke to how many (and which) Forms I-9 DHS received during the August 2019 inspection from the Respondent was the "woefully inadequate" receipt for property identifying only that DHS received 51 original Forms I-9, the ALJ ordered the Complainant to submit to the court (and serve on the Respondent) "evidence demonstrating the six Forms I-9 (Individuals 1 through 6 generated in 2010) were not included in the 51 Forms I-9 provided (as memorialized in the Receipt)." *Id.* at 13. The ALJ cautioned the Complainant that if they failed to provide such evidence, or provided evidence that "makes clear Complainant would still not be able to meet its burden at hearing," the ALJ would issue a final order finding the Respondent not liable for failure to present those Forms I-9.[7] *Id.*

After receiving an extension of time to respond to the ALJ's order to show cause, *see United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518m (2026), the Complainant filed its

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[6] Implicitly, a finding that these forms were fully and properly completed would similarly preclude liability for the allegations "in the alternative" that were included in the First Amended Complaint (namely, that the Respondent failed to properly complete Section 2 of the Form I-9 and/or correct technical failures on the form for nine individuals). Accordingly, the only allegation from the First Amended Complaint that seems to have been left unresolved by this finding by the ALJ is the allegation that the Respondent failed to present the Forms I-9 for the individuals in question.

[7] OCAHO's regulations provide that when a motion for summary decision is properly made and supported, the "party opposing the motion may not rest upon the mere allegations or denials" of its pleadings, but rather "must set forth specific facts showing that there is a genuine issue of fact for the hearing." 28 C.F.R. § 68.38(b). Although the ALJ did not expressly cite this provision of OCAHO's regulations in this portion of her discussion, nevertheless her directive to the Complainant in this order to show cause is arguably consistent with that provision.

response to the order to show cause on June 5, 2026. In its response, the Complainant provides four exhibits (numbered A-D) "to unequivocally show that the Forms I-9 for the individuals listed in Count I of the amended complaint were not part of the 51 Form I-9s provided by the respondent to the auditor on August 19, 2019." Resp. to Order to Show Cause, at 2. Exhibit A is identified by the Complainant as "the 51 Form I-9s provided by the respondent on August 19, 2019."[8] *Id.* Exhibit B is identified as the Form 6051R Receipt for Property for the 51 Forms I-9 that were received by DHS on August 19, 2019. *Id.* Exhibit C is identified by the Complainant as Forms I-9 for the six individuals listed in Count I of the amended complaint, which were provided by the Respondent as an exhibit accompanying its original motion for summary decision. *Id.* Exhibit D is identified as a declaration from the DHS auditor. *Id.*

On June 24, 2026, the ALJ issued a final order finding the Respondent not liable for violating 8 U.S.C. § 1324a. In the final order, the ALJ began by evaluating the exhibits submitted by the Complainant in its response to the order to show cause, essentially finding that Exhibits A, B, and C were reliable, but finding that Exhibit D (the declaration from the DHS auditor) was "not sufficiently reliable" for a variety of reasons. Final Order at 3-4. The ALJ then set forth her findings of fact, noting that most of those findings were reiterated from her prior order granting partial summary decision. *Id.* at 5-8. After repeating her analysis as to the prior findings of no liability in the order granting partial summary decision, *see id.* at 8-11, the ALJ noted that only one issue remained: "whether the Forms I-9 at issue were presented at the time of inspection," *id.* at 11. On that question, the ALJ found that, considering Complainant's response to the order to show cause, the ALJ could "divine Complainant has at least 56 Forms I-9, 51 of which it received in 2019. It is unknown how many they anticipated, and it is unknown which of the 56 were provided in 2019." *Id.* In the face of this uncertainty, the ALJ found that while the Complainant could have presented other reliable documents "to shed light on all these open questions," the Complainant did not provide those documents, and therefore the ALJ found the Respondent not liable for the remaining violations at issue. *Id.*

On July 6, 2026,[9] the Complainant filed a request for administrative review of the ALJ's finding of no liability, taking issue both with several of the ALJ's findings of fact and her conclusions of law. The Complainant therefore requested that the ALJ's final order finding no liability be vacated[10] and that the case be set for a hearing.

