

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. 2023A00045
MUNIZ CONCRETE	)	
& CONTRACTING, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Ricardo Cuellar, Esq., for Complainant  
Adrian Ciechanowicz, Esq., and James Hicks, Esq.,<sup>1</sup> for Respondent

ORDER GRANTING PARTIES' AGREED MOTION TO CONTINUE SECOND  
PREHEARING CONFERENCE AND EXTENDING DEADLINE TO FILE  
PREHEARING STATEMENTS

I. PROCEDURAL HISTORY

On February 28, 2023, 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, Muniz Concrete & Contracting, Inc., violated the employer sanctions provisions of the Immigration and Nationality Act, as amended by the Immigration

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<sup>1</sup> Counsel for Respondent, James Hicks, Esq., did not appear at the initial prehearing conference on February 20, 2024, and OCAHO's email to Mr. Hicks before the conference was returned as being undeliverable. If Mr. Hicks no longer represents Respondent, he must file a motion to withdraw that comports with 28 C.F.R. § 68.33(g).

Reform and Control Act of 1986, 8 U.S.C. § 1324a. On April 19, 2023, Respondent, through counsel, filed an answer.

On April 26, 2023, OCAHO invited the parties to participate in its Electronic Filing Pilot Program<sup>2</sup> through which they can electronically file all filings in this case and accept electronic service of case-related documents from OCAHO and the opposing party. On May 16, 2023, OCAHO received a signed Attorney/Participant Registration Form and Certification for Adrian Ciechanowicz, counsel for Respondent.

On January 24, 2024, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference through which it ordered the parties to make their initial disclosures and file prehearing statements by February 14, 2024, and set an initial telephonic prehearing conference for February 20, 2024. Neither party filed its prehearing statement as ordered by the Court.

The Court held the initial prehearing conference on February 20, 2024, pursuant to 28 C.F.R. § 68.13,<sup>3</sup> and issued an order memorializing the conference on February 27, 2024, in accordance with 28 C.F.R. § 68.13(c). DHS Assistant Chief Counsel (ACC) Ricardo Cuellar appeared on behalf of Complainant and Mr. Adrian Ciechanowicz appeared as counsel on behalf of Respondent. Order Memorializing Initial Prehearing Conf. 1. During the conference, the Court granted the parties' oral joint motion to extend the deadline for the filing of prehearing statements by thirty days to allow them to continue their settlement discussions. *Id.* at 2-3. The Court ordered the parties to file their prehearing statements with the Court by March 21, 2024, by the means set forth in 28 C.F.R. part 68 and ordered the parties to email OCAHO courtesy copies of those prehearing statements by 5 p.m. Eastern Standard

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<sup>2</sup> OCAHO's Electronic Filing Pilot Program is described in detail in the Federal Register. *See* 79 Fed. Reg. 31143 (May 30, 2014). Chapter 3.7 of OCAHO's Practice Manual also describes the program. *See* <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-3/7>.

<sup>3</sup> Proceedings in this case will generally be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024). OCAHO's Rules are available on OCAHO's homepage on the United States Department of Justice's website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

Time on March 21, 2024. *Id.* The Court further scheduled another telephonic prehearing conference for March 26, 2024. *Id.*

On March 21, 2024, shortly before the Court’s deadline for the filing of prehearing statements, Respondent’s counsel emailed OCAHO and represented that, given the parties’ continued active engagement in settlement negotiations, they might request a short continuance of the prehearing conference. Respondent’s counsel further represented that DHS Acting Deputy Chief Counsel (Acting DCC) Emily B. Swanson would be representing DHS in this matter, not ACC Cuellar. Respondent’s counsel copied DHS Acting DCC Swanson on his email to OCAHO. OCAHO staff responded to the parties’ email and explained that, given the upcoming prehearing conference, the parties should submit a courtesy copy of any motion by email or facsimile and explained that DHS Acting DCC Swanson should file a notice of appearance and motion to substitute as counsel for Complainant in accordance with 28 C.F.R. § 68.33(f)-(g). OCAHO staff copied ACC Cuellar on communication.

On March 22, 2024, the parties filed a courtesy copy by email and facsimile of an Agreed Motion for Second Continuance of the Prehearing Conference. Through their jointly signed filing, the parties moved the Court to “continue the case again for at least 35 days, or until April 30, 2024, because they need additional time to continue and complete their ongoing settlement negotiations, which have been fruitful.” Agreed Mot. for Second Continuance of Prehr’g Conf. 2. The parties represented that their request was not for delay, “but so that justice may be done.” *Id.*

On March 25, 2024, OCAHO received a signed Registration Form and Certification for OCAHO’s Electronic Filing Pilot Program for DHS Acting Deputy Chief Counsel Emily B. Swanson.

