

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

November 13, 2023

JOSEPH J. FERRERO,	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2024B00014
	)	
DATABRICKS,	)	
Respondent.	)	

NOTICE OF CASE ASSIGNMENT FOR COMPLAINT  
ALLEGING UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

1. A complaint was filed on November 7, 2023, against Databricks (Respondent) by Joseph J. Ferrero (Complainant). A copy of the complaint is attached to this Notice.<sup>1</sup> This case is assigned to the Honorable Andrea Carroll-Tipton, Administrative Law Judge (ALJ).

2. Proceedings in this matter will be conducted according to the OCAHO rules appearing at 28 C.F.R. pt. 68 and the applicable case law.<sup>2</sup> It is imperative that you obtain a copy of the rules immediately and comply with their requirements in this case. A Portable Document Format (PDF)

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<sup>1</sup> This Notice of Case Assignment (NOCA) serves as the “Notice of Hearing” referenced in the Office of the Chief Administrative Hearing Officer’s (OCAHO) rules. 28 C.F.R. § 68.3. OCAHO does not typically publish a NOCA. *United States v. Liberty Constructors, LLC*, 18 OCAHO no. 1495, 1 n.1 (2023). “However, OCAHO will publish a NOCA when it contains an update to the standard information provided in order to enhance transparency and better inform stakeholders with an interest in OCAHO proceedings.” *Id.* In the instant case, OCAHO is publishing the NOCA in order to clarify the timing of the initiation of discovery in OCAHO proceedings.

<sup>2</sup> Published OCAHO decisions may be accessed on the Executive Office for Immigration Review’s (EOIR) website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>, or in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO.” Hard copy volumes of OCAHO decisions up to and including volume 8 may be located at federal depository libraries nationwide, which may be located at <http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp>. All volumes after 8 are only available online.

copy (32 pages) is available on the OCAHO webpage at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>. If you are unable to access the webpage or print a copy, you may call our office at 703-305-0864 and request that a copy be mailed to you at no charge.

Attorneys and unrepresented parties are advised to read the relevant rules in their entirety prior to filing documents. Attorneys are advised that the OCAHO rules sometimes differ from the Federal Rules of Civil Procedure.

Additionally, attorneys and unrepresented parties are encouraged to review and consult OCAHO's Practice Manual. OCAHO's Practice Manual is available at the following link, and provides an outline of the procedures and rules applicable to OCAHO cases: <https://www.justice.gov/eoir/reference-materials/ocaho>.

All representatives and parties are also required to maintain a current address with OCAHO and to timely file a notice of a change of address with the presiding ALJ (or with the Chief Administrative Hearing Officer (CAHO) if the case either has not yet been assigned to an ALJ or is under administrative review by the CAHO) and must also serve such notice on the opposing party. *See United States v. Cordin Co.*, 10 OCAHO no. 1162, 4 (2012) ("It is the Respondent's responsibility (indeed, the responsibility of all parties before OCAHO) to file a notice of change of address or other contact information directly with the ALJ, as well as serving that notice on the opposing party."); *cf.* 28 C.F.R. § 68.6(a) ("Except as required by § 68.54(c) and [§ 68.6(c)],

service of any document upon any party may be made . . . by mailing a copy to the last known address.”).

3. OCAHO does not have authority to appoint counsel. 28 C.F.R. § 68.34. Unrepresented parties are encouraged to seek and obtain representation and, if appropriate, to avail themselves of available pro bono resources. Private parties may be represented by an attorney who is a member in good standing of the bar of the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States. 28 C.F.R. § 68.33(c)(1). Attorneys must file a Notice of Appearance as required by 28 C.F.R. § 68.33(f). In limited circumstances subject to the requirements of 28 C.F.R. § 68.33(c)(2), private parties may be represented by law students. Private parties may also be represented by certain non-attorney representatives in appropriate circumstances, in accordance with the requirements in 28 C.F.R. § 68.33(c)(3). Non-attorney representatives who wish to appear before the ALJ on behalf of a party must seek approval from the ALJ pursuant to 28 C.F.R. § 68.33(c)(3). Private parties may also represent themselves and should file a Notice of Appearance in accordance with 28 C.F.R. § 68.33(f) if they do so.