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[8] Notably, the six disputed Forms I-9 completed by the Respondent in 2010 do not appear to be among the 51 Forms I-9 in Exhibit A of the Complainant's response to the order to show cause.

[9] The Complainant submitted this request for review by email on July 6, 2026, and subsequently appears to have filed a copy of the document electronically through OCAHO's electronic filing application on July 7, 2026. OCAHO's rules of practice and procedure generally require that DHS electronically file all documents with OCAHO through OCAHO's electronic filing application, *see* 28 C.F.R. § 68.6(b)(1), but the rules also grant the ALJs and the CAHO discretion to accept paper or email filings in all cases, *see* 28 C.F.R. § 68.6(b)(4). Accordingly, the undersigned exercised that discretion and accepted the request for administrative review by email, and similarly exercised her discretion to accept the Respondent's opposition to the Complainant's request for administrative review, which was also filed by email. However, the undersigned's acceptance of these filings by email should not be construed as blanket authorization for the parties to continue to file case documents exclusively by email, and the undersigned's decision to exercise her discretion to accept these filings by email does not bind the presiding ALJ to exercise her discretion similarly in further proceedings before her.

[10] In the concluding paragraph of its request for administrative review, the Complainant specifically "requests that the Chief Administrative Law Judge vacate the ALJ's decision finding no liability and to set this case for a hearing." Req. for Admin. Review, at 6. However, pursuant to 28 C.F.R. § 68.54, it is the Chief Administrative Hearing Officer (not

On July 7, 2026, the Respondent filed an opposition to the Complainant's request for administrative review, generally arguing that the ALJ correctly evaluated the governing law and the evidentiary record in finding that the Complainant failed to establish that the disputed Forms I-9 were absent from the 51 Forms I-9 produced during the August 2019 inspection. The Respondent accordingly asserts that the request for administrative review should be denied.

For the reasons that follow, the ALJ's final order will be VACATED and the case will be REMANDED for further proceedings consistent with this decision.

II. JURISDICTION AND STANDARD OF REVIEW

The Chief Administrative Hearing Officer (CAHO)[11] has discretionary authority to review an ALJ's final order in cases arising under 8 U.S.C. § 1324a. *See* 8 U.S.C. § 1324a(e)(7); 28 C.F.R. § 68.54(a). Under OCAHO's rules, the CAHO may review an ALJ's final order on his or her own initiative by issuing a notification of administrative review within ten days of the date of entry of the ALJ's final order. 28 C.F.R. § 68.54(a)(2). Alternatively, a party may file a written request for administrative review within ten days of the date of entry of the ALJ's final order. 28 C.F.R. § 68.54(a)(1). If administrative review is timely noticed or requested, the CAHO may enter an order that modifies or vacates the ALJ's order or remands the case for further proceedings within thirty days of the date of entry of the ALJ's order. 8 U.S.C. § 1324a(e)(7); 28 C.F.R. § 68.54(d)(1).

Under the Administrative Procedure Act (APA), which governs OCAHO cases, the reviewing authority in administrative adjudications "has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule." 5 U.S.C. § 557(b). This authorizes the CAHO to apply a *de novo* standard of review to final orders issued by an ALJ. *See Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Mfg. Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990). In conducting an administrative review, "the CAHO exercises independent judgment and discretion free from ideological or institutional pressure." *United States v. Corrales-Hernandez*, 17 OCAHO no. 1454e, 3 (2023). The CAHO reviews both questions of law and fact *de novo*, but may give some amount of consideration to an ALJ's findings of fact, "depending on the particular circumstances of the case under review." *United States v. Fasakin*, 14 OCAHO no. 1375b, 4 (2021). In conducting the administrative review, "the CAHO must ensure that the ALJ's overall decision is well-reasoned, based on the whole record[,] . . . free from errors of law, and supported by or in accordance with reliable, probative, and substantial evidence contained in the record." *Id.* at 5.