## II. PARTIES’ AGREED MOTION TO CONTINUE SECOND PREHEARING CONFERENCE AND DEADLINE TO FILE PREHEARING STATEMENTS

Pending before the Court is the parties’ Agreed Motion for Second Continuance of the Prehearing Conference through which they jointly move the Court to postpone the prehearing conference scheduled in this matter for at least thirty-five days so that the parties may continue and complete their fruitful settlement negotiations. Given the joint nature of the request, the fact that this is the parties’ second request for additional time, the parties’ representation that their settlement negotiations continue to be fruitful, and the relatively limited amount of time requested to pursue settlement, namely thirty-five days, *see* Agreed Mot. for Second Continuance of the

Prehr's Conf. 1, the Court agrees that this motion is not made for purposes of delay, *see id.* at 2, but rather it is made to allow the parties a reasonable amount of time for continued settlement negotiations. As such, the Court now grants the parties' Agreed Motion for Second Continuance of the Prehearing Conference. The telephonic prehearing conference scheduled for March 26, 2024, at 11 a.m. Eastern Standard Time is therefore canceled.

The Court now reschedules the second telephonic prehearing conference in this case for Wednesday, May 8, 2024, at 11:00 a.m. Eastern Standard Time,<sup>4</sup> during which it will set a case schedule, including dates for the completion of discovery, the filing of dispositive motions and responses, and a hearing date. The Court's staff will provide the parties with the call-in information for the prehearing conference. The parties should refer to the Court's Order for Prehearing Statements and Scheduling Initial Prehearing Conference dated January 24, 2024, to ensure that they are fully prepared for the conference.

Although not addressed in the parties' motion, the Court likewise extends the deadline for the filing of the parties' prehearing statements from March 21, 2024, to 5 p.m. Eastern Standard Time on May 1, 2024, so that the parties may focus on pursuing an agreed resolution of this matter. If this case is not enrolled in OCAHO's Electronic Filing Pilot Program by that date, the parties shall email courtesy copies of their prehearing statements to OCAHO on or before 5 p.m. Eastern Standard Time on May 1, 2024.

Should the parties reach a settlement agreement before the prehearing conference scheduled on May 8, 2024, they shall consult 28 C.F.R. § 68.14 to understand the two avenues for leaving this forum after settlement. If the parties enter into a settlement agreement, 28 C.F.R. § 68.14(a)(2) provides that the parties may jointly file a notice of full settlement and an agreed motion to dismiss. The Court may require the filing of the settlement agreement. The parties should indicate in their filing whether they seek dismissal with or without prejudice.

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<sup>4</sup> If the parties need to reschedule the initial prehearing conference, at least five days in advance of the date set for the prehearing conference, they shall provide the Court with a joint written notice of a minimum of three proposed agreed dates and times in Eastern Standard Time for the rescheduled conference. The Court will confirm the date and time for the rescheduled conference either telephonically or in writing as soon thereafter as practicable.

### III. ELECTRONIC FILING

By letter dated April 26, 2023, the Court invited the parties to participate in OCAHO's Electronic Filing Pilot Program. All parties must consent in writing to participate before the Court will issue an order on electronic filing. *See* 79 Fed. Reg. 31143, 31144 (May 30, 2014) (explaining that “[a] case will not be accepted into the pilot unless both parties consent in writing to participate”).

On May 16, 2023, OCAHO received a signed Attorney/Participant Registration Form and Certification for OCAHO's Electronic Filing Pilot Program for Adrian Ciechanowicz, counsel for Respondent. Complainant's counsel, DHS ACC Cuellar, did not register for the program.

On March 25, 2024, OCAHO received a signed Registration Form and Certification for DHS Acting Deputy Chief Counsel Emily B. Swanson. Although Respondent's counsel represented to OCAHO staff on March 21, 2024, that Acting DCC Swanson, not ACC Cuellar, would be representing Complainant in this matter, Acting DCC Swanson has neither filed a notice of appearance as counsel for Complainant in accordance with 28 C.F.R. § 68.33(f) nor filed a motion to substitute as counsel in accordance with 28 C.F.R. § 68.33(g). Until such time as she does so, the parties will continue to file case documents by the means set forth in 28 C.F.R. part 68 for the duration of the case.<sup>5</sup> *See, e.g., United States v. Space Exploration Techs. Corp.*, 18 OCAHO no. 1499, 8 (2023) (no electronic filing privileges extended where attorney-applicant had not entered an appearance in the case).<sup>6</sup>

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<sup>5</sup> Given the upcoming prehearing conference in this case, OCAHO shall email a copy of this Order to the parties' counsel and include DHS Acting DCC Swanson on the service list as a one-time courtesy.

<sup>6</sup> Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database “FIM-OCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice's website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

IV. ORDERS

IT IS SO ORDERED that the parties' Agreed Motion for Second Continuance of the Prehearing Conference is GRANTED;

IT IS FURTHER ORDERED that the telephonic prehearing conference in this matter scheduled for March 26, 2024, is CANCELED;

IT IS FURTHER ORDERED that the deadline for the parties to file their prehearing statements of position with the Court is EXTENDED from March 21, 2024, until 5 p.m. Eastern Standard Time on May 1, 2024;

IT IS FURTHER ORDERED that a telephonic prehearing conference will be held with Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, Muniz Concrete & Contracting, Inc., on Wednesday, May 8, 2024, at 11 a.m. Eastern Standard Time, to set a case schedule in this matter; and

IT IS FURTHER ORDERED that, should the parties reach a settlement, they shall proceed in accordance with 28 C.F.R. § 68.14.

SO ORDERED.

Dated and entered on March 25, 2024.

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Honorable Carol A. Bell  
Administrative Law Judge