

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
COVINGTON DISTRICT

Issue Date: 06 April 2026

ABDULJABAR JBUR,

CASE NO.: 2024-LDA-02957

VERSUS

CSMI TECHNOLOGY SERVS. AND  
CONTINENTAL INS. CO.

OWCP NO.: LS- 02502867

VERSUS

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS

JUDGE DAN C. PANAGIOTIS

**PROCEDURAL ORDER**

This matter is filed pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S. Code, Chapter 18, (the Act), as extended by the Defense Base Act (DBA), as amended, U.S. Code, Title 42, Chapter 11, and is governed by the implementing regulations found at Code of Federal Regulations, Title 20, Chapter VI, Subchapter A, Part 704 and Part 702. Claimant is a foreign citizen living outside the territory of the United States.

Pursuant to the Court's Notice of District Office Assignment, Scheduling Order, and Order Implementing Prehearing Process (Scheduling Order) issued on December 5, 2025, the party proposing the testimony of a foreign witness "*shall address witness interpretation and certify compliance with the applicable Administrative Notice pertaining to the administration of oaths and development of evidence in and from a foreign country.*"<sup>1</sup> The referenced Administrative Notice was notated in a footnote as "*In re: Cases Involving Foreign Parties, Witnesses, and/or Evidence*, OALJ No. 2021-MIS-00006 (Oct. 5, 2021) (Henley, J.)."<sup>2</sup>

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<sup>1</sup> Scheduling Order at 5-6, Sec. E(2)(j). This was part of the contents of a required Joint Pre-Hearing Statement (JPS).

<sup>2</sup> The Order advised that the JPS "may be rejected" as deficient if it did not "properly identify live witnesses and address witness *interpretation and certify compliance with the applicable Administrative Notice.*" The referenced Administrative Notice is the same as noted in the text above

A Joint Pre-Hearing Statement was filed by the parties on November 13, 2025. This matter was assigned to the undersigned on March 13, 2026.

Section J of the JPS submitted by the parties pertains to Hearing Witnesses. The parties dutifully copied the language of Scheduling Order Sec. E(2)(j) pertaining to foreign witnesses, noted Judge Henley's Administrative Notice in a footnote, and in requesting a video hearing, stated the following:

**Claimant intends to call the following witnesses for live testimony:**

- Abduljabbar Neamah Jebur, Claimant  
Baghdad, Iraq  
c/o Hafemann, Magee & Thomas, LLC  
1000 Towne Center Blvd., Suite 804  
Pooler, GA 31322

Witness interpretation: Claimant will provide an Iraqi-Arabic interpreter to translate at the hearing.

Oath administration: Claimant's counsel respectfully proposes that Your Honor administer Claimant's oath at the formal hearing. Based upon Claimant's counsel's research, such procedure will comply with all applicable laws and regulations governing witness testimony from a location outside the territorial jurisdiction of the United States.

Claimant's Foreign Evidence Certification: Claimant's counsel hereby certify that, to the best of their knowledge, the parties have complied with all applicable laws and regulations governing the introduction of witness testimony and documentary evidence from a location outside the territorial jurisdiction of the United States<sup>3</sup>

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and is referenced as "Administrative Notice" herein.

<sup>3</sup> JPS at 5. Counsel for Claimant has submitted substantially the same "certification" in four other matters before this Court: *Al-Musaedi v. Serv. Emps Intl. Inc.*, OALJ Case No. 2024-LDA-04016; *Janabi v. Serv. Emps Intl. Inc.*, OALJ Case No. 2024-LDA-05358; *Al-Sallami v. Kellogg Brown & Root Servs.*, OALJ Case No. 2024-LDA-07152; and *Hussein v. Acquity Intl./Sallyport Global Holdings*, 2023-LDA-06298 (each JPS in these cases contained additional language which will be treated *infra*). Counsel has also taken substantially the same legal positions in other cases before this Tribunal. See *Herbi v. Global Linguist Solutions*, OALJ Case No. 2024-LDA-05186; *Ibrahim v. Janus Glob. Operations*, OALJ Case No. 2024-LDA-03567; *Fallah v. KBR Govt. Ops.*, OALJ Case No. 2023-LDA-05751; *Al Dulami v. SOS Int'l*, OALJ Case No. 2024-LDA-04212; *Manahi v. KBR/SEII*, OALJ Case No. 2023-LDA-04602; *Swayid v. ABM Security Svcs., Inc.*, OALJ Case No. 2024-LDA-02378; *Hussain v. EOD Tech., Inc.*, OALJ Case No. 2024-LDA-03723; *Venter v. DynCorp., Int'l*, OALJ Case No. 2024-LDA-00878. In reviewing the public records of those cases it appears to this Court (and to the presiding judge in *Ibrahim* and *Fallah*) that counsel has failed to provide sufficient authority for his positions in

For the following reasons, Claimant's request that this Court administer Claimant's testimonial oath at the formal hearing is DENIED and his counsel's "certification" is rejected.

I. "Certification" of Compliance with all Applicable Laws

Pursuant to the Scheduling Order, the party proposing the testimony of a foreign witness was required to "certify compliance with the applicable Administrative Notice pertaining to the administration of oaths and development of evidence in and from a foreign country."<sup>4</sup> That Administrative Notice stated in pertinent part:

Proceedings before the Office of Administrative Law Judges ("OALJ") involving foreign parties, foreign witnesses, and/or foreign evidence may present complex adjudicative issues, particularly when a party is located outside the territorial jurisdiction of the United States, or when a party seeks to present testimony of a person located outside the territorial jurisdiction of the United States and/or evidence obtained outside the territorial jurisdiction of the United States. I issue this Administrative Notice in order to minimize the risk that the parties may take, or that OALJ unwittingly facilitates, enables, or condones, actions potentially inconsistent with applicable law in cases involving foreign parties, witnesses, and/or evidence.

\* \* \*

Parties have the responsibility to comply with all applicable laws when participating, offering witness testimony, and obtaining evidence for use in administrative proceedings before OALJ. The presiding ALJ may make inquiry into such compliance. Thus:

(1) when a party, and/or that party's representative, seeks to participate in an OALJ proceeding from a location outside the territorial jurisdiction of the United States, that party should be prepared to *certify in writing or on the record that all applicable legal requirements concerning such participation have been*

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any of these cases.

<sup>4</sup> Scheduling Order at 5-6, Sec. E(2)(j).

*satisfied;*

(2) when a party seeks to elicit testimony from a witness located outside the territorial jurisdiction of the United States, *the proponent should be prepared to certify in writing or on the record that all applicable legal requirements concerning such testimony have been satisfied, including requirements concerning the administration of an oath to a witness;*

Administrative Notice (emphasis added).

The Administrative Notice does not specify the type of “certification” required. According to *Black’s Law Dictionary* 207 (5th Ed. 1979): To “Certify” something is: “To authenticate or vouch for a thing in writing. To attest as being true or as represented.”

The “certification” in this case must cover “all applicable legal requirements” that “participation” from a foreign country and the “administration of an oath outside the territorial jurisdiction of the United States” have been fulfilled. This presumes United States law *and* the laws of the foreign country at issue.

Thus, in this case, in order to truly understand if the requirements of the Administrative Notice have been fulfilled by the certification submitted by counsel, the undersigned has really but two choices: 1) accept at face value the unsupported and *de minimis* recitation of “Trust me, I have done the research,” or 2) require counsel to divulge the laws, rules, regulations, etc. that were actually reviewed and from whence his conclusions were drawn.

As counsel’s “certification” now stands before this Court, counsel has “certified” in the JPS that, “based upon Claimant’s counsel’s research” a United States Constitution Article I Tribunal, endowed only by the “authority” of the United States Department of Labor, can administer a valid testimonial oath to a foreign witness, a citizen of Iraq physically located in Iraq, merely because there are allegedly “no laws” of Iraq prohibiting such an intrusion into that country’s sovereignty.<sup>5</sup> Presumably,

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<sup>5</sup> On the issue of intruding into a country’s sovereignty, perhaps counsel was unaware that the United States Department of State issued a travel advisory for Iraq on March 2, 2026, stating: “Do not travel to Iraq due to **terrorism, kidnapping, armed conflict, civil unrest, and the U.S. government’s limited ability to provide emergency services to U.S. citizens in Iraq. Do not travel to Iraq**”

under such reasoning, the undersigned would have worldwide jurisdiction and could travel to Bagdad, eschew contact with the Iraqi government, and administer such an oath in person, even though counsel has not cited and this Court could find no such precedent under the LHWCA and its extensions.<sup>6</sup>

Furthermore, without looking into potential real life consequences, counsel “certifies” without citation to authority that a DOL ALJ will not run afoul of undescribed Iraqi law by administering a U.S. based oath, even though counsel has admitted in the *Herbi* matter that the claimant there was reportedly detained, interrogated, and criminally charged **by Iraqi authorities for merely voluntarily attending an independent medical examination** in Najaf, Iraq, in what counsel described as a “high-risk jurisdiction.”<sup>7</sup> Counsel’s representations in *Herbi* warn of the potential consequences of ignoring applicable foreign law and/or proceeding based on unsupported assumptions instead of established authority. Accordingly, counsel’s purported “certification” amounts to nothing more than unsupported and potentially irresponsible belief.