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the Chief Administrative Law Judge) who has authority to review final orders by OCAHO ALJs in cases arising under 8 U.S.C. § 1324a. The undersigned therefore assumes that this request for action by the Chief Administrative Law Judge was a typographical error by the Complainant, as the Chief Administrative Law Judge is not authorized by OCAHO's regulations to review the decisions of other ALJs. *Compare* 28 C.F.R. § 68.2 (definition of "Chief Administrative Hearing Officer" at paragraph (5)) (providing that the Chief Administrative Hearing Officer is authorized to "[a]djudicate cases on administrative review") *with* 28 C.F.R. § 68.2 (definition of "Chief Administrative Law Judge" at paragraph (5)) (providing that the Chief Administrative Law Judge is authorized instead only to "[a]djudicate cases as an administrative law judge").

[11] As discussed further *supra* note 1, because the CAHO is unavailable, the Deputy CAHO is currently performing the duties (and exercising the authority) of the CAHO, including the CAHO's discretionary authority to review ALJ final orders in cases arising under 8 U.S.C. § 1324a.

III. BRIEFING

When administrative review is properly requested or ordered, the parties may file briefs or other written statements within twenty-one days of the date of entry of the ALJ's order. 28 C.F.R. § 68.54(b)(1). As such, the parties had until July 15, 2026, to submit briefs or other written statements related to this administrative review. As discussed further *infra* Part IV.A, the Complainant timely filed its request for administrative review on July 6, 2026 (which has been accepted and fully considered), but does not appear to have subsequently filed an additional brief or other written statement. The Respondent filed an opposition to the Complainant's request for administrative review on July 7, 2026. This opposition filing was timely and has been fully considered by the undersigned.

A. Complainant's Request for Administrative Review

In its request for administrative review, the Complainant generally argues "that the ALJ erred as a matter of law and erroneously placed the burden on Complainant, the non-moving party, to show that there were no sufficient facts in dispute." Req. for Admin. Review, at 2. The Complainant notes the relevant burdens on summary decision, as set forth in OCAHO's regulations and the OCAHO Practice Manual,[12] and asserts that the Complainant met its burden (as the non-moving party) to demonstrate that there were genuine issues of material fact in dispute – specifically, "whether the nine Forms I-9 dated December 10, 2010 were part of the 51 original Forms I-9 provided to DHS as part of their August 19, 2019 inspection." *Id.*

After briefly recounting the procedural history of the case, the Complainant next highlights several findings of fact made by the ALJ with which the Complainant takes issue. Specifically, the Complainant argues that finding of fact number 10, in subsection III.D of the ALJ's final order, "completely contradicts" findings of fact 20-24, also in subsection III.D of the ALJ's final order.[13] *Id.* at 3-4. The relevant findings of fact contested by the Complainant are as follows:

> 10. Based on the receipt alone, it is possible the Forms I-9 prepared in December 2010 for the employees named in the Charge were included with the 51 Forms. Resp't Reply Ex. 2, p. 13.
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> [. . .]
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> 20. On July 22, 2021, Respondent emailed the HSI Auditor that he "was unable to correct the highlighted or circled failures on the accompanying Forms I-9 under the Notice of Technical or Procedural Failures," because Respondent viewed it as

[12] The relevant standards governing summary decision are discussed more fully below. *See infra* Part IV.B.

[13] The Findings of Fact section of the ALJ's final order contains five subsections, numbered A through E. The findings of fact in subsections A and B are in a list with continuous numbering through the two sections. In these two subsections, findings of fact 1 through 6 are in subsection A, and findings of fact 7 through 18 are in subsection B. Beginning in subsection C, the numbering of the findings of fact restarts at number 1. For these final three subsections, findings of fact 1 through 4 are in subsection C, findings of fact 5 through 24 are in subsection D, and findings of fact 25 and 26 are in subsection E. Unless otherwise noted, references to the numbered findings of fact in this order are to the findings of fact contained in subsections C, D, and E of Section III of the ALJ's order.

