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

February 1, 2024

ARTIT WANGPERAWONG, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2024B00007
META PLATFORMS, INC., Respondent.	)	

Appearances: Artit Wangperawong, pro se Complainant
Eliza A. Kaiser, Esq., Matthew S. Dunn, Esq., and Amelia B. Munger, Esq., for Respondent

ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT'S MOTION PERTAINING TO ARBITRATION AND TO DISMISS

I. INTRODUCTION

This matter arises under the antidiscrimination provisions of the Immigration and Nationality Act at 8 U.S.C. § 1324b.

On October 3, 2023, Complainant, Artit Wangperawong, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Meta Platforms, Inc. Complainant alleges that Respondent discriminated against him on the basis of national origin[1] and citizenship status and retaliated against him in violation of 8 U.S.C. §§ 1324b(a)(1) and (a)(5). Compl. 8.

[1] Following a prehearing conference on January 9, 2024, the Court ordered Complainant to submit a filing explaining the Court's subject matter jurisdiction over his national origin claim as Respondent may have more than fifteen employees. *See* Order Summarizing Prehr'g Conference 2 (citing, inter alia, *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417, 2 (2022)). "[G]enerally [courts] may not rule on the merits of a case without first determining that it has jurisdiction over the cause," *Sinochem Intern. Co. Ltd. v. Malaysia Intern. Shipping Corp.*, 549 U.S. 422, 423 (2007). The Court will address that allegation at a later point (vice in this Order, noting Respondent's motion to dismiss advances only exhaustion and failure to state a claim as to the national origin allegation).

On December 15, 2023, Respondent filed an answer (after receiving an extension to do so). Alongside its answer, filed a Motion to Compel Arbitration and to Dismiss or Stay Action. Respondent seeks an order compelling use of arbitration, and in conjunction with this request, Respondent argues the case should be stayed or dismissed for reasons related to arbitration and otherwise (failure to state a claim upon which relief can be granted and failure to exhaust administrative remedies).

On December 20, 2023, Complainant filed its opposition to Respondent's motion.

II. BACKGROUND & PROCEDURAL HISTORY[2]

In his Complaint, Complainant alleges he is a United States Citizen. Compl. 4. He asserts he worked for Respondent as an Applied Research Scientist in the Applied Research Group in Enterprise Engineering. IER Charge 4. He states his employment began on May 26, 2020, and that he learned on November 9, 2022 his employment with Respondent would be terminated. *Id.* Complainant alleges he was ultimately terminated on January 13, 2023, and he was terminated because he is a United States citizen. Compl. 10. He came to this conclusion because he was qualified for his job, and other workers with different nationalities or citizenship in the position continued working for Respondent. *Id.*; *see also* IER Charge 4.

After his termination, Complainant alleges he applied for a position with Respondent. Specifically, he alleges that on January 24, 2023, he applied to work for Respondent as a Research Data Scientist, Machine Learning and Research Scientist, Applied Core ML. Compl. 8. Complainant asserts he was qualified for the position to which he applied; however according to the Complainant, Respondent refused to hire him. *Id.* at 8–9.

On April 23, 2023, Complainant filed a charge with the Immigrant and Employee Rights Section (IER). In this Charge, Complainant answered "Citizenship Status Discrimination" and "Retaliation" as to type of discrimination alleged, and he wrote he believed that he had been discriminated against due to his "national origin (American/US Citizen)." IER Charge 2, 4.

Separately, the Complainant states he filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), a forum which adjudicates matters arising under Title VII of the Civil Rights Act of 1964. IER Charge 4; *see also* Mot. Dismiss 7 (asserting Complainant filed his charge with the EEOC on February 17, 2023, and it is still pending).