4. The Respondent has the right to file an answer to the complaint. The answer (and two copies) must be filed within thirty (30) days after receipt of the attached complaint. 28 C.F.R. §§ 68.3(b), 68.9. The filing date is the date on which OCAHO receives the filing. 28 C.F.R. § 68.8(b). If the Respondent fails to file an answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the complaint, and the ALJ may enter a judgment by default along with any and all appropriate relief. 28 C.F.R. § 68.9(b).

5. All documents filed by either party, including letters, must be filed and served as follows: (i) File one original signed document and two copies, **including** attachments, with the ALJ, and serve one copy on each person on the attached Service List. 28 C.F.R. § 68.6(a);

(ii) Effort should be made to avoid filing by facsimile. Filing by facsimile is permitted only to toll a deadline. 28 C.F.R. § 68.6(c). Exhibits and attachments are never to be filed by facsimile; and

(iii) Include a certificate of service indicating the recipient(s), manner and date of service with every filing. 28 C.F.R. § 68.6(a). A document that does not have a certificate of service will be returned to the party filing it.

6. In general, in a civil action in federal court, a non-federal-government defendant must serve an answer within 21 days after being served with a summons and complaint. Fed. R. Civ. P. 12(a)(1)(A)(i). However, a defendant seeking to dismiss the action on one of seven, common grounds—*e.g.*, lack of personal or subject-matter jurisdiction, improper venue, insufficient process or service of process, or failure to state a claim on which relief may be granted, Fed. R. Civ. P. 12(b)(1)-(7)—must file a motion to dismiss before filing an answer, *see* Fed. R. Civ. P. 12(b) (“A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed.”). The filing of a motion to dismiss based on one of those grounds alters the deadline for filing an answer until 14 days after the court has either denied the motion or postponed its disposition. Fed. R. Civ. P. 12(a)(4)(A). Further, such motions should generally be resolved *before*

discovery begins. *See, e.g., Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367-68 (11th Cir. 1997) (“Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should, however, be resolved before discovery begins. Such a dispute always presents a purely legal question . . . . Therefore, neither the parties nor the court have any need for discovery before the court rules on the motion. . . . If the district court dismisses a nonmeritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided. Conversely, delaying ruling on a motion to dismiss such a claim until after the parties complete discovery encourages abusive discovery and, if the court ultimately dismisses the claim, imposes unnecessary costs. For these reasons, any legally unsupported claim that would unduly enlarge the scope of discovery should be eliminated before the discovery stage, if possible.” (footnotes and citations omitted)). Combined, these rules create a framework for civil actions in federal court in which discovery does not usually begin until after an answer is filed.

OCAHO procedures generally track those of federal civil proceedings, but they are not identical in all respects. *See, e.g., United States v. Liberty Constructors, LLC*, 18 OCAHO no. 1495, 2 (2023) (advising attorneys that “OCAHO rules sometimes differ from the Federal Rules of Civil Procedure”); *cf.* 28 C.F.R. § 68.1 (noting that “[t]he Federal Rules of Civil Procedure may be used as a general guideline [in OCAHO proceedings] in any situation *not* provided for or controlled by [OCAHO’s own] rules [or other applicable law]” (emphasis added)). For instance, OCAHO’s rules differ from the Federal Rules regarding the impact of the filing of a motion to