> "fraud;" however, he "was willing to provide [HSI] the proper [Forms I-9]" for certain individuals. Resp't Ex. 4, p. 90-91; Opp'n Ex. D p. 37-40.
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> 21. On August 5, 2021, the HSI Auditor emailed Respondent, requesting "corrected" Forms I-9 by August 12, 2021. Resp't Ex. 4, p. 83-[8]4; Opp'n Ex. D, p. 33.
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> 22. On August 12, 2021, Respondent emailed the Auditor to relay the "corrections" requested relate to Forms I-9 of CPE, a separate business. Respondent offered to "provide [HSI] the proper Forms I-9." Resp't Ex. 4, p. 82-[8]3; Opp'n Ex. D, p. 32-33.
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> 23. On September 1, 2021, the HSI Auditor emailed Respondent to relay his disagreement (i.e. the HSI Auditor believed Respondent was the employer). Opp'n Ex. D, p. 30-31.
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> 24. On September 10, 2021, Respondent replied via email that he "will not and cannot oblige with [the Auditor's] inappropriate requests to commit fraud," and he was "willing to provide [HSI] the proper Forms I-9[]." Opp'n Ex. D, p. 30.

Final Order, at 7-8. Complainant asserts that findings of fact 20-24 contradict finding of fact 10 because findings of fact 20-24 "indicat[e] that the Respondent had not provided the correct Forms I-9 for all the individuals listed in the amended complaint for Count I." Req. for Admin. Review, at 4.

Furthermore, the Complainant challenges several of the ALJ's conclusions of law. Specifically, "Complainant asserts that the ALJ improperly found that the HSI Auditor 'lacked sufficient personal knowledge to provide reliable evidence.'" *Id.* at 5. Complainant further argues that such conclusion was improper to make at the summary decision phase "without the benefit of a full evidentiary hearing and testimony from the HSI Auditors." *Id.* Additionally, the Complainant points out that in evaluating a motion for summary decision, "[a]ll reasonable inferences are drawn in favor of the nonmoving party," *id.*, and argues that "[t]he ALJ erred in not giving reasonable inferences to the aforementioned discrepancies of facts as to when the Respondent provided the nine Forms I-9 in question to the HSI Auditor," *id.* at 6.

B. Respondent's Opposition to Complainant's Request for Administrative Review

One day after the Complainant filed its request for administrative review, the Respondent filed an opposition to the request for administrative review. The Respondent generally argued that the Complainant failed to identify any reversible legal error, Opp'n to Req. for Admin. Review, at 2, failed to satisfy the ALJ's previous order to show cause, *id.* at 4, and failed to identify which forms were produced during the 2019 inspection, *id.* at 4-5. The Respondent also argued that the Complainant's appeal "seeks to impose liability based upon uncertainty that exists only because of deficiencies in DHS's own documentation, inventory, and evidentiary practices[,]" and asserts that DHS cannot "shift the consequences of its own failures to Respondent." *Id.* at 5. The Respondent's opposition also argues that DHS's request for administrative review does not identify any procedural or legal errors or any findings of fact that are not supported by substantial evidence, and thus asserts that the request instead asks the CAHO "to draw different factual conclusions from the same record considered by the ALJ." *Id.* at 7. On this point, the Respondent argues that "[a]dministrative review should not become a mechanism for relitigating factual questions already decided on a complete record." *Id.* at 8.

In addition to countering elements of the Complainant's arguments, the Respondent also generally argues that the ALJ correctly applied the burden of proof, *id.* at 3, correctly found that the Respondent was not liable for violations related to Forms I-9 generated by CPE, *id.* at 6-7, and correctly found the declaration from the DHS auditor to be unreliable, *id.* at 7. Relatedly, the Respondent argues that OCAHO cannot impose liability based on speculation, asserting that "[w]hen the evidence supports two competing possibilities, the party bearing the burden of proof necessarily fails."[14] *Id.* at 8. Finally, the Respondent asserts that the Complainant's request for administrative review may be untimely,[15] asking that the CAHO verify the actual filing date of the Complainant's request and consider whether dismissal may be warranted on procedural grounds. *Id.* at 8-9.