If counsel truly made a “reasonable inquiry” into “all applicable laws,” then he should have stated in the “certification” what laws he made an inquiry into and what steps were taken to make sure claimant’s foreign evidence complied with those laws. Counsel listed no areas of the law that were researched and documented no steps

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**for any reason. Leave now if you are there.”** Travel Advisory: Iraq March 2026, U.S. Embassy & Consulate in Iraq, <https://iq.usembassy.gov/travel-advisory-iraq-march-2026/> (Mar. 3, 2026). Additionally, on March 23, 2026, the State Department issued a warning that all U.S. citizens should leave that country and “U.S. citizens choosing to remain in Iraq are doing so at significant risk” due to “terrorist militias.” Security Alert: U.S. Embassy Baghdad, Iraq, – March 23, 2026, U.S. Embassy & Consulate in Iraq, <https://iq.usembassy.gov/security-alert-u-s-embassy-baghdad-iraq-march-23-2026/> (Mar. 26, 2026). The undersigned could not physically travel to Iraq under this advisory. It is unknown how that country would treat a virtual intrusion by a U.S. government official.

<sup>6</sup> Compare the express designation of jurisdiction of a United States military judge over active military members in the Uniform Code of Military Justice, 10 U.S.C. § 805. Art. 5. Territorial applicability of this chapter: “This chapter applies in all places.”

<sup>7</sup> *Herbi v. Global Linguist Sols*, OALJ Case No. 2024-LDA-05186 (Claimant’s Motion for Sanctions, Reimbursement of Expenses, and Protective Order Regarding Employer/Carrier IME) (filed Feb. 23, 2026)(emphasis added). It makes this Court very concerned that an Iraqi claimant could appear voluntarily by video before a U.S. ALJ in the United States but be yanked out of that video haven by “Iraqi Authorities” and jailed just because that claimant participated or “collaborated” with the U.S. government. The “voluntary” video appearance in the proceeding presumably would have no effect on the actions of the local authorities.

taken to ensure compliance with any applicable rules and/or regulations. Counsel did not relate in the “certification” that any kind of specific inquiry was made, just counsel’s unidentified “research” done “to the best” of his unspecified “knowledge.” In this context, “research” and “knowledge” are nothing more than existential terms, not ones of legal compliance.<sup>8</sup>

II. Administration of a Testimonial Oath to a Foreign Based Witness  
by U.S.-Based Federal ALJ<sup>9</sup>

Administrative Law Judges presiding at LHWCA and DBA hearings may administer oaths and affirmations to witnesses. 5 U.S.C. § 556(c)(1); 29 C.F.R. § 18.12(b)(2). Witnesses at the hearing must testify under oath or affirmation. 29 C.F.R. § 18.603; 20 C.F.R. § 702.340.<sup>10</sup>

The presiding ALJ has “all powers necessary to conduct fair and impartial proceedings,” including the authority to approve or deny a party’s request to present testimony by video conferencing or deposition. 29 C.F.R. § 18.12(b). “For good cause and with appropriate safeguards, the judge may permit testimony in an open hearing by contemporaneous transmission from a different location.” 29 C.F.R. § 18.81(b). But where does the actual “power” come from which allows an ALJ to perform these functions?

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<sup>8</sup> When it comes to difficult legal issues involving foreign law which require significant research and hard work, this Court does not subscribe to the “Trust me” method of proof and compliance. In the undersigned’s experience, and despite the well-intentioned mandates of OALJ Rule 18.35(b) (Representations to the judge), violations and less than full disclosures have occurred, making necessary OALJ Rule 18.35(c) (Sanctions).

<sup>9</sup> In this case, as well as in others, counsel for Claimant argues that a U.S. based DOL ALJ has the power and authority to administer a valid testimonial oath to a foreign citizen located and residing in their own country because other ALJs have done so. Each DOL ALJ has decisional independence. Counsel has presented no citation to any authority other judges may have relied upon. The Court is aware of one order overruling an Employer’s objection to a Foreign Evidence Certification asserting the ALJ could administer an oath to an Iraqi claimant residing in Iraq. *See Jabir v. PAE Holdings Corp.*, OALJ Case No. 2024-LDA-05280 (ALJ Feb. 19, 2026). The judge in that case cited no authority but decided without further explanation to accept Claimant’s counsel’s “certification” that no law in Iraq prevented such administration. The undersigned does not consider such a sparse order either controlling or persuasive authority.

<sup>10</sup> 29 C.F.R. § 18.603 states, “Before testifying, every witness shall be required to declare that he/she will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness’s conscience and impress the witness’s mind with the duty to do so.”

Counsel for Claimant seemingly believes that such “power” is inherent in the office.<sup>11</sup> No citation to authority has been given. Or perhaps counsel believes an Art. I ALJ is like the “all powerful Oz”<sup>12</sup> and not the “man behind the curtain” with limitations on his power.<sup>13</sup> For the answer, one needs to consult the governing statutes.

*a. Administrative Procedure Act.*

Counsel for Claimant may be tempted to cite the Administrative Procedure Act (APA) as authority for the Court to administer oaths or affirmations to foreign witnesses. Like the OALJ Rules, there is no express territorial limitation in this statute. Counsel would be wise to resist that temptation.

The provisions of the APA are operative to “every case of adjudication *required by statute to be determined on the record* after opportunity for an agency hearing” with exceptions not pertinent here. 5 U.S.C. § 554(a) (emphasis added). By its own terms, Section 554 applies only where the agency's governing statute requires adjudication “to be determined on the record” after a hearing.<sup>14</sup> Accordingly, it has been affirmatively held that the adjudicatory provisions of the APA have ***no application unless some other statute*** directs an agency hearing.<sup>15</sup>

Additionally, Section 556(b), provides that “[t]his subchapter [‘Administrative Procedure’] does not supersede the conduct of specified classes of proceedings, in

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<sup>11</sup> To be fair, counsel does argue in *Al-Sallami*, 2024-LDA-07152, that “[w]ithin the Department of Labor, administrative law judges have broad authority to administer oaths, without any territorial limits” citing 29 C.F.R. § 18.12(b)(2). The OALJ rule cited, however, is a procedural rule, *not* an authorizing statute conveying extraterritorial power.

<sup>12</sup> Baum, L. Frank, *The wonderful Wizard of Oz* (Geo. M. Hill Co. 1900), Library of Congress, [www.loc.gov/item/03032405/](http://www.loc.gov/item/03032405/) (adapted from the original quote: “I am Oz, the Great and Terrible. Who are you, and why do you seek me?” Chapter XI, p. 127).

<sup>13</sup> *The Wizard of Oz*, Victor Fleming, dir. (Metro-Goldwyn-Mayer 1939) (adapted from the original quote: “Pay no attention to that man behind the curtain.”).

<sup>14</sup> See *Diehl v. Franklin*, 826 F. Supp. 874, 881 n.9 (D.N.J. 1993).

<sup>15</sup> *Wong Yang Sung v. McGrath*, 339 U.S. 33, 48, 70 S. Ct. 445, 453, 94 L. Ed. 616 (1950); *Gallagher & Ascher Co. v. Simon*, 687 F.2d 1067, 1072 (7th Cir. 1982); *Colo. v. Veterans Admin.*, 602 F.2d 926, 928 (10th Cir. 1979), *cert. denied*, 444 U.S. 1014, 62 L. Ed. 2d 643, 100 S. Ct. 663 (1980); *Sisselman v. Smith*, 432 F. 2d 750, 754 (3rd Cir. 1970); *Webster Groves Trust Co. v. Saxon*, 370 F.2d 381 (8th Cir. 1966); *LaRue v. Udall*, 324 F.2d 428 (D.C. Cir. 1963), *cert. denied*, 376 U.S. 907, 84 S. Ct. 660, 11 L. Ed. 2d 606 (1964).

whole or in part, by or before boards or other employees specially provided for by or designated under statute.” This, too, supports the conclusion that the APA does not impose any requirement of an adversary hearing before an agency, but only specifies *the procedure* to be followed when a hearing is required by some other statute.<sup>16</sup>

Finally, 5 U.S.C.S. § 556(c)(1) provides that the officer proceeding at the hearing "may" administer oaths and affirmations. There is no separate section that states an ALJ *must* administer an oath.<sup>17</sup> There is no section that expressly authorizes extraterritorial application of the APA procedures. The authorized actions under that section are clearly limited by the “published rules of the agency and within its [the Agency’s] powers.” 5 U.S.C.S. § 556(c). As defined in the statute, “agency” means “each authority of the Government of the United States, whether or not it is within or subject to review by another agency.” 5 U.S.C.S. § 551(1). This Court can find no authority in the APA for an ALJ in the Department of Labor to administer a testimonial oath outside of the United States.