dismiss on the deadline for filing an answer to a complaint. *Compare* 28 C.F.R. § 68.10(a) (“The filing of a motion to dismiss does not affect the time period for filing an answer.”) *with* Fed. R. Civ. P. 12(a)(4)(A) (noting that the filing of a motion to dismiss alters the deadline for filing an answer until 14 days after the court has either denied the motion or postponed its disposition). Nevertheless, despite any particular differences from the Federal Rules, OCAHO otherwise follows the general principle from federal civil actions that discovery should not be initiated until after an answer has been filed. *See Liberty Constructors, LLC*, 18 OCAHO no. 1495, at 4 (“Either party may initiate discovery at any time after the answer has been filed.”); *see also Frequently Asked Questions*, OFF. OF THE CHIEF ADMIN. HEARING OFFICER, <https://www.justice.gov/sites/default/files/pages/attachments/2017/01/24/faqs.pdf> (last visited November 13, 2023) (“Q: When may I begin discovery in my case? You may begin discovery any time after the answer to the complaint is filed.”)<sup>3</sup>. Further, in practice, once an answer has been filed, an ALJ will generally call for prehearing statements from the parties, *see* 28 C.F.R. 68.12, and hold a prehearing conference, *see* 28 C.F.R. § 68.13, at which time the ALJ will set a discovery schedule.

Taken together, these rules and procedures have been synthesized into a longstanding and typical practice in OCAHO cases that the parties generally do not initiate discovery until the presiding ALJ has set a discovery schedule or otherwise authorized the start of discovery.

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<sup>3</sup> Now that OCAHO is clarifying when discovery should generally begin, it will also amend its Frequently Asked Questions to reflect that clarification.

Nevertheless, because leave from the presiding ALJ is not required to begin discovery, *see Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no 1432, 2 n.1 (2022) (noting that a party need not seek leave of an ALJ to begin discovery once an answer has been filed), and because there is some lag between when an answer is filed and when an ALJ sets a discovery schedule, there may be some confusion as to when precisely discovery should be initiated. To dispel that confusion, and pursuant to OCAHO's "broad authority to control discovery," *United States v. Chancery Staffing Sols.*, 13 OCAHO no. 1326a, 3 (2019), OCAHO now clarifies that generally parties should not initiate discovery until the presiding ALJ has set a discovery schedule or otherwise authorized the start of discovery.

Notwithstanding this general rule, however, OCAHO recognizes there may be situations in which earlier, limited discovery may be necessary—*e.g.*, to avoid the possible unintentional spoliation of evidence or to resolve a motion to dismiss that turns on a factual finding, such as one related to jurisdiction, *see, e.g., Chudasama*, 123 F.3d at 1367 ("Resolution of a pretrial motion that turns on findings of fact—for example, a motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2)—may require some limited discovery before a meaningful ruling can be made."). In such circumstances, or in any other circumstance in which a party believes it is necessary to begin discovery before the presiding ALJ has set a discovery schedule, the party may seek leave to initiate discovery through the filing of a motion with the presiding ALJ (or with the CAHO if the case has not yet been assigned to an ALJ). *See* 28 C.F.R. § 68.11(a). Accordingly, in the instant case, the parties should not initiate discovery until the presiding ALJ

has set a discovery schedule or otherwise authorized the start of discovery. Should either party believe it is necessary to begin discovery prior to that time, it may seek leave from the presiding ALJ to do so through the filing of a motion.

7. OCAHO operates a Settlement Officer Program, which is a voluntary program through which the parties can use a settlement officer to mediate settlement negotiations as a means of alternative dispute resolution. The settlement officer may convene and oversee settlement conferences and negotiations, may confer with the parties jointly and/or individually, and will seek voluntary resolution of issues. The parties may request that the presiding ALJ refer the case to a settlement officer at any time while proceedings are pending, up to thirty days before the date scheduled for a hearing in the matter. More information about the Settlement Officer Program can be found in the OCAHO Practice Manual: <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>.

8. Should the ALJ determine that a hearing is required, the Respondent would have the right to appear in person and give testimony at the place and time fixed for the hearing. 28 C.F.R. § 68.39. The hearing will be held at the nearest practicable place to where the Respondent resides or the alleged violation occurred. 28 C.F.R. § 68.5(b).



9. All parties in OCAHO proceedings are expected to act with integrity and in an ethical manner and shall conform their conduct to the Standards of Conduct. 28 C.F.R. § 68.35.

Notice Given By:

James McHenry  
Chief Administrative Hearing Officer  
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Attachments