



**BILLING CODE: 4410-30**

**DEPARTMENT OF JUSTICE**

**Executive Office for Immigration Review**

**Docket No. EOIR 182**

**Office of the Chief Administrative Hearing Officer Electronic Filing Pilot Program**

**AGENCY:** Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, Department of Justice.

**ACTION:** Public notice.

**SUMMARY:** The Office of the Chief Administrative Hearing Officer (OCAHO), Executive Office for Immigration Review (EOIR), is creating a voluntary pilot program to test an electronic filing system in certain cases filed with OCAHO under 8 U.S.C. 1324a and 1324b. This notice describes the procedures for participation in the pilot program.

**DATES:** The pilot program will be in effect from [INSERT DATE OF PUBLICATION OF NOTICE] until [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF NOTICE]. Parties who enroll in the pilot program with respect to a particular case within these dates will be permitted to continue utilizing electronic filing throughout the pendency of that case.

**FOR FURTHER INFORMATION CONTACT:** Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 20530, telephone (703) 305-0470 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Office of the Chief Administrative Hearing Officer (OCAHO), Executive Office for Immigration Review (EOIR), Department of Justice (Department), is establishing a pilot

program that would allow parties in cases before OCAHO's Administrative Law Judge (ALJ) and Chief Administrative Hearing Officer (CAHO) to file case-related documents by email. Currently, parties before OCAHO submit paper filings to OCAHO, and simultaneously serve a physical copy of each document on other parties to the case. Under this pilot program, both filing with OCAHO and service on other parties could be accomplished by email in eligible cases. OCAHO is undertaking this initiative to attempt to make submission of case documents more convenient for parties and to reduce the time and expense presently incurred with paper filings.

On April 1, 2013, EOIR published a final rule in the Federal Register establishing a mandatory electronic registry (eRegistry) for all attorneys and accredited representatives who practice before EOIR's immigration courts and the Board of Immigration Appeals (Board). *See* 78 FR 19400. eRegistry is part of a long-term agency plan to create an electronic case access and filing system for the immigration courts and the Board, pursuant to the Government Paperwork Elimination Act (GPEA), Pub. L. No. 105-277, 112 Stat. 2681-750 (1998).

OCAHO is not currently participating in eRegistry, for a number of reasons. First, OCAHO's cases are filed and tracked in different databases than and differ in both substance and procedure from those handled by the immigration courts and the Board. Second, while many attorneys and accredited representatives appear repeatedly before the immigration courts and the Board in different cases, OCAHO does not encounter as many repeat representatives in its cases. Additionally, many parties in OCAHO cases appear *pro se* or are represented by non-attorneys (for example, business managers or human resources specialists) for only a single case. Therefore, OCAHO does not believe that a formal registry is necessary or useful for its cases at this time.

However, in order to align OCAHO procedures with the rest of the agency as it moves toward a system for electronic filing in cases before the immigration courts and the Board, OCAHO is instituting this temporary, limited, and voluntary electronic filing pilot program. Implementation of this pilot program on a small scale will allow OCAHO to test and evaluate operating an electronic filing system. At the conclusion of the pilot program, OCAHO will assess its experience and determine the best course of action for the development of a more comprehensive and permanent electronic filing system. OCAHO also welcomes input from the public in this regard.

This notice describes the basic procedures for applying for and participating in the pilot program. As detailed herein, OCAHO also intends to send more detailed instructions for participation directly to the parties in eligible cases.

## **II. Eligibility to Participate**

An opportunity to participate in the pilot program will be offered in all OCAHO cases filed within 180 days of the effective date of this notice. Enrollment in the pilot program will be limited to those cases in which both parties: (1) elect to participate and (2) certify that they and/or their representative(s) have access to the technology necessary to comply with the procedures for electronic filing and that access to the parties' email will be provided only to authorized individuals. This technology includes access to a scanner that can create documents in portable document format (PDF), up-to-date software for creating and reading PDF documents, and an email account that can send and receive email attachments up to ten (10) megabytes in size. While all new OCAHO cases will be eligible for the pilot, OCAHO may limit the total number of cases that will be accepted into the pilot program once it commences, as circumstances require.

### **III. Procedures for Participation**

OCAHO cases commence with the filing of a complaint, by Immigration and Customs Enforcement (ICE) in cases brought under 8 U.S.C. 1324a and 8 U.S.C. 1324c, or by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), or the charging or injured party in cases brought under 8 U.S.C. 1324b. OCAHO subsequently issues a Notice of Case Assignment to both parties, assigning the case to an OCAHO ALJ and giving the respondent the opportunity to file an answer. After the respondent files an answer, the ALJ issues an order for prehearing statements, setting a schedule for discovery and dispositive motions. Under this pilot program, once OCAHO receives the respondent's answer, OCAHO will invite parties to participate in the pilot by mailing to both parties instructions outlining the procedures for the pilot and the certification form the parties must complete and sign in order to participate in the pilot program.

In order to enroll in the pilot, each party must submit the signed certification form in hard copy to OCAHO and serve a copy of the certification on the opposing party. The certification must: identify the email address the party will use for all case-related communications and submissions; certify that only authorized individuals will have access to that email address; attest that the party has access to the necessary technology; and consent to abide by the specific procedures for filing and service outlined in the e-filing instructions that will be sent to each party. If both parties to a case agree to participate in the pilot and meet the certification requirements, they will be notified by mail and email that their case has been accepted into the pilot program. Thereafter, all case documents shall be filed with OCAHO and served on the opposing party in the case by email. All documents submitted under this pilot that require a signature under 28 CFR 68.7, including motions, briefs, and other pleadings, must include a

handwritten, scanned signature. All files submitted by email must be in PDF.

For cases enrolled in the pilot program, all decisions and orders issued by the ALJ (or, in cases of administrative review, the CAHO) will be signed, scanned, and emailed to both parties in the case.

The pilot will be entirely voluntary. A case will not be accepted into the pilot unless both parties consent in writing to participate. Once accepted, the parties will be responsible for all activity and communications from their designated email account. Parties who elect not to participate in the pilot will continue to file and receive case documents as set forth in 28 CFR part 68.

#### **IV. Additional Information**

The pilot program will be effective for 180 days after the date of this notice. Parties who properly enroll in the pilot program during this 180-day period will be allowed to continue filing by email throughout the duration of their case before OCAHO, even if the case remains pending beyond the 180-day pilot period. OCAHO will continue to accept paper submissions in accordance with the procedures at 28 CFR part 68 in all cases not enrolled in the pilot program.

Parties and their representatives will be responsible for all activity and communications with OCAHO conducted from the party's or representative's designated email account. Parties and their representatives must take necessary steps to ensure that only authorized individuals have access to the party's or representative's designated email account and all official case

documents sent and received through that email account, as those documents may contain sensitive or protected privacy information.

May 15, 2014  
Date:

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Juan P. Osuna  
Director

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