*b. The power of the Department of Labor*

The Department of Labor’s “powers” are derived from laws passed by the Congress and executed by the President. Its establishment is codified in 29 U.S.C. § 551. There is nothing in that establishment clause that allows the Secretary or the “agency” to exercise jurisdiction beyond the borders of the United States. To the contrary, the express purpose “of the Department of Labor shall be to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment.” 29 U.S.C. § 551. Congress has devoted the entirety of Title 29 of the United States Code to Labor. This Court has found no chapter of that Title, or section, nor has Claimant cited any provision therein, which would afford the “agency” extraterritorial or international jurisdiction. To the contrary, certain Chapters

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<sup>16</sup> *Sisselman, supra; Webster Groves Trust Co., supra; LaRue, supra.*

<sup>17</sup> *See Leitman v. McAusland*, 934 F.2d 46, 47 (4th Cir. 1991).

reference “the people of the United States,” “individuals in the United States,” “to promote the economic growth of the United States,” and promote a “high-quality workforce development system in the United States.”<sup>18</sup>

Courts presume that federal statutes “apply only within the territorial jurisdiction of the United States.”<sup>19</sup> This principle, commonly called the presumption against extraterritoriality, has deep roots.<sup>20</sup> The presumption rests on “the commonsense notion that Congress generally legislates with domestic concerns in mind.”<sup>21</sup> The presumption prevents “unintended clashes between our laws and those of other nations which could result in international discord.”<sup>22</sup>

It is beyond cavil that the Act and the DBA have limited extraterritorial application to the high seas and United States military bases overseas, respectively. They both allow claims to be filed in the United States for incidents sometimes arising outside the United States. The question then becomes what powers are conferred to an agency and delegated to an agency ALJ by those statutes and what are any limitations to those powers?

### 1. Agency Jurisdiction.

“Courts are constituted by authority and they cannot go beyond the power delegated to them.”<sup>23</sup> “They possess only that power authorized by Constitution and statute.”<sup>24</sup> The U.S. Supreme Court has explained that jurisdiction “refers to a court’s

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<sup>18</sup> See 29 U.S.C. §§ 1, 49, 2701, 3101.

<sup>19</sup> *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 412, 138 S. Ct. 2129, 201 L. Ed. 2d 584, 591-92 (2018) (citing *Foley Bros., Inc. v. Filardo*, 336 U. S. 281, 285, 69 S. Ct. 575, 93 L. Ed. 680 (1949)).

<sup>20</sup> See A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* § 43, p. 268 (2012) (tracing the presumption to the medieval maxim *Statuta suo clauduntur territorio, nec ultra territorium disponunt*; that is, “statutes are confined to their own territory and have no extraterritorial effect”); see also *United States v. Palmer*, 16 U.S. 610, 3 Wheat. 610, 631, 4 L. Ed. 471 (1818) (Marshall, C. J.) (“[G]eneral words must . . . be limited to cases within the jurisdiction of the state”).

<sup>21</sup> *Smith v. United States*, 507 U. S. 197, 204, n. 5, 113 S. Ct. 1178, 122 L. Ed. 2d 548 (1993).

<sup>22</sup> *WesternGeco*, *supra* (citing *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248, 111 S. Ct. 1227, 113 L. Ed. 2d 274 (1991)).

<sup>23</sup> *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 353-4, 65 L. Ed. 297, 41 S. Ct. 116 (1920); *Am. Telecom Co., L.L.C. v. Republic of Lebanon*, 501 F.3d 534, 539 (6th Cir. 2007); *Burleson v. Coastal Recreation, Inc.*, 595 F. 2d 332, 337 n. 21 (5th Cir. 1978).

<sup>24</sup> *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 552, 125 S. Ct. 2611, 162 L. Ed. 2d 502 (2005) (internal quotation omitted).

adjudicatory authority.”<sup>25</sup> Subject-matter jurisdiction “refers to ‘the courts’ statutory or constitutional *power* to adjudicate the case.”<sup>26</sup> Accordingly, courts must scrupulously observe the precise jurisdictional limits prescribed by Congress.<sup>27</sup>

Although these statements refer to Article III courts, jurisdictional issues are just as important for administrative adjudicative bodies. “It is well settled that an administrative agency,” like an Article III court, “is a tribunal of limited jurisdiction.”<sup>28</sup> An administrative agency “may exercise only the powers granted by the statute reposing power in it.”<sup>29</sup> These powers are limited by the scope of the jurisdictional statute in the same way that a federal court's powers are limited by the Constitution and statute.<sup>30</sup> “OALJ, as an administrative agency, is a ‘tribunal of limited jurisdiction’” and has “only such adjudicatory jurisdiction as is conferred on them by statute.”<sup>31</sup> The fact that this case deals with an administrative agency does not change these basic principles.<sup>32</sup>

Cases falling under the Act and its extensions are heard by ALJs at the trial

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<sup>25</sup> *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 130 S. Ct. 1237, 1243, 176 L. Ed. 2d 18 (2010) (quoting *Kontrick v. Ryan*, 540 U.S. 443, 455, 124 S. Ct. 906, 157 L. Ed. 2d 867 (2004)).

<sup>26</sup> *Id.* (quoting *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 89, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) (emphasis in original)).

<sup>27</sup> *Commodity Futures Trading Com. v. Nahas*, 738 F.2d 487, 494, n.9 (D.C. Cir. 1984). Moreover, jurisdiction cannot be conferred by stipulation of the parties. See *Littrell v. Or. Shipbuilding Co.*, 17 BRBS 84, 88 (1985). See also *Campbell Harrison & Dagley, L.L.P. v. PBL Multi-Strategy Fund, L.P.*, 744 Fed. App'x. 192, 200 (5th Cir. 2018); *Erickson v. Crowley Mar. Corp.*, 14 BRBS 218 (1981).

<sup>28</sup> *Pentheny Ltd. v. Gov't of Virgin Islands*, 360 F.2d 786, 790, 5 V.I. 575 (3d Cir. 1966).

<sup>29</sup> *Id.* (citing *Fed. Trade Comm. v. National Lead Co.*, 352 U.S. 419, 428, 77 S. Ct. 502, 1 L. Ed. 2d 438 (1957); *Civil Aeronautics Bd. v. Delta Air Lines*, 367 U.S. 316, 322, 81 S. Ct. 1611, 6 L. Ed. 2d 869(1961)). See also *Dep't of Labor & Eddis v. LB&B Associates, Inc.*, ARB Case Nos. 01-031, 01-086, ALJ Case No. 2000-NQW-00001, 2001 DOL Ad. Rev. Bd. LEXIS 58, slip op. at 8 (ARB Aug. 8, 2001); *Moore v. U.S. Dep't of Energy*, ARB Case No. 99-094, ALJ Case No. 99-CAA-14, 1999 DOL Ad. Rev. Bd. LEXIS 127, slip op. at 3 (ARB July 14, 1999); 2 Am. Jur. 2d *Administrative Law* § 282 (2013) (“Administrative agencies are tribunals of limited jurisdiction . . . . As a general rule, agencies have only such adjudicatory jurisdiction as is conferred on them by statute.”).

<sup>30</sup> See *N.L.R.B. v. New Vista Nursing & Rehab.*, 719 F.3d 203, 211 (3d Cir. 2013), *reh'g granted*, 2014 U.S. App. LEXIS 15360 (3rd Cir. 2014), *after remand*, 870 F.3d 113 (3rd Cir. 2017) (recognizing abrogation on other grounds).

<sup>31</sup> *Emp. and Training Admin. v. Auxilium Manus Deo Corp.*, OALJ Case No: 2020-WIA-00005, slip op. at 2 (Chief ALJ Henley Aug. 25, 2020).

