

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. 2023A00070   |
| FRESCO PRODUCE, INC.,     | ) |                             |
|                           | ) |                             |
| Respondent.               | ) |                             |
| _____                     | ) |                             |

Appearances: Ariel Chino, Esq., for Complainant  
Robert H. Crane, Esq., for Respondent

ORDER EXTENDING REFERRAL TO THE OCAHO SETTLEMENT  
OFFICER PROGRAM

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 23, 2023, alleging that Respondent, Fresco Produce, Inc., violated the employer sanctions provisions of 8 U.S.C. § 1324a. Respondent, through counsel, filed an answer on July 28, 2023.

On January 25, 2024, the Court issued an Order Requiring Filing of Notice of Intent to Fine and Prehearing Statements and Scheduling Initial Prehearing Conference. Through this Order, the Court ordered the parties to make their initial disclosures and to file prehearing statements of position with the Court by February 15, 2024, and scheduled an initial prehearing conference for February 21, 2024. Order Requiring Filing Notice Intent Fine & Prehr’g Statements & Scheduling Initial Prehr’g Conf. 2, 7-9. Neither party filed its prehearing statement of position.

On February 20, 2024, the parties filed a Joint Motion for and Consent to Referral to Settlement Officer Program. The parties requested that the Court refer this matter to the OCAHO Settlement Officer Program<sup>1</sup> and “expressly consent[ed] to participation in the Settlement Officer Program and agree[d] to engage in settlement negotiations in good faith.” Joint Mot. Consent Referral Settlement Officer Program 1.

The Court held the initial telephonic prehearing conference as scheduled on February 21, 2024. During the prehearing conference, counsel for both parties reaffirmed their interest in a referral to the OCAHO Settlement Officer Program and consented to abide by the program’s rules. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530, 3-4 (2024).<sup>2</sup> The Court granted the parties’ Joint Motion for and Consent to Referral to Settlement Officer Program, finding that the case was appropriate for an initial referral of sixty days with the parties’ consent. *Id.* at 5.

On March 7, 2024, the Court issued an Order Referring Case to OCAHO Settlement Officer Program and Designating Settlement Officer. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530a (2024). The Court referred this matter to a Settlement Officer for an initial period of sixty days beginning on March 18, 2023, and continuing through May 17, 2024. *Id.* at 4. The Court appointed Administrative Law Judge John A. Henderson as the Settlement Officer. *Id.* The

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<sup>1</sup> EOIR Policy Memorandum 20-16 sets forth the OCAHO Settlement Officer Program and is available at <https://www.justice.gov/eoir/page/file/1300746/download>. *See also* Chapter 4.7 of the OCAHO Practice Manual available at <https://www.justice.gov/eoir-policy-manual/iv/4/7>.

<sup>2</sup> 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 after Volume 8, 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 “FIMOCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Court noted that no procedural deadlines needed to be stayed in this matter during the referral period. *Id.*

On March 8, 2024, the Court enrolled this case in OCAHO’s Electronic Filing Pilot Program through the issuance of an Order on Electronic Filing.<sup>3</sup>

On March 18, 2024, in response to the filing of Respondent’s Motion to Stay Proceedings Before OCAHO Pending Supreme Court Decision in SEC vs. Jarkesy (Motion to Stay), the Court issued an Order Staying Response Deadline for Respondent’s Motion to Stay Proceedings. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530b (2024). Through the Order, the Court stayed the regulatory deadline for the filing of Complainant’s response to Respondent’s Motion to Stay for the pendency of the case’s referral to the OCAHO Settlement Officer Program. *Id.* at 6. The Court explained that it would set a briefing schedule on Respondent’s Motion to Stay, including a filing deadline for Complainant’s response, after the referral concluded. *Id.*

On May 12, 2024, Respondent filed a Motion to Dismiss Complaint. On May 14, 2024, Complainant filed its Opposition to Motion to Dismiss.

On May 16, 2025, Judge Henderson, acting in his capacity as the assigned Settlement Officer, requested a thirty-day extension of time of this case’s referral to the OCAHO Settlement Officer Program. Judge Henderson explained that he was seeking the extension of time at the parties’ request and indicated that the parties are working diligently toward a settlement.