IV. DISCUSSION

A. The Complainant's Request for Administrative Review Was Timely Filed

OCAHO's regulations authorize parties to file a request for administrative review of an ALJ's final order within ten days of the date of entry of that order. 28 C.F.R. § 68.54(a)(1). However, OCAHO's regulations also provide that, in calculating any period of time under OCAHO's rules, "the time begins with the day following the act, event, or default, and includes the last day of the period unless it is Saturday, Sunday, or legal holiday observed by the Federal Government in which case the time period includes the next business day." 28 C.F.R. § 68.8(a).

The ALJ's final order in this case was issued on June 24, 2026. The tenth day after June 24, 2026, was July 4, 2026. However, because July 4, 2026, was a Saturday, the request for review period included the next business day, which was Monday, July 6, 2026. *See* 28 C.F.R. § 68.8(a). The Complainant filed its request for administrative review on July 6, 2026; accordingly, the request was timely filed.

B. Summary Decision Standards

Because the ALJ's final order in this case was issued pursuant to a motion for summary decision filed by the Respondent, the analysis must be informed by the standards applicable to motions for summary decision under OCAHO's rules and case law. Under OCAHO's rules of practice and procedure, upon proper motion, the ALJ "shall enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially

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[14] As discussed further *infra* Part IV, while the Complainant bears the ultimate burden of proof and persuasion in the underlying case, at the summary decision phase, the initial burden is on the moving party (here, the Respondent) to show both the absence of a genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Therefore, this argument by the Respondent likely cuts against its position in the context of its motion for summary decision.

[15] *See infra* Part IV.A for discussion of this issue.

noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. § 68.38(c). In light of the similarity of OCAHO's regulation governing summary decision to Rule 56(c) of the Federal Rules of Civil Procedure governing summary judgment, OCAHO adjudicators often look to federal case law interpreting Rule 56(c) for guidance when adjudicating motions for summary decision in OCAHO cases. *E.g.*, *United States v. Rubio-Reyes*, 14 OCAHO no. 1349, 2 (2020).

"The party seeking summary decision bears the initial burden of demonstrating the absence of a genuine issue of material fact." *United States v. Quisquina-Yaxon*, 17 OCAHO no. 1474, 4 (2023). "Only after the moving party satisfies its initial burden demonstrating both the absence of genuine issues of material fact and that it is entitled to judgment as a matter of law does the burden shift to the nonmoving party, who must then come forward with contravening evidence." *Id.* at 5. If this initial burden is met by the moving party, the "party opposing the motion may not rest upon the mere allegations or denials" of its pleadings, but rather "must set forth specific facts showing that there is a genuine issue of fact for the hearing." 28 C.F.R. § 68.38(b). When evaluating a motion for summary decision, the ALJ must view all evidence and reasonable inferences therefrom in the light most favorable to the nonmoving party. *See Quisquina-Yaxon*, 17 OCAHO no. 1474, at 4-5; *Rubio-Reyes*, 14 OCAHO no. 1349, at 3; *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (observing that, when a judge is ruling on a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.").

Issues of fact are genuine only if they have "a real basis in the record," and genuine issues of fact are material only if, "under the governing law, [they] might affect the outcome of the suit." *Quisquina-Yaxon*, 17 OCAHO no. 1474, at 4 (quoting *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993)). Additionally, evidence submitted to support or oppose a motion for summary decision "must be presented through means designed to ensure its reliability." *Rubio-Reyes*, 14 OCAHO no. 1349, at 3; *see also* 28 C.F.R. §§ 68.38(d) (providing that a final order entered as a summary decision "shall conform to the requirements for all final orders"), 68.52(b) (providing that final orders by the ALJ "shall be based upon the whole record" and "shall be supported by reliable and probative evidence").

