

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

July 20, 2023

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2020A00050
)	
EDGEMONT GROUP, LLC,)	
Respondent.)	
_____)	

Appearances: Jason Stanley, Esq. for Complainant¹
Robert Gibbs, Esq., and Adam Boyd, Esq., for Respondent

ORDER FOR BRIEFING ON REMAND

This case is before this Administrative Law Judge (ALJ) on remand from the Chief Administrative Hearing Officer (CAHO). On June 15, 2023, the CAHO vacated the May 18, 2023, Final Order on Penalties and remanded the case for further proceedings. *See United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1470b, 1 (2023).²

¹ Jason Stanley filed a Notice of Entry of Appearance, explaining that the two previous attorneys who sought to appear for Complainant, Daniel Burkhart (who filed the complaint in February 2020) and Ryan Kahler (who filed an entry of appearance in June 2023) have left their employment with the U.S. Immigration and Customs Enforcement.

The Court GRANTS Mr. Stanley’s substitution for Mr. Burkhart and Mr. Kahler, to the extent Mr. Kahler appeared on Complainant’s behalf. *See United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1450b, 1 n.1 (2023). Mr. Stanley is now the sole attorney of record for Complainant in this matter.

² 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

I. BACKGROUND

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On February 14, 2020, the Government filed a complaint with this office, alleging that Edgemont Group, LLC failed to timely prepare and/or present Forms I-9 for forty-six individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B). On December 22, 2022, this Court issued an Order on Summary Decision – Liability, *see United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1470, 1 (2022), and on May 18, 2023, an Order on Penalties imposing a total penalty of \$55,024.

On May 22, 2023, the CAHO issued a Notification of Administrative Review, and subsequently issued an order titled Order by the Chief Administrative Hearing Officer Vacating the Chief Administrative Law Judge’s Final Order on Penalties and Remanding for Further Proceedings. *Edgemont Grp., LLC*, 17 OCAHO no. 1470b, at 1–12. In his review, the CAHO found an error in the calculation of the penalty range, precluding an affirmance. *Id.* at 5. In considering the remedy, however, the CAHO determined that the interpretation of which date to use in calculating the penalty range widely used by OCAHO’s ALJs is not “necessarily the best interpretation of the date of assessment contemplated by 28 C.F.R. § 85.5.” *Id.* at 6. Due to the time constraints for reviewing ALJ decisions, Complainant’s limited briefing, the lack of briefing from Respondent, and the novelty and complexity of the issue, the CAHO remanded the case for further development rather than resolving the issue on review. *Id.* at 11–12.

II. THE QUESTION ON REMAND

The question on remand is: When an employer is liable for 8 U.S.C. § 1324a violations that occurred after November 2, 2015, what date of assessment should be used to calculate the inflation-adjusted penalty ranges? See 28 C.F.R. § 85.5; 28 C.F.R. § 68.52(c)(8); 28 C.F.R. § 85.1.

The appropriate range of civil penalties depends on both the date of the violations and the date when the penalties are assessed. See 28 C.F.R. §§ 68.52(c); 28 C.F.R. § 85.1; *Edgemont Grp., LLC*, 17 OCAHO no. 1450b. When the violations occurred after November 2, 2015, and the penalties for those violations are assessed after August 1, 2016, the inflation-adjusted penalty ranges set forth in 28 C.F.R. § 85.5 apply. § 68.52(c)(8); § 85.1. However, the relevant regulations in 28 C.F.R. pt. 85 do not define the term “assessed,” nor do they provide any other guidance as to how to determine the date of assessment.

Beginning with *United States v. Farias Enters. LLC*, 13 OCAHO no. 1338, 7 (2020), OCAHO ALJs have interpreted the date of assessment to be the date when the Department of Homeland Security serves the Notice of Intent to Fine (NIF) on a respondent. *E.g.*, *United States v. Cityproof Corp.*, 15 OCAHO no. 1392a, 7 (2022); *United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 9 (2021); *United States v. Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355a, 8 (2020); *United States v. Visiontron Corp.*, 13 OCAHO no. 1348, 9 (2020). In his order, however, the

database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

CAHO analyzed in some detail whether a more appropriate date would be the date of OCAHO's final decision, be it the ALJ's or the CAHO's decision. *Edgemont Grp., LLC*, 17 OCAHO no. 1470b, at 4–12. The CAHO stated that he was not making an ultimate conclusion and would welcome further elaboration as to which date is appropriate, to include whether there is another date beyond the NIF date or the OCAHO final decision date. *Id.*

III. BRIEFING

It does not appear that the remand calls for any further development of the factual record, nor any proceedings beyond further consideration of the legal issue. Therefore, the appropriate course of action is to solicit further briefing, particularly in light of the discussion of the issue in the CAHO's order. To that end, this office issued an amicus invitation on Thursday, July 13, 2023. <https://www.justice.gov/eoir/page/file/159038/download>. Briefing is due August 10, 2023.

The parties may submit briefs as well, and OCAHO will provide the parties with the amicus briefs upon receipt, allowing for the parties to respond to any amicus briefs submitted. Should the parties wish to provide briefing on remand, submissions shall follow this schedule:

Briefs from the parties will be due August 24, 2023.

Responses will be due September 6, 2023.

SO ORDERED.

Dated and entered on July 20, 2023.

Honorable Jean C. King
Chief Administrative Law Judge