## II. RULES GOVERNING THE OCAHO SETTLEMENT OFFICER PROGRAM

OCAHO announced its Settlement Officer Program in August 2020 through Policy Memorandum 20-16.<sup>4</sup> Section II.D.2 of the Policy Memorandum for the OCAHO Settlement Officer Program states that, “with the consent of the parties,

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<sup>3</sup> OCAHO’s Electronic Filing Pilot Program is described in detail in the Federal Register. *See* 79 Fed. Reg. 31143 (May 30, 2014).

<sup>4</sup> *Available at* <https://www.justice.gov/eoir/page/file/1300746/download>.

the settlement officer may, in his or her discretion, seek to extend the time period for negotiations for a reasonable amount of time, not to exceed an additional thirty (30) days.” Policy Memorandum 20-16, Section II.D.2. (August 3, 2020). It specifies that the Settlement Officer shall seek approval of the extension of time from the presiding Administrative Law Judge (ALJ), and provides that, “[i]f an extension of the negotiation period is appropriate, the presiding ALJ shall issue an order extending the period of settlement negotiations and specifying whether and to what extent the procedural deadlines in the case continue to be stayed.” *Id.*

### III. DISCUSSION

The assigned Settlement Officer, Judge Henderson, has requested a thirty-day extension of the OCAHO Settlement Officer Program referral period in this matter so that the parties may continue their settlement discussions. The Court finds that the requested extension of the referral period for mediation is reasonable and appropriate given the Settlement Officer’s representations that the parties consent to the extension request and continue to work diligently to settle this matter through the Settlement Officer Program. *See, e.g., United States v. DNT Constr., LLC*, 19 OCAHO no. 1529a, 3 (2024). Accordingly, the case’s referral to the OCAHO Settlement Officer Program for mediation is extended through June 17, 2024. During the extension of the referral period, the deadline for Complainant’s response to Respondent’s Motion to Stay remains stayed as ordered on March 18, 2024. *See Fresco Produce, Inc.*, 19 OCAHO no. 1530b, at 6. Respondent’s Motion to Dismiss Complaint is held in abeyance pending the end of the referral period, and the Court will order further briefing if needed.

As the Court explained in the Order Referring Case to OCAHO Settlement Officer Program and Designating Settlement Officer, should the parties reach a settlement agreement, they should seek dismissal of this matter by the means afforded them in 28 C.F.R. § 68.14.<sup>5</sup> *Fresco Produce, Inc.*, 19 OCAHO no. 1530a, at 4. The parties may jointly file a notice of settlement and an agreed motion to dismiss the case under 28 C.F.R. § 68.14(a)(2). If the parties pursue this option, the Court may require that the parties file a copy of their settlement agreement. The parties should indicate in any such filing whether they are requesting dismissal with or without prejudice.

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<sup>5</sup> OCAHO Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (2024), are available at <https://www.govinfo.gov/content/pkg/CFR-2023-title28-vol2/pdf/CFR-2023-title28-vol2-part68.pdf>.

If the parties do not reach a settlement agreement during the OCAHO Settlement Officer Program referral period, the assigned Settlement Officer will refer this matter back to the undersigned for further proceedings. At that time, the Court may request status reports from the parties and will set a briefing schedule on Respondent's Motion to Stay and other deadlines necessary for the case.

#### IV. ORDERS

IT IS SO ORDERED that the Settlement Officer's request for an extension of time is GRANTED, and this case's referral to the OCAHO Settlement Officer Program for settlement negotiations is extended through June 17, 2024; 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 May 20, 2024.

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Honorable Carol A. Bell  
Administrative Law Judge

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ERRATUM TO ORDER EXTENDING REFERRAL TO THE OCAHO  
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The date in the last paragraph of the Procedural History section of the May 20, 2024, Order Extending Referral to the OCAHO Settlement Officer Program is corrected to read “May 16, 2024,” rather than “May 16, 2025.”

SO ORDERED.

Dated and entered on May 31, 2024.

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Honorable Carol A. Bell  
Administrative Law Judge