As to his retaliation allegation, Complainant alleges Respondent began "smearing" Complainant's reputation by "suggesting that [his] layoff could have been due to [his] performance," which was "contradictory" to feedback Complainant received from his manager. Compl. 11. Complainant

[2] The facts are drawn from the Complaint and attachments thereto, and for the purposes of adjudicating the motion to dismiss, are accepted as true with all reasonable inference drawn in Complainant's favor. *Udala v. N.Y. State Dep't of Educ.*, 4 OCAHO no. 633, 390, 394 (1994); Fed. R. Civ. P. 10(c).

alleges this occurred after he "assert[ed his] rights and object[ed] to the discrimination by filing a complaint with the EEOC," and he is "being punished because [he] filed a complaint, whereas such reasons were not asserted before [he] filed the complaint." *Id.*

III. LAW AND ANALYSIS

A. The Court Declines to Compel Arbitration

Antecedent to its requests to stay or dismiss the case, Respondent requests the Court "compel Complainant's claims to arbitration," because, according to Respondent, "the parties have entered into an enforceable arbitration agreement, which covers Complainant's § 1324b claims." Mot. Dismiss 8–12. Respondent attached a copy of the signed arbitration agreement and a declaration.[3]

Respondent argues these proceedings are governed by the framework of the Federal Arbitration Act (FAA), and the Court should apply the Ninth Circuit test for compelling arbitration (existence of a valid written agreement to arbitrate and the agreement encompasses the dispute at issue). Mot. Dismiss 8 (citing *Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320 (9th Cir. 2015)).

For the reasons outlined below, the Court declines to grant this portion of Respondent's motion.

As a foundational matter, "[t]he FAA validates contractual provisions that agree to settle claims arising out of such contract or transaction through arbitration." *Hseih v. PMC-Sierra, Inc.*, 9 OCAHO no. 1096, 8 (2003) (citing 9 U.S.C. § 2 (2002)); *see also Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991) (noting the FAA's "purpose was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts"). Specifically, the FAA states "[i]f any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending . . . shall . . . stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement[.]" 9 U.S.C. § 3 (emphasis added). Moreover, any part aggrieved by the failure of another to arbitrate may "petition any United States district court which, save for such agreement, would have jurisdiction . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." *Id.* § 4 (emphasis added).

OCAHO is not a United States district court. As a baseline matter, Respondent, the moving party, has failed to provide legal justification to expand the FAA beyond federal district court to APA-governed fora within the executive branch.

[3] On the issue of compelling arbitration, Complainant asserts the arbitration agreement is "not enforceable because it is clearly not mutual." Complainant's Opp'n Mot. Dismiss 1. Complainant asserts he had no opportunity to negotiate agreement terms; and even if the agreement is enforceable, the terms "unambiguously state" that he is allowed to file complaints. *Id.*

Alternatively, even if Respondent had demonstrated the applicability of the FAA to these proceedings, Respondent provides no legal analysis justifying the proposition that OCAHO ALJ's can compel participation in a contractually-generated arbitration (i.e. that such an action is within the scope of the authority vested in the Court by the INA and the APA). Indeed, OCAHO ALJ's "may not perform duties inconsistent with their duties and responsibilities as administrative law judges." *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450h, 2 (2023) (quoting 5 U.S.C. § 3105). OCAHO's Administrative Law Judges (ALJs) are "appointed pursuant to 5 U.S.C. [§] 3105" to hear cases arising under 8 U.S.C. §§ 1324a–1324c. 28 C.F.R. §§ 68.1, 68.2. OCAHO's rules authorize ALJs to "[c]onduct formal hearings in accordance with the provisions of the Administrative Procedure Act" and "[t]ake any action authorized by the Administrative Procedure Act."[4] *Id.* § 68.28.

Ultimately, OCAHO has "exclusive, original jurisdiction to adjudicate allegations of section 1324b violations," and it is "clear that Congress specifically vested the power to adjudicate complaints brought under section 1324b in administrative law judges" who have "special training respecting employment discrimination." *Hseih*, 9 OCAHO no. 1096, at 25 (noting that there is no provision in § 1324b for arbitration, and finding persuasive a complainant's argument that Congress could not achieve its objective for ALJ's to have exclusive, original jurisdiction over § 1324b violations "if private parties could extract cases from this national framework and turn to private arbitrators").

Because the moving party has failed to demonstrate the applicability of the FAA to these proceedings and failed to demonstrate how its request to compel arbitration is within an OCAHO ALJ's scope of authority, the Court need not opine on the propriety of utilizing the cited Ninth Circuit test. For these reasons, the Court will not "compel" arbitration or otherwise opine on a contract between Complainant and Respondent.

B. The Court Declines to Stay the Case

In the alternative, Respondent asks the Court to stay the action pending arbitration pursuant to Section 3 of the FAA. Mot. Dismiss 12.[5] For the reasons outlined above, the Court remains unconvinced by Respondent's motion that the FAA applies to these proceedings. Indeed, on the topic of a stay under 9 U.S.C. § 3, this Court finds its above conclusions on the applicability of the FAA to be consistent (i.e. that it applies to litigation in federal district court). *See E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002) ("The FAA provides for stays of proceedings in federal district courts when an issue in the proceeding is referable to arbitration . . . .").

[4] For context, OCAHO ALJ's have denied motions wherein parties seek actions beyond the authority of the forum (such as motions to enforce criminal statutes, *Sharma*, 17 OCAHO no. 1450h, at 2, and motions for a jury trial, *A.S. v. Amazon, Inc.*, 14 OCAHO no. 1381c, 1–2 (2021)). *See also United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416c, 8 (2023) (noting that contractual disputes arising out of a settlement agreement "cannot be resolved in this forum").

[5] Complainant opposes a stay, noting that Respondent is in possession of "most of the evidence relevant" to Complainant's claims, rendering his "ability to support [his] claims highly limited." Complainant's Opp'n Mot. Dismiss 1.

OCAHO ALJ's have the authority to issue stays of proceedings,[6] but only when there is a "clear bar to moving ahead." *See Monda v. Staryhab, Inc.*, 8 OCAHO no. 1002, 86, 91 (1998). The moving party here has failed to identify a clear bar to this case's forward progress in this forum. The case will not be stayed, and will proceed per the schedule previously set forth.

C. The Court Grants in Part and Denies in Part Respondent's Motion to Dismiss

In its motion, Respondent advances several theories for which this case may be dismissed. Respondent argues Complainant failed to exhaust his administrative remedies and failed to state a claim upon which relief can be granted.

1. Exhaustion

Respondent argues Complainant's claim based on a failure-to-hire must be dismissed for failure to exhaust administrative remedies. Mot. Dismiss 13–15. Complainant only included his January 13, 2023 termination on his IER Charge, and did not include his failure-to-hire claim, which he raised in the Complaint.

"The scope of a discrimination case pursuant to 8 U.S.C. § 1324b is ordinarily limited to matters within, or like and related to, the administrative charge and the scope of the administrative investigation upon which the action is based." *Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1097, 7 (2003) (citing *Ong v. Cleland*, 642 F.2d 316, 318–20 (9th Cir. 1981); and then citing *Green v. L.A. Cnty. Superintendent of Sch.*, 883 F.2d 1472, 1475–76 (9th Cir. 1989)). "The purpose of exhausting administrative remedies is to put the respondent on notice and afford an opportunity to resolve the matter at the administrative stage." *Id.* (citing *Sosa v. Hiraoka*, 920 F.2d 1451, 1458–59 (9th Cir. 1990)). "For this reason, the scope of the charge itself must be considered in order to determine whether the matters raised could reasonably be expected to grow out of the investigation of that charge." *Id.*

"The Ninth Circuit has cautioned that the investigation that can reasonably be expected to result from a charge filed by an individual is not necessarily strictly limited by the literal terms of the charge." *Id.* at 8 (citing *Paige v. California*, 102 F.3d 1035, 1042 (9th Cir. 1996)). "In determining whether a plaintiff has exhausted allegations that she did not specify in her administrative charge, it is appropriate to consider such factors as the alleged basis of the discrimination, dates of discriminatory acts specified within the charge, perpetrators of discrimination named in the charge, and any locations at which discrimination is alleged to have occurred. In addition, the court should consider plaintiff's civil claims to be reasonably related to allegations in the charge to the extent