<sup>32</sup> See also Nat'l Conf. of Admin. Law Judges, Judicial Admin. Div., *The Model Code of Judicial Conduct for Administrative Law Judges* (American Bar Assoc. 1989): Canon 1 (A) (An administrative law judge should respect and comply with the law); Canon 3(A)(1) (An administrative law judge should be faithful to the law and maintain professional competence in it).

level. 33 U.S.C. § 919. They are then subject to review by the Benefits Review Board, and if a party is adversely affected, the claim may be appealed to the federal courts. *See, e.g.*, 33 U.S.C. § § 921(b), (c); 42 U.S.C. § 1653. Thus, the extent of an ALJ's authority to act under a statute is ultimately subject to review by an Art. III court, which will apply federal procedure and Art. III legal principles.<sup>33</sup>

## *2. Agency authority under the LHWCA*

There is no question that Congress delegated benefits cases under the relevant Acts to the Secretary of Labor. *See* 33 U.S.C. § 902(6). The Secretary thus has jurisdiction both to conciliate and to adjudicate these claims. *See, e.g.*, 33 U.S.C. §§ 907, 912(c), 914(c), 919, 921-23, 927, 929-33, 939-42, 944. But, in the 1972 amendments to the Longshore and Harbor Workers' Compensation Act, Congress divided the authority previously delegated to deputy commissioners (now "district directors") and gave adjudicatory authority to administrative law judges. *See, e.g.*, 33 U.S.C. §§ 919, 921, 923, 927. The Secretary's implementing regulations further explicate the division of responsibility between the two. *See* 20 C.F.R. Part 702, Subparts B & C.

The LHWCA makes clear that any evidentiary hearing "shall be conducted by a[n] administrative law judge[.]" (not a district director), and the hearing "shall be conducted in accordance with the provisions of section 554 of Title 5 [APA]."<sup>34</sup> "The relevant language states that an ALJ has authority 'to hear and determine all questions in respect of such claim' and the phrase 'such claim' references 'a claim for compensation.'"<sup>35</sup> An ALJ from the U.S. Department of Labor is granted jurisdiction to adjudicate a claim under Section 19(d) of the LHWCA and to conduct administrative proceedings to evaluate claims for compensation.<sup>36</sup> *See* 33 U.S.C. §

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<sup>33</sup> Pursuant to Section 907(j)(4), appeal from a decision made by the District Director pertaining to medical services and supplies is made directly to the U. S. Circuit Court, and not the Office of Administrative Law Judges, further evidencing Art. III review. 33 U.S.C. § 907(j)(4).

<sup>34</sup> *Craven v. Dir., OWCP*, 604 F.3d 902, 906 (5th Cir. 2010).

<sup>35</sup> *Temp. Emp't Serv. v. Trinity Marine Group, Inc.*, 261 F.3d 456, 461 (5th Cir. 2001) (quoting 33 U.S.C. § 919(a)).

<sup>36</sup> *Ciliberto v. Popple Bros.*, 573 F. App'x 223, 223 (3d Cir. 2014).

919; 20 C.F.R. §§ 701.101, 701.201, 702.301-702.394.

Section 27 of the Act grants ALJs the authority to enforce orders, issue subpoenas, administer oaths to, and compel witness attendance and testimony, examine witnesses, and compel the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths. 33 U.S.C. § 927(a).<sup>37</sup> They are also permitted to “do all things conformable to law” that are necessary to effectively discharge their duties. *Id.*<sup>38</sup> “If any person in proceedings before an ALJ disobeys or resists any lawful order or process, or *“upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law,”* the ALJ shall certify the facts to the district court having jurisdiction in the place in which he is sitting for further adjudication. 33 U.S.C. § 927(b) (emphasis added).<sup>39</sup>

The combination of Section 927(a) and Section 927(b) is important in that the LHWCA authorizes district courts to impose sanctions on parties who disobey or resist lawful orders issued by ALJs during administrative proceedings. Notably, the statute specifies that a district court may “punish” a party who disobeys a lawful order during administrative proceedings “in the same manner and to the same extent as for a contempt committed before the court.” 33 U.S.C. § 927(b). Thus, even though

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<sup>37</sup> §927(a) states: “The deputy commissioner [now ALJ]... shall have power to preserve and enforce order during any such proceedings; to issue subpoenas for, **to administer oaths to, and to compel the attendance and testimony of witnesses,** or the production of books, papers, documents, and other evidence, or **the taking of depositions before any designated individual competent to administer oaths;** to examine witnesses; and to do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office.” (emphasis added).

<sup>38</sup> See also *Horizon Shipbuilding, Inc. v. Jackson*, No. 24-12858, 2025 U.S. App. LEXIS 19230, at \*3 (11th Cir. July 31, 2025).

<sup>39</sup> §927(b) states: “If any person in proceedings before a deputy commissioner [now ALJ]... disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or **upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law,** the deputy commissioner or Board shall certify the facts to the district court having jurisdiction in the place in which he is sitting (or to the United States District Court for the District of Columbia if he is sitting in such District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.” 33 U.S.C. § 927(b) (emphasis added).

Section 927(a) contains a “catch-all” clause that an ALJ has the authority to do “all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office,” the context and language of the statute in Section 927(b) show that such authority is limited.

### 3. *Agency authority to administer an oath*

Counsel for Claimant has made the bald assertion that a U.S. ALJ with the Department of Labor has the authority to administer a valid testimonial oath to a foreign national in their own country because of a procedural rule (OALJ Rule 18.12) and because the statute is silent as to any express territorial limitation. Essentially, counsel is stating that the silence in the statute can be used to create additional non-enumerated powers. This would be incorrect.<sup>40</sup>

#### *A. Canons of Statutory Construction*

To adopt counsel’s argument, the canon against broad extraterritorial application of a statute without express Congressional intent would be violated.<sup>41</sup> The Act, by the DBA, allows claims arising outside the United States and its Territories to be filed by foreign claimants in U.S. tribunals. That is the extent of the extraterritorial effect. No language appears in either the Act or the DBA whereby Congress expressly or impliedly grants an Art. I tribunal power to interfere in the sovereignty of another country.

Next, this Court is informed by another canon of statutory construction that

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<sup>40</sup> It would also be incorrect if counsel were to argue that an ALJ has unfettered discretion under Sec. 923(a) of the Act which states: “In making an investigation or inquiry or conducting a hearing the [ALJ] shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, *except as provided by this chapter*; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties.” It is clear that Sec. 923(a) is limited by its express “exception clause.” The United States Supreme Court has noted this clause and cited it as part of the reason why the “true doubt” rule was abolished: “More importantly, § 923 by its terms applies ‘*except as provided by this chapter*,’ and the chapter provides that Section 7(c) does indeed apply to the LHWCA.” *Dir. OWCP v. Greenwich Collieries*, 512 U.S. 267, 271, 114 S. Ct. 2251, 2254 (1994). In practice, the Supreme Court has set a bright line that a judge must look at the Act’s provisions *first*, before applying the discretion afforded under Sec. 923(a).

<sup>41</sup> See A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* § 43, p. 268 (2012) (tracing the presumption against extraterritorial effect to the medieval maxim *Statuta suo clauduntur territorio, nec ultra territorium disponunt*).

requires courts, wherever possible, to construe federal statutes to ensure their application will not violate international law.<sup>42</sup> This canon was applied to prohibit Art. III district courts from enforcing subpoenas served by a government agency on foreign nationals in a foreign country.<sup>43</sup> It was invoked in noting that the service of an agency investigative subpoena on a foreign national in a foreign country was “a sufficiently significant act as to require that Congress should speak to it clearly.”<sup>44</sup> “When compulsory process is served [on a foreign citizen on foreign soil in the form of an investigative subpoena], . . . the act of service itself constitutes an exercise of one nation's sovereignty within the territory of another sovereign. Such an exercise [absent consent by the foreign nation] constitutes a violation of international law.”<sup>45</sup> Where the applicable empowering statute is silent on the issue of the court’s authority to compel a response to such a subpoena, courts have been “unwilling to infer enforcement jurisdiction absent a clearer indication of congressional intent,” as “inferring such a mandate would run contrary to established canons of statutory construction.”<sup>46</sup> In short, finding enforcement jurisdiction to exist in such a case would be “tantamount to enacting, rather than explicating, a law.”<sup>47</sup>

To construe Sec. 927(a) as empowering an ALJ to administer a testimonial oath under U.S. substantive law to a foreign national sitting within the territory of a foreign nation, carrying the full weight of American Congressional assigned adjudicatory power and potentially subjecting that foreign citizen to felony perjury, without due regard for his home country’s sovereignty, likewise would seriously impinge on principles of international law and violate the canon against doing so.<sup>48</sup>

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<sup>42</sup> *Commodity Futures Trading Com. v. Nahas*, 738 F.2d 487, 493 (D.C. Cir. 1984) (citing *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118, 2 L. Ed. 208 (1804)); *FTC v. Compagnie de Saint-Gobain-Pont-A-Mousson*, 636 F.2d 1300, 1323 & n.130 (D.C. Cir. 1980).

<sup>43</sup> *Nahos*, *supra*; *Saint-Gobain*, 636 F. 2d at 1327.

<sup>44</sup> *Id.* See also *Mugerwa v. AEGIS Def. Serves.*, 52 BRBS 11 (2018) (citing *Aristocrat Leisure Ltd. v. Deutsche Bank Tr. Co. Americas*, 262 F.R.D. 293, 305 (S.D.N.Y. Sept. 16, 2009)(finding subpoena rules inapplicable to foreign nationals)).

<sup>45</sup> *Saint-Gobain*, *supra*, at 1313 (footnote omitted). Restatement (Second) of the Foreign Relations Law of the United States §§ 7, 8, 32 & comment b, 44 (1965).

<sup>46</sup> *Nahos*, 738 F.2d at 495.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 494 n. 14 (enforcing a subpoena on foreign soil “carries with it the full array of American judicial power”). There can be no doubt that a U.S. Judicial officer exercising their power on a foreign

This is why, perhaps, the court can find no construction of the language of Sec. 927(a) or its history which allows a U.S. jurist to exert any power over a foreign citizen residing in their own country and subject to that country's sovereignty, without a treaty between the U.S. and that country, or that country's agreement to assist in the juridical act.

Further, the *omitted-case canon* instructs, "Nothing is to be added to what the text states or reasonably implies (*casus omissus pro omisso habendus est*). That is, a matter not covered is to be treated as not covered."<sup>49</sup> To be sure, where a statute or regulation lacks an explicit requirement, courts have cautioned *against* reading one in.<sup>50</sup> "Insofar as Congress has made explicit statutory requirements, they must be observed and are beyond the dispensing power of (Agency) officials."<sup>51</sup> An ALJ must apply the statute and regulations as they are found.<sup>52</sup>

Nothing in the Act or DBA expressly authorizes agency action in a foreign country. When the LHWCA was enacted in 1927, video capability did not exist and "virtual courtrooms" may well have been as realistic as "stardust."<sup>53</sup> If Congress in this modern day wishes for an Art. I ALJ to have the authority to administer an oath to a foreign citizen within their own country's sovereignty, it will have to amend the statutes to expressly state so. An Art. I ALJ cannot enhance the scope of Sec. 927(a) to include such authority for the sake of expediency or convenience, even if that

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citizen sitting in their own country by administering an oath that carries the penalty for perjury also "carries with it the full array of American judicial power."

<sup>49</sup> Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 93 (West 2012). See also *S. Tex. Env't Just. Network v. Tex. Comm'n on Env't Quality*, 165 F.4th 356, 372 and n.76 (5th Cir. 2026); *United States ex rel. Vermont Nat'l Tel. Co. v. Northstar Wireless LLC*, 703 F. Supp. 3d 48 (D.D.C. 2023); *Williams v. Lakeview Loan Servicing LLC*, 509 F. Supp. 3d 676, 680 (S.D. Tex. 2020)

<sup>50</sup> *Env't Integrity Project v. EPA*, 969 F.3d 529, 541 (5th Cir. 2020) ("The principle that a matter not covered is not covered is so obvious that it seems absurd to recite it.") (quoting *Yates v. Collier*, 868 F.3d 354, 369 (5th Cir. 2017)); *In re Taxotere (Docetaxel) Eye Injury Prods. Liab. Litig.*, 2025 U.S. Dist. LEXIS 233514; 2025 WL 3442731 (E.D. La. Dec. 1, 2025).

<sup>51</sup> *Vensure HR, Inc. v. United States*, 119 F.4th 7, 16 (Fed. Cir. 2024) (citing *Angelus Milling Co. v. Comm'r*, 325 U.S. 293, 296, 65 S. Ct. 1162, 1164 (1945)).

<sup>52</sup> See *Walls v. Union Pac. R.R. Co.*, ARB No. 2018-0015, ALJ No. 2016-FRS-00069, 2020 DOL Ad. Rev. Bd. LEXIS 287, at \*5 n. 7 (ARB Mar. 17, 2020).

<sup>53</sup> "Stardust: a feeling or impression of romance, magic, or ethereality." "Stardust." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/stardust>. (last accessed Mar. 31, 2026).

tribunal thinks it would be good policy.<sup>54</sup> Counsel’s unsupported argument that a silent statute allows for judicial treading on foreign soil and U.S. Department of Labor meddling with foreign sovereignty must fail.

### *B. Sec. 927(a) Oath*

The language of Sec. 927 expressly authorizes an ALJ to administer “oaths to ...witnesses,” “compel the attendance and testimony of witnesses,” and compel the “taking of depositions before any designated individual competent to administer oaths.” 33 U.S.C. § 927(a). This section does not state where the oath can be administered, from where a witness may be compelled to attend, or who is “competent” to administer an oath for a deposition.<sup>55</sup> These things must be filled in according to the plain words of the statute and their meanings as widely understood and accepted in common law.<sup>56</sup>

According to Black’s Law Dictionary, an “oath” is defined as “[a]n affirmation of truth of a statement, which renders one willfully asserting untrue statements punishable for perjury.”<sup>57</sup> At the time the Act was passed in 1927, the definition of “perjury” at common law was “a wilful, false *oath*...in any procedure in the course of

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<sup>54</sup> See *United States v. Miss.*, 82 F.4th 387, 393 (5th Cir. 2023) (“Courts must follow the language Congress has enacted; we may not enhance the scope of a statute because we think it good policy or an implementation of Congress’s unstated will”); *Neely v. Benefits Rev. Bd.*, 139 F.3d 276, 281 (1st Cir. 1998) (policy-making authority under the Longshore Act belongs to the Secretary, not to the ALJ or the Benefits Review Board); *Wood v. United States Dep’t of Labor*, 112 F.3d 592, 595 (1st Cir. 1997) (same). See also *Donahue v. United States*, 634 F.3d 615, 629 (1st Cir. 2011) (“[M]echanical operation [of a statute] may at times have seemingly harsh consequences, but the amelioration of such consequences is a matter for Congress rather than for the courts”).

<sup>55</sup> As shown *infra*, neither an Art. III court nor an Art. I ALJ has the authority to compel the attendance of foreign witnesses on foreign soil. If such judges do not have the power to compel “the attendance and testimony” of foreign witnesses, it would make no sense that the judge has the power to administer a testimonial oath to someone *beyond* their reach. Counsel might argue that a Claimant is attending a hearing voluntarily, and that somehow this affects the court’s power. Voluntary attendance is not the issue. A subpoena cannot be served on a foreign party who voluntarily wants to comply. A witness may want to voluntarily attend a hearing in opposition to his county’s laws. Neither act by the witness establishes a court’s authority. The focus must be on the authorizing statutes. Not on the acts, civil or criminal, of the witness.

<sup>56</sup> William N. Eskridge, Jr., Philip P. Frickey, & Elizabeth Garrett, *Cases And Materials On Legislation: Statutes And The Creation Of Public Policy* 819 (3d. ed. 2001); *Carter v United States*, 530 U.S. 255, 266 (2000); *Evans v. United States*, 504 U.S. 255, 261–64 (1992). See also Scalia & Garner, *supra* note 46, at 318 (A statute will be construed to alter the common law only when that disposition is clear).

<sup>57</sup> Black’s Law Dictionary at 1220 (4th ed. 1968) (second definition).

justice.”<sup>58</sup> Congress must be presumed to have legislated under this known state of the laws and usage.<sup>59</sup> The “oath” required in LHWCA cases therefore must be one that carries the penalty of perjury.<sup>60</sup>

At the time the 1972 Amendments to the Act were passed, the crime of perjury was codified. The essential elements of the crime of perjury as defined in 18 U. S. C. § 1621 were (and still are) (1) an oath authorized by a law of the United States, (2) taken before a competent tribunal, officer or person, and (3) a false statement willfully made as to facts material to the hearing.<sup>61</sup> Congress is assumed to have known that the “oath administered must be authorized by a law of the United States.”<sup>62</sup> So again, the “oath” required under the Act is one authorized under U.S. law and that carries the penalty of perjury if false statements were given after the oath was administered by a “competent” tribunal or person.

