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

July 29, 2021

A.S., Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2020B00073
AMAZON WEB SERVICES INC., Respondent.	)	

DENIAL OF COMPLAINANT'S REQUEST FOR ADMINISTRATIVE REVIEW

This case arises under the anti-discrimination provisions of 8 U.S.C. § 1324b. On July 12, 2021,[1] Complainant filed a letter addressed to the Chief Administrative Hearing Officer (CAHO), indicating that he was "not satisfied with the way proceedings are going on." C's Letter, 1.[2] In his letter, Complainant takes issue with several recent orders issued in his case by the presiding Administrative Law Judge (ALJ) and requests various forms of relief. Specifically, Complainant requests that the CAHO "intervene in the proceedings in this case," "revisit or reconsider the critical decisions already taken by the assigned [ALJ]," "order the Respondent [to] cooperate in the discovery phase in a timely manner," and "consider ruling in favor of the Complainant." *Id.* at 10-11.[3]

As Complainant's letter was addressed to the CAHO and requests relief from orders issued by the presiding ALJ, the undersigned construes the letter as a request for administrative review of an interlocutory order pursuant to 28 C.F.R. § 68.53. *See United States v. Greif*, 10 OCAHO

[1] Complainant's letter is dated July 6, 2021, it was received by OCAHO on July 12, 2021, and it was forwarded to the undersigned on July 19, 2021.

[2] The undersigned notes that the Complainant's letter does not appear to contain a certificate of service, which is required for all pleadings filed with the Office of the Chief Administrative Hearing Officer. *See* 28 C.F.R. § 68.6(a) ("all pleadings . . . shall be accompanied by a certification indicating service to all parties of record"). To ensure that the Respondent has appropriate notice of Complainant's letter, a courtesy copy of the letter is attached to this order.

[3] Complainant's letter also alleges, *inter alia*, bias by the presiding ALJ and misconduct by Respondent's counsel. C's Letter, 2-9. Complainant's allegations of bias by the ALJ are unsubstantiated by the record and appear rooted solely in disagreement with the ALJ's rulings in the case. As such, they do not constitute a cognizable basis for finding the ALJ to be biased. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"); *cf.* U.S. Dep't of Justice, Exec. Office for Immigration Review, Summary of EOIR Procedure for Handling Complaints Concerning EOIR Adjudicators (2018), *available at* https://www.justice.gov/eoir/page/file/1100946/download (a "written complaint [alleging adjudicator misconduct] . . . is not a means to . . . [c]hallenge an unfavorable decision"). Complainant's allegations of misconduct by Respondent's counsel have also not been substantiated, but if they are, they may be addressed as appropriate by the ALJ. *See* 28 C.F.R. § 68.35(b) (authorizing an ALJ to take action for misconduct by a party and a party's counsel).

no. 1183, 2-3 (2013) (construing a similar letter to the CAHO as a request for administrative review); *see also United States v. Bhattacharya*, 14 OCAHO no. 1380b, 3-4 (2021). However, Complainant's case arises under 8 U.S.C. § 1324b, and "[t]he CAHO only has authority to administratively review cases arising under 8 U.S.C. § 1324a and 8 U.S.C. § 1324c." *Wong-Opasi v. Sundquist*, 8 OCAHO no. 1051, 799 (2000). The applicable statutes, regulations, and OCAHO case law are all crystal clear—unlike cases arising under 8 U.S.C. § 1324a and 8 U.S.C. § 1324c, there is no administrative review available for either interlocutory or final ALJ decisions in cases arising under 8 U.S.C. § 1324b.[4] *See* 8 U.S.C. § 1324b(g)(1) (providing that the ALJ order in cases arising under 8 U.S.C. § 1324b is final unless appealed to the appropriate court of appeals); 28 C.F.R. § 68.52(g) (providing that the ALJ's order in cases arising under 8 U.S.C. § 1324b becomes the final agency order on the date it is issued); *Wong-Opasi,* 8 OCAHO no. 1051, at 799 ("Section 1324b does not provide for administrative review."); *Banuelos v. Transp. Leasing Co*., 1 OCAHO no. 259, 1682 (1990) (finding that the CAHO lacks jurisdiction over an appeal of an ALJ order in cases arising under 8 U.S.C. § 1324b because such orders are appealable only to the appropriate court of appeals); *cf*. 8 U.S.C. §§ 1324a(e)(7), 1324c(d)(4) (authorizing administrative review of ALJ decisions by the CAHO and possible referral to the Attorney General for review only for cases arising under 8 U.S.C. § 1324a and 8 U.S.C. § 1324c); 28 C.F.R. §§ 68.53, 68.54, 68.55 (same). Thus, the undersigned lacks authority to review the ALJ's decisions at issue in the Complainant's letter.

Accordingly, the Complainant's request for administrative review is DENIED.

James McHenry
Chief Administrative Hearing Officer

[4] OCAHO ALJs appear to be inferior officers for purposes of the Appointments Clause, Article II, Section 2, Clause 2, of the Constitution. *See Guidance on Administrative Law Judges After* Lucia v. SEC *(S.Ct.), July 2018,* 132 Harv. L. Rev. 1120 (2019) (discussing guidance from the Department of Justice's Office of the Solicitor General that after the decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), "all ALJs" should be appointed as inferior officers). Consequently, the undersigned acknowledges some possible tension between that status and the unavailability of further administrative review of ALJ decisions in cases arising under 8 U.S.C. § 1324b in light of a recent Supreme Court decision. *See United States v. Arthrex, Inc*., 141 S. Ct. 1970 (2021) (holding that unreviewable authority by an Administrative Patent Judge is incompatible with that Judge's status as an inferior officer). However, neither party has raised that issue before the ALJ, and even if one party had, it is not clear that the ALJ could have addressed it. *Compare*, *e.g*., *Carr v. Saul*, 141 S. Ct. 1352, 1360 (2021) ("[T]his Court has often observed that agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators' areas of technical expertise."), *and Califano v. Sanders*, 430 U.S. 99, 109 (1977) ("Constitutional questions obviously are unsuited to resolution in administrative hearing procedures"), *with Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 215 (1994) (observing that the rule that agency consideration of constitutional questions is generally beyond the agency's jurisdiction is not "mandatory"), *and Graceba Total Commc'ns, Inc. v. FCC*, 115 F.3d 1038, 1042 (D.C. Cir. 1997) (finding that administrative agencies have "an obligation to address properly presented constitutional claims which . . . do not challenge agency actions mandated by Congress"). In any event, the current posture of this case does not provide a need or a foundation to address the impact of *Arthrex*, if any, at the present time.