C. Employment Eligibility Verification Requirements

Under the provisions of 8 U.S.C. § 1324a, employers generally must verify the identity and employment authorization of all individuals hired for employment in the United States. *See* 8 U.S.C. § 1324a(a)(1)(B)(i) (providing that it is unlawful for a person or other entity to hire an individual without complying with the requirements of 8 U.S.C. § 1324a(b)), § 1324a(b) (setting forth the requirements for employment verification). By regulation, this employment eligibility verification is done using the Form I-9. *See* 8 C.F.R. § 274a.2(a)(2). In addition to completing the Form I-9 at the beginning of an individual's employment, employers are required to retain completed Forms I-9 for a specified period and must make the forms available for inspection by a variety of offices and agents of the federal government. *See* 8 U.S.C. § 1324a(b)(3); 8 C.F.R. § 274a.2(b)(2). DHS's regulations provide that employers must "be provided with at least three business days notice prior to an inspection of Forms I-9 by officers of an authorized agency of the United States." 8 C.F.R. § 274a.2(b)(2)(ii). "At the time of inspection, Forms I-9 must be made available in their original paper, electronic form, a paper copy of the electronic form, or on microfilm or microfiche at the location where the request for production was made." *Id.* "Any refusal or delay in presentation of the Forms I-9 for inspection is a violation of the retention requirements as set forth in [8 U.S.C. § 1324a(b)(3)]." *Id.*

OCAHO case law has consistently held that employers generally "cannot avoid liability for failure to timely present I-9 forms by submitting the forms at some point later in the process, whether in the course of the inspection itself or later during the ensuing litigation." *United States v. Horno MSJ, Ltd., Co.*, 11 OCAHO no. 1247, 7 (2015). For example, in *United States v. Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355, 5-7 (2020), the ALJ found the respondent liable for failing to timely present certain Forms I-9 where the forms were not provided to DHS at the time of inspection, but rather were presented approximately two weeks later. Numerous other OCAHO cases evaluating similar fact patterns, including where certain Forms I-9 were not provided to DHS until after a complaint was filed with OCAHO, have held similarly. *See, e.g.*, *United States v. Golden Emp. Grp., Inc.*, 12 OCAHO no. 1274, 6-8 (2016) (finding the respondent liable for failing to timely present Forms I-9 for certain individuals where the forms were provided to DHS one or two months after the deadline, and where the evidence failed to establish that an extension was granted); *United States v. Horno MSJ, Ltd., Co.*, 11 OCAHO no. 1247, 5, 7 (2015) (finding the respondent liable for failing to timely present Forms I-9 for several individuals, and finding that "the belated presentation" of I-9s for some of those individuals could not absolve the company of liability); *United States v. A&J Kyoto Japanese Rest., Inc.*, 10 OCAHO no. 1186, 7 (2013) (finding the respondent liable for several violations for failure to timely present Forms I-9 where the forms were not presented to DHS at the time of inspection but were later presented as an exhibit in a filing before OCAHO); *United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 5 (2013) ("Fowler Equipment failed to present I-9 forms for eighteen of its employees on the date of inspection, November 19, 2009. The company's argument that it submitted these forms in October of 2011 has no merit because the violations occurred at the time of inspection. That the company submitted the I-9s after the inspection does not absolve it of liability.").

D. Analysis

The First Amended Complaint essentially alleges four possible theories of liability for the Forms I-9 at issue here – it alleges in the alternative that the Respondent: (1) failed to prepare the Forms I-9; (2) failed to present the Forms I-9; (3) failed to properly complete Section 2 of the Forms I-9; and/or (4) failed to correct technical failures on the Forms I-9. First Am. Compl. at 3. In her May 4, 2026, order granting in part the Respondent's motion for summary decision, the ALJ essentially granted summary decision to the Respondent on three of the four theories of liability, finding that the Respondent did prepare the Forms I-9 in question, *see Zarco Hotels Inc.*, 18 OCAHO no. 1518*l*, at 11-12; fully completed the Forms I-9 (including Section 2), *see id.* at 12; and was "not liable for any violations arising from Forms I-9 generated by CPE (pre-2010)," *id.* at 11, clarifying in a footnote that to the extent it was the Forms I-9 generated by CPE that were the subject of the failure to correct technical failures charge, that charge therefore "cannot be sustained on this record[,]" *id.* at 11 n.18.