As was said almost two centuries ago:

No one can doubt, that *an oath administered by a person without authority is a void act*. It imposes no legal obligation on the person swearing to state the truth; nor is he punishable under any law for swearing falsely in such a case.

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A federal judicial officer, either by act of congress or as an incident to his office, has the power to administer oaths. *This power, however, can only be exercised within the jurisdiction of the federal government, and in cases where an oath is required or sanctioned by the laws of that government.* And so of the judicial officers of a state. If either officer act beyond the sphere of his appropriate jurisdiction, his act is a nullity.

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<sup>58</sup> *United States v. Bailey*, 34 U.S. 238, 258, 9 L. Ed. 113 (1835) (emphasis added).

<sup>59</sup> *Id.* 34 U.S. at 256. *Accord Miles v. Apex Marine Corp.*, 498 U.S. 19, 32, 111 S. Ct. 317, 112 L. Ed. 2d 275 (1990) (“We assume that Congress is aware of existing law when it passes legislation.”) (citation omitted)); *Cannon v. Univ. of Chicago*, 441 U.S. 677, 696-98, 99 S. Ct. 1946, 60 L. Ed. 2d 560 (1979) (“It is always appropriate to assume that our elected representatives . . . know the law” and “that those representatives were aware of the prior interpretation of [the law] and that that interpretation reflects their intent with respect to [it].”); *Blitz v. Donovan*, 740 F.2d 1241, 1245 (D.C. Cir. 1984) (“Congress is deemed to know the . . . judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning.”) (alteration in original) (internal quotation marks omitted)).

<sup>60</sup> “Oath” includes “affirmation.” See 1 U.S.C. § 1.

<sup>61</sup> *United States v. Debrow*, 346 U.S. 374, 377, 74 S. Ct. 113, 115, 98 L. Ed. 92 (1953).

<sup>62</sup> *Id.*

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Any official act of a federal officer, under the jurisdiction of a state, which has not authorised such act by him, *is extra judicial*, and in no point of view legal. Nor can an oath administered under such circumstances, however false, be punishable under a general statute of the state against false swearing. *The act of administering the oath, being done without authority, is void.* It subjects the false swearer to no greater penalty than if it had been administered by a private citizen, without any pretence of power.<sup>63</sup>

Counsel for claimant has cited no authority under the laws of Iraq which would allow a U.S. ALJ to administer an oath to an Iraqi citizen in that country. Without authorization to administer an oath in Iraq, any ALJ doing so would be committing an act that is without authority and null and void.<sup>64</sup> In that case, any “oath” would not meet the requirements of an *oath* under the LHWCA. Counsel has not cited any U.S. law which would extend the judicial power to administer an oath into any other country besides the United States, let alone Iraq.

And there is good reason for this. By the time Congress passed the LHWCA, the statutes pertaining to Foreign Relations and consular officials had already been enacted into law.<sup>65</sup> 22 U.S.C. § 4215 authorizes consular officers to administer oaths or take depositions, but only as to any person within the limits of the particular consulate:

**§4215. Notarial acts, oaths, affirmations, affidavits, and depositions; fees**

Every consular officer of the United States is required, whenever application is made to him therefor, within the limits of his consulate, to administer to or take from any person any oath, affirmation, affidavit, or deposition, and to perform any other notarial act which any notary public is required or authorized by law to do within the United States; and for every such notarial act performed he shall charge in each instance the appropriate fee prescribed by the President under section 4219 of this title.<sup>66</sup>

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<sup>63</sup> *United States v. Bailey*, 34 U.S. 238, 259-60 & 262 (1835) (M’Lean J. dissent) (emphasis added).

<sup>64</sup> *Id.*

<sup>65</sup> See 22 U.S.C. §§ 4215, 4221.

<sup>66</sup> 22 U.S.C. § 4215 (1906)(as amended 1994).

22 U.S.C. § 4221 allows the Secretary of State to authorize a U.S. government official who is a U.S. citizen “serving overseas ... to perform such acts” in a location without a consular office:

**§4221. Depositions and notarial acts; perjury**

Every secretary of embassy or legation and consular officer is authorized, whenever he is required or deems it necessary or proper so to do, at the post, port, place, or within the limits of his embassy, legation, or consulate, to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States. At any post, port, or place where there is no consular officer, the *Secretary of State* may authorize any other officer or employee of the United States Government who is a United States citizen serving overseas, including any contract employee of the United States Government, to perform such acts, and any such contractor so authorized shall not be considered to be a consular officer. *Every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be as valid, and of like force and effect within the United States, to all intents and purposes, as if administered, sworn, affirmed, taken, had, or done, by or before any other person within the United States duly authorized and competent thereto.* If any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any Act of Congress now or hereafter made, *such offender may be charged, proceeded against, tried, convicted, and dealt with in any district of the United States, in the same manner, in all respects, as if such offense had been committed in the United States,* before any officer duly authorized therein to administer or take such oath, affirmation, affidavit, or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for such offense; and any document purporting to have affixed, impressed, or subscribed thereto, or thereon the seal and signature of the officer administering or taking the same in testimony thereof, shall be admitted in evidence without proof of any such seal or signature being genuine or of the official character of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined, in a sum not to exceed \$3,000, and may be charged, proceeded against, tried, convicted,

and dealt with therefor in the district where he may be arrested or in custody. Pursuant to such regulations as the Secretary of State may prescribe, the Secretary may designate any other employee of the Department of State who is a citizen of the United States to perform any notarial function authorized to be performed by a consular officer of the United States under this Act.<sup>67</sup>

Under the foregoing laws Congress has delegated the authority to administer oaths in foreign countries to the Secretary of State and certain employees at the State Department, **not to the Secretary of Labor**, or any judicial officer located in the United States. This delegation of power obviates the need for any judicial officer located in the United States to administer an oath on foreign soil. Congress has already provided that mechanism. These federal statutes provide support for concluding that the undersigned's authority under the LHWCA to administer oaths to witnesses testifying from a foreign country has not been authorized by Congress.<sup>68</sup>

### *C. Sec 927(a) Testimony*

The power to administer an oath under the Act is inextricably tied to the taking of *testimony*. Specifically, the Act states: “to administer oaths to, and to compel the attendance and *testimony* of witnesses.”<sup>69</sup> The authority given to an ALJ is express. The oath must be given to a witness to *testify*.<sup>70</sup>

The word “testimony” used in 927(a) is a legal term which by definition can only be under oath. Again harkening back to a time where Congress is presumed to know what the common law definition and usage of the word “testimony” was when the Act was passed, the Supreme Court held: “Testimony’ is confined to oral evidence or the statements made by a witness *under oath*.”<sup>71</sup> It can be given live before a

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<sup>67</sup> 22 U.S.C. § 4221 (1906)(as amended 1998).

<sup>68</sup> Had Congress wished to give ALJs international power to administer oaths, they had perfect examples of how to do so in the laws passed so enabling the State Department. Such laws were on the books in 1927 when the LHWCA was enacted. That Congress did not also authorize the Department of Labor is telling.

<sup>69</sup> 33 U.S.C. § 927(a) (emphasis added).

<sup>70</sup> See also 33 U.S.C. § 924 (“but the *testimony* of any witness...”); 20 C.F.R. § 702.340 (“Witnesses at the hearing shall *testify* under oath or affirmation”).

<sup>71</sup> *Ensign v. Pa.*, 227 U.S. 592, 596, 33 S. Ct. 321, 321, 57 L. Ed. 658 (1913). See also *Kungys v. United States*, 485 U.S. 759, 780, 99 L. Ed. 2d 839, 108 S. Ct. 1537 (1988) (The term “testimony” is limited to oral statements made under oath); *Gonzalez-Maldonado v. Gonzales*, 487 F.3d 975, 975 (5th Cir. 2007)

tribunal or on the trial of a cause “in the form of affidavits or depositions.”<sup>72</sup>

By definition, an unsworn statement cannot be “testimony.”<sup>73</sup> Thus, if an ALJ is authorized to “compel the attendance and testimony of witnesses” such “testimony” must be under a valid oath or affirmation in the country from where the witness is testifying. Anything else would be a nullity.

