

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

November 14, 2023

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| UNITED STATES OF AMERICA, |) | |
| Complainant, |) | |
| |) | |
| v. |) | 8 U.S.C. § 1324a Proceeding |
| |) | OCAHO Case No. 2023A00073 |
| |) | |
| R&V STEEL ERECTORS SYSTEMS, INC., |) | |
| Respondent. |) | |
| _____ |) | |

Appearances: Ricardo Cuellar, Esq., for Complainant
Jose Noe De Leon, pro se, for Respondent

ORDER ON EX PARTE COMMUNICATION AND ON ELECTRONIC FILING

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On July 3, 2023, Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, R & V Steel Erector Systems, Inc., failed to prepare and/or present Forms I-9 in violation of § 1324a(a)(1)(B).

On October 11, 2023, the Court held a prehearing conference.

On October 26, 2023, Complaint submitted an Email Filing Program registration form.

On November 7, 2023, Respondent sent an email to the Court. Complainant’s counsel was not copied on the email. The email’s salutation was to Complainant’s counsel and the contents may be characterized as relating to settlement. The presiding ALJ was made aware of the general nature of this communication, but has not reviewed the email.

On November 10, 2023, Respondent submitted his Email Filing Program registration form.

II. EX PARTE COMMUNICATIONS

A. Legal Standards

Generally, an ex parte communication is a “communication between counsel or a party and the court when opposing counsel or party is not present.” *Zajradhara v. E-Supply Enter.*, 16 OCAHO no. 1438c, 2 (2023) (citing *Zajradhara v. HDH Co.*, 16 OCAHO no. 1417a, 2 (2022)) (emphasis in original);¹ *see also* 28 C.F.R. § 68.36.² Communications with the Court “are not considered ex parte communications” when they are “for the sole purpose of scheduling hearings, or requesting extensions of time . . . except that all other parties shall be notified of such request by the requesting party and be given an opportunity to respond thereto.” 28 C.F.R. § 68.36(a).

The Administrative Procedure Act requires ex parte communications be disclosed. *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450c, 3 (2023); *Tingling v. City of Richmond*, 13 OCAHO no. 1324b, 2 (2021) (citing 5 U.S.C. § 557(d)(1)(C)). The Court may “provide parties the opportunity to review and comment upon the communication.” *E-Supply*, 16 OCAHO no. 14328c at 3.

B. Discussion

Respondent’s email is an ex parte communication. It did not include opposing counsel and it was not sent for the sole purpose of scheduling a hearing or requesting an extension of time. *See* 28 C.F.R. § 68.36(a). Based on the description of the email content and the salutation to Complainant (and not to the Court), it is reasonable to conclude this communication was sent to the Court in error.

A copy of the email will be attached to this Order when it is served on the parties to ensure compliance with the Administrative Procedures Act. No response from Complainant is required. Respondent is encouraged to carefully review OCAHO’s procedures.³

¹ 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 subsequent to Volume 8, where the decision has not yet 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,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

³ The OCAHO Practice Manual can be found at: <https://www.justice.gov/eoir/reference-materials/ocaho>.

III. ELECTRONIC FILING

The Court received the parties' electronic filing pilot program registration forms. The parties are now permitted to use the Court's voluntary electronic filing program.

The Court will encrypt any decisions or orders sent electronically that contain personally identifiable information, such as names, email addresses, home addresses, and telephone numbers. OCAHO has instructed the parties how to access these encrypted files.

The parties shall electronically file all filings in accordance with the program instructions provided to them, unless otherwise permitted by the Court or its designee.

IV. CONCLUSION

The Respondent's correspondence sent to the Court is rejected and shall be disclosed to Complainant. Parties are approved to e-file.

SO ORDERED.

Dated and entered on November 14, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge