

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

June 3, 2024

US TECH WORKERS, ET AL.,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00068
	)	
RELATIVITY,	)	
Respondent.	)	
_____	)	

Appearances: John M. Miano, Esq., for Complainant  
Ralph Hua, Esq., and Landon Schwob, Esq., for Respondent

ORDER ON MOTION FOR LEAVE TO FILE REPLY AND MOTION TO STAY  
FURTHER PROCEEDINGS

I. PROCEDURAL BACKGROUND

On March 19, 2024, U.S. Tech Workers, et al., filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Relativity. Complainant alleges that Respondent engaged in citizenship status discrimination in violation of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b(a)(1). Respondent filed an answer on May 7, 2024, alleging various affirmative defenses. Ans. 4–5.

On May 9, 2024, the Court issued an Order Setting Prehearing Conference and General Litigation Order. The Order set the parties’ initial prehearing conference for June 20, 2024, and requested that the parties file initial prehearing statements within twenty-one (21) days of receipt of the Order. Order Setting Prehr’g Conf. & Gen. Lit. Order 1–2. The Court also authorized the parties to begin discovery upon receipt of the Order. *Id.* at 3.

On May 13, 2024, Respondent filed a Motion to Dismiss, arguing that Complainant does not have standing, that this Court does not have subject matter jurisdiction, and that Complainant failed to provide “sufficient factual allegations” in its complaint. Mot. Dismiss 2–4. Also on May 13, Respondent filed a Motion to Stay Further Proceedings, citing judicial economy and the potentially dispositive nature of its pending Motion to Dismiss. Mot. Stay Furth. Procs.

On May 13, 2024, Complainant filed a Motion to Consolidate and for Leave to File a Consolidated Amended Complaint, arguing that related cases filed by Complainant should be consolidated with this one due to identical facts, identical legal questions, and “concerted action.” Mots. Consol. & Leave File Consol. Am. Compl. 2–3. Complainant asserted that an amended complaint would reflect this consolidation. *Id.* at 3.

On May 17, 2024, Complainant filed a Response to Respondent’s Motion to Dismiss, arguing proper standing and emphasizing evidence allegedly demonstrating a multi-faceted effort to unlawfully recruit non-protected individuals at the expense of protected individuals as well as civil conspiracy. Resp. Mot. Dismiss 2–9.

On May 23, 2024, Respondent filed an Opposition to Complainant’s Motion to Consolidate and for Leave to File a Consolidated Amended Complaint, arguing futility, prejudice, and inefficiency. Opp’n Mot. Consol. & Leave File Consol. Am. Compl. 1–2. Also on May 23, Respondent filed a Motion for Leave to File Reply to Complainant’s Response to Motion to Dismiss (Mot. Leave File Reply) and provided the proposed reply. Respondent represented that Complainant refused to take any position on the motion. Mot. Leave File Reply 1.

## II. MOTION FOR LEAVE TO FILE REPLY

The Court first turns to Respondent’s Motion for Leave to File Reply. Per OCAHO Rules of Practice and Procedure, parties are not permitted to file a “reply to a response, counterresponse to a reply, or any further responsive document,” unless authorized by an Administrative Law Judge (ALJ). 28 C.F.R. § 68.11(b).<sup>1</sup> Thus, parties “must seek leave of Court before filing a reply . . . .” *United States v. Space Expl. Techs. Corp.*, 18 OCAHO no. 1499a, 4 (2023) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1093, 7 (2003)); *see also Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362g, 4 (2024).<sup>2</sup>

An ALJ has full discretion to permit a reply. *See Space Expl. Techs. Corp.*, 18 OCAHO no. 1499a, at 4 (“[T]he decision whether to allow a reply or sur-reply ‘is solely within the judge’s discretion.’” (quoting *Diaz v. Pac. Mar. Assoc.*, 9 OCAHO no. 1108, 3 (2004))). OCAHO judges have

<sup>1</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023). The rules are also available through OCAHO’s webpage on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

<sup>2</sup> Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after Volume 8, where the decision has not yet 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 database “FIM-OCAHO,” the LexisNexis database “OCAHO,” or on the United States Department of Justice’s website at: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

considered whether the reply would “further record development and provide an opportunity for parties to be heard on novel issues or argument.” *Sharma v. NVIDIA Corp.*, 17 OCAHO 1450j, 3 (2023) (citing *Heath v. Ameritech Global*, 16 OCAHO 1435, 3 (2022)); see also *United States v. Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475d, 7 (2023).