#### *D. Does a “Virtual Courtroom exist?”*

To be able to administer a legal oath, this court must be within its jurisdiction and “presiding” at a hearing. 5 U.S.C. § 556(c)(1). A witness “must” give testimony in “open” court. 29 CFR § 18.81(b); Fed. R. Civ. P. 43(a). It has been held that a witness testifying remotely by telephone or video does not satisfy the requirement of being physically present in “open” court.<sup>74</sup> Thus, if the rules are to be applied strictly, an ALJ could never administer an oath to a witness outside of the courtroom during an open hearing. This correlates with the inability of a judge to compel a foreign witness to appear and give testimony.<sup>75</sup>

29 C.F.R. § 18.81(b) states: “For good cause and with appropriate safeguards, the judge may permit testimony in an open hearing by contemporaneous transmission from a different location.” The term “appropriate safeguards” is

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(same).

<sup>72</sup> *Black’s Law Dictionary* 1324 (5<sup>th</sup> ed. 1979). See also *Bernal v. Ins*, 154 F.3d 1020, 1022-23 (9th Cir. 1998) (“Testimony means a statement made by a witness under oath for the purpose of establishing proof of a fact to a court or tribunal”).

<sup>73</sup> *Bailey, supra*.

<sup>74</sup> *Murphy v. Tivoli Enters.* 953 F.2d 354, 359 (8th Cir. 1992); *J.S.X. v. Foxhoven*, 2019 U.S. Dist. LEXIS 43063 (S.D. Iowa Mar. 13, 2019).

<sup>75</sup> See also 28 U.S.C. § 1783 and 29 C.F.R. § 18.56(b)(2) and (3) which limit subpoena power to service in the United States or to United States nationals or residents who are in a foreign country. A U.S. ALJ has no power to compel a foreign witness in a foreign country to appear and testify, even though Sec. 927(a) conveys such power nationally. *E.g. United States v. Serhan*, 2015 U.S. Dist. LEXIS 107743, 2015 WL 4886578, at \*1 (E.D. Mich. Aug. 17, 2015) (quoting *Gillars v. United States*, 182 F.2d 962, 978, 87 U.S. App. D.C. 16 (C.A.D.C.1950) (citing *Blackmer v. United States*, 284 U.S. 421, 52 S. Ct. 252, 76 L. Ed. 375 (1932)) (“Aliens who are inhabitants of a foreign country cannot be compelled to respond to a subpoena. They owe no allegiance to the United States.”); *United States v. Zabaneh*, 837 F.2d 1249, 1259-60 (5th Cir. 1988) (“[T]he United States courts lack power to subpoena witnesses, (other than American citizens) from foreign countries.”); *United States v. Moussaoui*, 382 F.3d 453, 463-64 (4th Cir. 2004) (recognizing “the well-established and undisputed principle that the process power of the district court does not extend to foreign nationals abroad.”); *United States v. Tan*, 2022 U.S. Dist. LEXIS 195472, \* 4; 2022 WL 15522231 (E.D. La. Oct. 27, 2022) (the court lacked authority to compel a Philippine foreign national to testify at trial).

undefined, nonetheless, allowance of remote testimony is a separate question from how, and by whom, a remotely testifying witness should be sworn before testifying.

Courts have had to deal with “who” can administer an oath to a foreign witness for some time now, especially in the instance of depositions from which guidance may be taken.<sup>76</sup> Courts have explicitly permitted taking sworn testimony of a witness located outside the United States by video, but only when a duly qualified person was present with the witness to administer the proper testimonial oath in the foreign jurisdiction.<sup>77</sup> This practice ensured that the oath was administered by an individual qualified by the foreign jurisdiction to administer oaths.<sup>78</sup> Courts have not allowed foreign witnesses to testify when such safeguards were not be utilized.<sup>79</sup>

These safeguards are important.<sup>80</sup> A witness may make a video or virtual

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<sup>76</sup> See 29 C.F.R. § 18.64(b)(4) (for purposes of taking sworn testimony by deposition the deposition “takes place where the deponent answers the questions”). See also Fed. Rule Civ. P. 30(b)(4) (stating that “[f]or the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions”).

<sup>77</sup> Fed. R. Civ. P. 28(b) pertaining to foreign depositions specifically requires that the witness testify before an official, i.e., at the same place as the official, and that the official be authorized to administer oaths where the examination is held.

<sup>78</sup> See *Gamboa v. Murphy*, 2016 U.S. Dist. LEXIS 168038, at \*6 (D. Md. Dec. 5, 2016) (district court ruled that it would allow the remote taking of direct testimony where “a duly qualified person [would] be present to provide any necessary oath in Canada). See also *United States v. Cole*, 2022 U.S. Dist. LEXIS 12672, at \*3 (N.D. Ohio Jan. 24, 2022) (Court would preside over video trial deposition after it was ensured that a notary or other Polish person capable of administering oaths shall be present at the deposition).

<sup>79</sup> See *United States v. Banki*, 2010 U.S. Dist. LEXIS 27116 (S.D.N.Y. Mar. 23, 2010) (court denied a request from a criminal defendant to present trial testimony from third party witnesses in Iran by videoconference. “Without the teeth of the penalty of perjury, the oath becomes nothing more than an empty recital.”). See also *Azizpur v. AAA Life Ins. Co.*, 2025 U.S. Dist. LEXIS 35758, at \*5-6 (C.D. Cal. Feb. 27, 2025) (court denied remote video testimony from Iran for failure to comply with the process for foreign testimony in Fed. R. Civ. P. 28(b); *United States v. Buck*, 271 F. Supp. 3d 619, 624 (S.D.N.Y. 2017) (court denied remote testimony as “these [Swiss] witnesses’ testimony may essentially be free of any penalty of perjury, calling into doubt the reliability of any of the potential testimony.”); *Loucas G. Matsas Salvage & Towage Mar. Co. v. M/T COLD SPRING I*, 1997 U.S. Dist. LEXIS 2415, 1997 WL 102491, at \*2 (E.D. La. Mar. 5, 1997), *aff’d sub nom.*, *Loucas G. Matsas Salvage & Towage Mar. Co. v. M/V Cold Spring I*, 1997 U.S. Dist. LEXIS 5856, 1997 WL 201647 (E.D. La. Apr. 23, 1997) (court struck a Polish witness’s telephone deposition from the record because the Federal Rules of Civil Procedure required the court reporter to be located in Poland and to be authorized to administer an oath in Poland and parties did not comply).

<sup>80</sup> ALJs perform an important gatekeeping function while assessing evidence to decide the merits of a claim. They must ensure the evidence is competent and probative. Absent such a discipline to qualify evidence, administrative findings and orders could unacceptably rest on suspicions, surmise, and speculation. See *United States Steel Mining Co. v. Dir.*, *OWCP*, 187 F.3d 384, 389 (4th Cir. 1999). As the Supreme Court has observed, in enacting § 556(d) of the Administrative Procedure Act, “Congress

appearance on a screen in the presence of a physical judge but still resides in whatever physical location he is appearing from and remains subject to the laws of that locality. It makes no difference if the foreign witness appears “voluntarily” or not.<sup>81</sup> One case in particular illustrates this point and the frustrations and problems that can arise when attempting to obtain contemporaneous video testimony in a foreign country.

In *United States v. Khan*,<sup>82</sup> the District Court was faced with a request to have several key witnesses testify by video from Pakistan. The court was informed that for security reasons the witnesses would not be allowed to enter the U.S. Embassy. The Government also refused to travel to Pakistan to take depositions of the witnesses, again citing safety concerns. Defense counsel insisted that Letters Rogatory were not needed. The Government disagreed and insisted that the permission of the Pakistani government was needed since there was no applicable treaty between it and the United States. The court fashioned a compromise by ordering “video-teleconferencing technology” to allow contemporaneous testimony at trial with safeguards.<sup>83</sup> Defense counsel unequivocally advised the court that the Pakistani government was “not going to stop” the voluntary testimony.

During the trial, however, *in the middle of examination of a voluntary witness*,

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was primarily concerned with the elimination of agency decision-making premised on evidence which was of poor quality --irrelevant, immaterial, unreliable, and nonprobative-- and of insufficient quantity.” *Steadman v. SEC*, 450 U.S. 91, 102, 67 L. Ed. 2d 69, 101 S. Ct. 999 (1981).

<sup>81</sup> The issue of “voluntary appearance is misleading. A foreign witness may be willing to accept a subpoena from a U.S. court; that does not mean that court had the authority to issue a legal subpoena that could be enforced. *See* note 54, *supra*.

<sup>82</sup> 794 F. 3d 1288 (11th Cir. 2015).