The Complainant's request for administrative review does not squarely challenge the ALJ's findings on those three theories of liability, and the undersigned therefore will not disturb those findings. Similarly, although the Complainant's request for administrative review references the "nine Forms I-9" at issue, the request also does not squarely challenge the ALJ's finding that the Respondent was not liable for violations related to the Forms I-9 for Individuals 7, 8, and 9 of the First Amended Complaint because those individuals "have an ownership interest in the Respondent business," *id.* at 10. Accordingly, the undersigned will not disturb that finding either.

The only remaining alleged violations at issue in the ALJ's final order (and thus in this administrative review) were the allegations that the Respondent failed to present Forms I-9 for Individuals 1 through 6 in the First Amended Complaint. On this question, the ALJ made several relevant findings of fact. Specifically, the ALJ found that the Respondent produced 51 Forms I-9 on August 19, 2019, and that "it is possible" that the six Forms I-9 at issue "were included with the 51 Forms." Final Order, at 7 (findings of fact 9 and 10). However, the ALJ also found that the Respondent repeatedly offered to provide DHS with the "proper" Forms I-9 at several points in 2021 (well after the August 19, 2019, inspection). *See id.* at 7-8 (findings of fact 20, 22, and 24).

Because the Respondent is the party that moved for summary decision in this matter, it is the Respondent who bears the initial burden of demonstrating both the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *E.g.*, *Quisquina-Yaxon*, 17 OCAHO no. 1474, at 4-5. In evaluating the motion for summary decision, the ALJ was required to view all facts and reasonable inferences in the light most favorable to the non-moving party. *See id.* Evaluating the ALJ's final order in light of these standards, I believe the ALJ erred in granting summary decision to the Respondent on the question of whether the Respondent failed to present the Forms I-9 in question to DHS at the time of inspection.

Although it may be theoretically possible that the six disputed Forms I-9 were included in the 51 Forms I-9 presented to DHS on August 19, 2019, *see* Final Order at 7 (finding of fact 10), it is hard to square that finding by the ALJ with the Respondent's repeated efforts to offer the Complainant the "proper" Forms I-9 for certain individuals in the years following DHS's initial inspection. After all, if the six disputed Forms I-9 were in fact included in the 51 Forms I-9 presented to DHS on August 19, 2019, there would have been little reason for the Respondent to offer additional Forms I-9 to DHS in 2021, *see* Final Order at 7-8 (findings of fact 20, 22, and 24), or again in 2023, *see* First Am. Compl. at Tab B (in its request for hearing, dated July 10, 2023, and submitted to DHS, the Respondent states that it is "ready, willing, and able to provide" current I-9s for seven individuals – four of whom are individuals whose I-9s are among the six at issue here – and notes that the two other individuals whose I-9s are at issue retired or were terminated between the inspection and the issuance of the Notice of Intent to Fine).

Although the email correspondence between the Respondent and DHS in 2021 does not identify which specific "proper" Forms I-9 the Respondent was offering to DHS at that time, the Respondent's answer to the First Amended Complaint expressly identifies those Forms I-9 as the nine Forms I-9 at issue in Count I of the First Amended Complaint. Answer to First Am. Compl. at 4 (stating that the DHS auditor "refused to accept Form I-9 for the nine individuals [listed in Count I of the First Amended Complaint] on five different occasions"; all of those occasions were identified by the Respondent as being in 2021, approximately two years after the initial inspection in this matter). Viewing these facts in the light most favorable to the Complainant (as the non-moving party at summary decision), one could reasonably infer that the six Forms I-9 at issue were not provided to DHS during the initial inspection on August 19, 2019, but instead were only offered (and eventually provided) long after the initial inspection had concluded.