Respondent asserts three arguments supporting its Motion for Leave to File Reply. First, Respondent argues that “Complainant’s response introduced new information and evidence, consisting of various webpages,” and “appear[ed] to admit” that some webpage links in the complaint were nonfunctional. Mot. Leave File Reply 1. Respondent asserts it “should have an opportunity to address” this evidence. *Id.* (citation omitted). Next, Respondent argues that the Court should strike this new evidence as an improper attempt to alter the Complaint. *Id.* Finally, Respondent asserts that, despite any addition of evidence, Complainant still fails to sufficiently allege “any inference of discrimination committed by Respondent.” *Id.*

The Court exercises its discretion under 28 C.F.R. § 68.11(b) to grant Respondent’s Motion for Leave to File Reply. In introducing new evidence in its response (e.g., a LinkedIn post, various specific Twitter posts), Complainant created cause for “further record development,” as in *Sharma*, 17 OCAHO 1450j, at 3. Mot. Dismiss Exs. C & D.<sup>3</sup> To the extent Respondent implicitly argues it was unable to effectively assess and respond to evidence in the complaint due to nonfunctioning links, the same rationale for a reply applies. Respondent’s second argument is also persuasive to the extent Respondent seeks to clarify what “portions of the response the Court should consider . . . .” See *Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475d, at 7.<sup>4</sup> Finally, Respondent seeks to clarify “the exact nature of the dispute between the parties . . . .” *Heath v. ASTA CRS, Inc.*, 14 OCAHO no. 1385b, 2 (2021). The Court also notes Complainant’s lack of opposition to the motion. Given these factors, Respondent’s May 23, 2024, Motion for Leave to File Reply to Complainant’s Response to Motion to Dismiss is GRANTED.

### III. MOTION TO STAY FURTHER PROCEEDINGS

In Respondent’s Motion to Stay Further Proceedings, Respondent requests that this Court issue a stay “in the interest of judicial economy,” as Respondent’s pending Motion to Dismiss may be case dispositive. Mot. Stay Furth. Procs. (citation omitted).

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<sup>3</sup> Complainant refers to Exhibit D as “Appendix D” in its response. However, the Court uses “Exhibit” for the sake of consistency.

<sup>4</sup> To the extent Respondent intended the Motion for Leave to File a Reply as a motion to strike, the court will consider the argument when it resolves the motion to dismiss. See *Walmart, Inc. (Bethlehem)*, 17 OCAHO no. 1475d, at 3 (looking to Federal Rule of Civil Procedure 12(f) which permits a court to strike “from a *pleading* an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter . . . .”) *Id.* at 3 (emphasis added) (quoting Fed. R. Civ. P. 12(f)). 28 C.F.R. § 68.2 defines pleading as “the complaint, the answer thereto, any motions, any supplements or amendments to any motions or amendments, and any reply that may be permitted to any answer, supplement, or amendment submitted to the Administrative Law Judge . . . .”

Per OCAHO rules, an ALJ is permitted to exercise “all appropriate powers necessary to conduct fair and impartial hearings . . . .” 28 C.F.R. § 68.28(a). This includes the authority to “regulate” and, thus, stay proceedings. *United States v. Black Belt Sec. & Investigations*, 17 OCAHO no. 1456b, 2 (2023) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1091, 5 (2003)); *see also Heath v. ConsultAdd*, 15 OCAHO no. 1395b, 2 (2022) (basing the Court’s authority to issue a stay on its “inherent power to ‘control the disposition of the cases on its docket with economy of time and effort . . . .’” (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936))).

In considering whether to grant a stay of proceedings, the Court must “weigh competing interests and maintain an even balance.” *Heath*, 15 OCAHO no. 1395b, at 2 (quoting *Landis*, 299 U.S. at 254). A stay is warranted if there is “good cause” and, more specifically, if there is a “clear bar to moving ahead.” *United States v. Fresco Produce*, 19 OCAHO 1530, 4 (2024) (quoting, in part, *Monda v. Staryhab, Inc.*, 8 OCAHO no. 1002, 86, 91 (1998)). In the past, the Court has found judicial economy, fairness, lack of prejudice, and potentially dispositive case developments to justify a stay of proceedings. *United States v. Ron’s Temp. Help Servs., Inc.*, 18 OCAHO no. 1496, 2 (2023) (judicial economy and fairness); *US Tech Workers v. Fifth Third Bank*, 19 OCAHO no. 1550, 3 (2024) (lack of prejudice); *Talebinejad v. Mass. Inst. Tech.*, 17 OCAHO no. 1464c, 3 (2023) (stay of proceedings due to pending motion to dismiss).

Upon weighing these factors, the Court finds there is good cause to stay proceedings. A stay will serve the parties’ interests in preserving time and resources as the Court considers Respondent’s Motion to Dismiss and, as Respondent notes, will serve judicial economy. Mot. Stay Furth. Procs. (citation omitted). There is also no allegation that such a stay would create fairness or prejudice concerns, and the Court does not foresee any such issue. Finally, the posture here mirrors that in *Talebinejad* and is comparable to other OCAHO cases where the Court has found a stay of proceedings pending adjudication of a motion to dismiss to be appropriate. *See, e.g., Zajradhara v. Hantang Ent. Corp.*, 19 OCAHO no. 1557, 2 (2024); *Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438b, 3, 5 (2022). As such, Respondent’s May 13, 2024, Motion to Stay Further Proceedings is GRANTED. Proceedings, including case deadlines and discovery, are STAYED until the Court issues a decision on Respondent’s May 13, 2024, Motion to Dismiss. The prehearing conference scheduled for July 20, 2024, is CANCELED.

SO ORDERED.

Dated and entered on June 3, 2024.

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Honorable Jean C. King  
Chief Administrative Law Judge