<sup>83</sup> The District Court attached several conditions to this arrangement. First, the District Court ordered the defense, to submit “evidence . . . showing that the Pakistan government explicitly (a) permits these depositions to be held or (b) acknowledges that it is aware of these depositions and that no official permission is needed for them to occur.” The rationale behind this requirement was that the court did not want all the preparations for the testimony to be laid, only to have the depositions fall through at the last minute because the Pakistan government will not allow them to occur. Second, the District Court ordered that the depositions be conducted at a facility in Islamabad that would support live, encrypted video teleconferencing with three cameras, “one showing the witness testifying in Pakistan, one showing the room where the deposition is held, and one in the Miami federal courtroom that will show the government’s attorney conducting the examination.” Third, the District Court required the presence of “one or more Pakistani officials that either alone or together were authorized to administer an oath and verify the identity of the witnesses.” Apparently these conditions were not met.

the video feed went blank. Defense counsel reported that Pakistani government officials had “suddenly” appeared at the hotel where the testimony was taking place and that hotel staff informed him that the internet-protocol address supporting the live video conferencing had been blacklisted by the Pakistani Telecommunications Authority.<sup>84</sup> The trial was conducted without testimony from those witnesses.

The *Khan* case showcases the difficulties inherent in transnational litigation, especially from countries that do not enjoy reciprocity with the United States. Recognizing these types of difficulties, representatives from a number of nations convened to produce the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Evidence Convention”), which sought to “improve mutual judicial cooperation in civil or commercial matters.”<sup>85</sup> Of course, had the promoters of that convention just asked Claimant’s counsel for advice, he no doubt would have told them such a treaty was unnecessary since, in his opinion, a U.S. Administrative Law Judge has the unfettered power to administer testimonial oaths to witnesses in and obtain sworn testimony from all nations on the face of the Earth! There is a reason why the Hague Convention exists and why other methods of obtaining foreign testimony, such as Letters of Request, Letters Rogatory and Commissions are included in Fed. R. Civ. P. 28(b).<sup>86</sup> If counsel’s argument were to be

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<sup>84</sup> *Khan*, 794 F. 3d at 1309-10.

<sup>85</sup> See <https://www.hcch.net/en/instruments/conventions/full-text/?cid=82> (last visited March 26, 2026). “The Hague Evidence Convention serves as an alternative or ‘permissive’ route to the federal Rules of Civil Procedure for the taking of evidence abroad from litigants and third parties alike.” *Tulip Computs. Int’l B.V. v. Dell Comput. Corp.*, 254 F.Supp.2d 469, 472 (D. Del. 2003).

<sup>86</sup> That rule states:

(b) In a Foreign Country.

(1) In General. A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a “letter rogatory”;

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

“The strictures of Rule 28(b) serve to mitigate the dangers inherent in foreign depositions, both in terms of accuracy and identity of deponents and documents, by requiring that the deponent testify pursuant to a letter of request, treaty or convention, or on notice before one *authorized or commissioned to administer oaths.*” *Advani Enters. v. Underwriters at Lloyds*, 2000 U.S. Dist. LEXIS 15421, at \*7 (S.D.N.Y. Oct. 18, 2000).

adopted, there would be no need for conventions, treaties or rules. Once again, counsel's argument fails.

Moreover, our scientific community has yet to produce a Star Trek type "transporter" where people can be "beamed" from one location to another.<sup>87</sup> A "virtual appearance," no matter how much counsel might wish it to be true, cannot magically transport a witness from their physical location to a proceeding in the United States. If remotely giving sworn testimony by way of deposition, that may be used at trial, takes place where the witness answers the questions, how can remote virtual sworn testimony at the trial be viewed any differently? The witness is located where the witness is located.<sup>88</sup>

A "virtual courtroom" does not exist. To treat sworn testimony unequally in terms of requirements from foreign nations, heaping more stringent requirements on depositions to be used at trial, while at the same time facilitating less requirements and non-binding oaths for trial testimony based upon a belief that the trial witness is in a conveniently contrived "virtual courtroom," is both unsupportable and unjust.<sup>89</sup>

#### *E. Sec. 927(b)*

Section 927(b) of the Act allows for Art. III judicial enforcement of an Art. I ALJ's lawful orders. Congress gave the district courts the power to "punish" those who would "disobey or resist any lawful order or process" or refuse "to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or

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<sup>87</sup> "Beam me up, Scotty!" is a catch phrase which made its way into pop culture from the science fiction television series Star Trek. It comes from the command Captain Kirk (played by William Shatner) gives his chief engineer (played by James Doohan). Montgomery "Scotty" Scott, when he needs to be transported back to the Starship Enterprise. James Doohan, *Beam Me Up, Scotty: Star Trek's Scotty—In His Own Words* (Pocket Books 1996).

<sup>88</sup> Quantum physics has shown that particles like electrons can exist in multiple locations until they are measured or observed. This phenomenon is called "quantum superimposition." Caltech Science Exchange, *What is Superimposition and Why is it Important?*, <https://scienceexchange.caltech.edu/topics/quantum-science-explained/quantum-superposition> (last accessed March 31, 2026). Although we as humans are made up of atoms and sub-atomic particles, we cannot be in two places at one time.

<sup>89</sup> As gatekeepers, judges are the final defenders of the law, not lawlessness. That is no small responsibility. By allowing foreign claimants to appear and speak (live or by deposition) without a valid testimonial oath, judges are treating them differently, allowing them a lighter procedural and evidentiary burden than US citizens who can be compelled to *testify* and must give *testimony* under oath. Such inequal application of the law should **never** occur.

after having taken the oath refuses to be examined according to law,” in the same manner and to the same extent “as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.”<sup>90</sup> For the United States District Court to obtain jurisdiction under 33 U.S.C. § 927(b), the administrative law judge must “certify the facts” to the District Court.<sup>91</sup> This means the ALJ must authenticate or vouch for the facts in writing or attest to the facts as being true or as represented.<sup>92</sup>

For the district court to act on those facts, however, the order based upon them must be “lawful.” Thus if an ALJ wishes to certify facts about a witness who “refused to take the oath” or “after taking the oath” refused “to be examined according to law,” that certification must be predicated upon a “lawful” oath. If the oath is not lawful, then anything after it would be invalid and divest jurisdiction from the district court. In this context, if an ALJ issued an unauthorized oath to a foreign citizen and then sought to enforce it, Sec. 927(b) would be useless since the district court would be powerless to act upon that nullity, other than to find the “oath” was unlawful. It has long been held that a statute should be construed so that every provision and every word should be given effect.<sup>93</sup> Construing the interplay of Sections 927(a) and (b) to allow an ALJ to have the power to administer an oath to a foreign national on foreign soil, while at the same time divesting an Art. III district court of any authority to review that act, is nonsensical.

### III. Conclusion

It is the opinion of this Court that Congress has not empowered an ALJ in the Department of Labor with the authority to administer a valid testimonial oath to a foreign claimant seeking to testify from a foreign country. Counsel still have the

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<sup>90</sup> 33 U.S.C. § 927(b).

<sup>91</sup> *A-Z Int'l v. Phillips*, 179 F.3d 1187, 1191 (9th Cir. 1999).

<sup>92</sup> *Id.* at 1193.

<sup>93</sup> Scalia & Garner, *supra* note 46, at 170.

obligation to provide this Court with a proper Foreign Evidence Certificate, which details the applicable foreign law pertaining to the proposed testimony of the Claimant and any foreign documents, the applicable U.S. laws, statutory and regulatory, which apply, and how those laws have been satisfied, along with a showing of compliance with all applicable federal and OALJ rules.

In proving the requirements of foreign law, counsel shall provide citations to statutory and/or jurisprudential authorities and include exhibits from the Ministry of Justice of Iraq or other Iraqi governmental agency documenting the administration of a legally binding testimonial oath in that country.<sup>94</sup>

Accordingly, it is hereby ORDERED that counsel for the party offering foreign evidence shall submit a proper Foreign Evidence Certificate as described above, **no later than May 31, 2026. No formal hearing date will be scheduled until the Court is satisfied that compliance with the Order has been fulfilled.**

**So ORDERED** this day.

**DAN C. PANAGIOTIS**  
**UNITED STATES ADMINISTRATIVE LAW JUDGE**

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<sup>94</sup> Should counsel change their mind and seek to submit foreign *testimony* by way of deposition, they are advised to review the requirements for that process as related in *Ndungu v. PAE Gov't Servs.*, OALJ Case No. 2023-LDA-03351 (ALJ Panagiotis July 9, 2025). Additionally if counsel agree to submit an unsworn recorded statement from the Claimant, the Court will consider admitting that exhibit and assess the weight it deserves.