This reasonable inference is bolstered by the Complainant's submission in response to the ALJ's order to show cause. Assuming (without deciding) that the ALJ's concerns as to the reliability of Exhibit D (the DHS's auditor's declaration) are valid, DHS nevertheless presented copies of the 51 Forms I-9 that it claims were provided by the Respondent on August 19, 2019, as Exhibit A in its response to the order to show cause.[16] The six Forms I-9 at issue here (the Forms I-9 completed in 2010 for Individuals 1 through 6 in the First Amended Complaint) are apparently not among those 51 Forms I-9. In its response to the ALJ's order to show cause, the Complainant also attaches (as Exhibit C) ten Forms I-9 that it asserts were provided by the Respondent as part of its original motion for summary decision (which was, of course, filed only after the filing of the complaint in this matter, and therefore many years after the initial inspection). OCAHO case law is abundantly clear that this belated presentation of the Forms I-9 in question could not absolve the Respondent of liability for failure to present those forms at the time of the inspection. *See, e.g.*, *A&J Kyoto Japanese Rest., Inc.*, 10 OCAHO no. 1186, at 7; *see also* 8 C.F.R. § 274a.2(b)(2) ("Any refusal or delay in presentation of the Forms I-9 for inspection is a violation of the retention requirements as set forth in [8 U.S.C. § 1324a(b)(3)].").

Accordingly, viewing all facts and reasonable inferences drawn therefrom in the light most favorable to the non-moving party (in this case, the Complainant),[17] the Respondent has not met its burden to show that there is no genuine issue of material fact as to whether the six disputed Forms I-9 were presented by the Respondent to DHS at the time of the inspection. In my view, the facts and reasonable inferences therefrom raise the distinct possibility that the six Forms I-9 at issue were not presented to DHS at the time of the initial inspection, but rather may have been presented by the Respondent only much later in the process (in that they were offered to the Complainant on multiple occasions in 2021, and later were submitted as part of an exhibit attached to the Respondent's motion for summary decision). Therefore, at this stage, the Respondent is not entitled to judgment as a matter of law with respect to the allegation that the Respondent failed to present the Forms I-9 in question, and the ALJ's final order finding no liability must be vacated.

[16] The ALJ noted in her final order that it was "both incomprehensible and of some concern" that DHS only provided these Forms I-9 to OCAHO at a very late stage of the proceedings. Final Order at 3 n.7. Indeed, given that the identity of the specific Forms I-9 that were provided by the Respondent to DHS during DHS's initial inspection was of critical factual importance from a very early stage of the proceedings, best practice certainly would have called for DHS to produce these I-9s earlier in the proceedings (at least no later than the Complainant's opposition to the Respondent's motion for summary decision). Doing so could have conserved significant time and resources for both OCAHO and the parties. On remand, the parties are encouraged to make every effort to provide all necessary and appropriate evidence and argument in a timely manner such that the case can "proceed with all reasonable speed, insofar as practicable[.]" 28 C.F.R. § 68.31.

[17] As the ALJ correctly noted in her order granting the Respondent's motion for summary decision in part and ordering the Complainant to show cause, at the summary decision stage, it is the moving party (in this case, the Respondent) who bears the burden of demonstrating that there are no material factual issues and that the moving party is entitled to judgment as a matter of law. *Zarco Hotels Inc.*, 18 OCAHO no. 1518*l*, at 9. As such, at the summary decision phase, the ALJ "must defer" to the Complainant and apply a "'light most favorable to the non-moving party' standard." *Id.* at 12. However, at hearing, the Complainant will bear the ultimate burden of proof and persuasion, and therefore must show by a preponderance of the evidence that the six Forms I-9 at issue were not included in the 51 Forms I-9 originally presented by the Respondent on August 19, 2019. *See id.*; *see also* 28 C.F.R. § 68.52(b) (providing that "[t]he standard of proof shall be by a preponderance of the evidence.").

V. CONCLUSION

For the reasons set forth above, the ALJ's June 24, 2026, final order finding the Respondent not liable for 8 U.S.C. § 1324a violations is hereby VACATED, and the case is REMANDED to the ALJ for further proceedings consistent with this order.

SO ORDERED.

Elizabeth Vayo
Deputy Chief Administrative Hearing Officer