[6] Issuance of a stay is pursuant to the authority of ALJ's to "dispose of procedural requests or similar matters" under 5 U.S.C. § 556(c)(9). *See United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271d, 7 (2017); *see also Heath v. I-Services, Inc.*, 15 OCAHO no. 1413a, 2 (2022) ("The power to stay proceedings is incidental to a court's inherent power to "control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936))).

that those claims are consistent with the plaintiff's original theory of the case." *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1100 (9th Cir. 2002).

Here, Complainant did not allege in his IER charge that he was not hired for a position to which he applied on January 24, 2023 (specifically to work for Respondent as a Research Data Scientist, Machine Learning and Research Scientist, Applied Core ML). *See* Mot. Dismiss 14 n.10 (noting Complainant's failure-to-hire claim is "is based on a separate alleged adverse action" than his termination). However, Complainant's non-selection occurred within a month of his termination and prior to his IER charge on April 23, 2023. Additionally, the proposed discriminatory rationale for Complainant's non-selection is the same. *See, e.g.*, *Gonzalez v. National R.R. Passenger Corp.*, 376 F. App'x 744, 745–46 (9th Cir. 2010) (finding district court erred by holding that a Title VII plaintiff failed to exhaust administrative remedies as to a discriminatory act that "fell directly on the heels" of an act that was raised in the EEOC charge); *Sodhi v. Maricopa Cnty. Special Health Care Dist.*, 9 OCAHO no. 1124, 9 (2007) ("Indeed, the 'like and related' principle has instead most frequently been applied to post-charge claims related to new acts occurring during or after the pendency of the charge.").[7]

Therefore, the Court declines to dismiss Complainant's failure-to-hire discrimination claim on exhaustion grounds because the allegation could reasonably be expected to grow out of the investigation of the charge.

2. Failure to State a Claim Upon Which Relief May Be Granted

Respondent argues that Complainant's failure-to-hire and retaliation claims should be dismissed for failure to state a claim.

a. Standard

An OCAHO Administrative Law Judge (ALJ) may dismiss a complaint for failure to state a claim upon which relief may be granted. *See* 28 C.F.R. § 68.10. This rule is modeled after Federal Rule of Civil Procedure 12(b)(6). *S. v. Discover Fin. Servs., LLC*, 12 OCAHO no. 1292, 7 (2016) (citing *United States v. Spectrum Tech. Staffing Servs., Inc.*, 12 OCAHO no. 1291, 8 (2016); and then citing 28 C.F.R. § 68.1).

"In considering a motion to dismiss, the court must limit its analysis to the four corners of the complaint." *Udala*, 4 OCAHO no. 633, at 394. The complainant's allegations of fact are accepted as true and all reasonable inferences derived therefrom are drawn in the complainant's favor. *Id.*

[7] The Court is not persuaded by Respondent's citations to *Wijie v. Barton Springs/Edwards Aquifer C.D.*, 4 OCAHO no. 668, 704 (1994), which involved a motion to add new individuals and entities to a complaint, and *Goel v. Indotronix Int'l Corp.*, 9 OCAHO no. 1102, 21 (2003), which involved new allegation of national origin discrimination when the charge of discrimination only alleged retaliation. Here, as discussed above, Complainant only alleges an additional adverse action (failure to hire) occurring within weeks after the adverse action alleged in the IER charge (termination), involving the same discrimination claims and the same parties.

OCAHO's Rules of Practice and Procedure provide that complaints shall contain (1) "A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated"; (2) "The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred"; and (3) "A short statement containing the remedies and/or sanctions sought to be imposed against the respondent." 28 C.F.R. § 68.7(a)–(b). "Statements made in the complaint only need to be 'facially sufficient to permit the case to proceed further,' . . . as '[t]he bar for pleadings in this forum is low.'" *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 3 (2022) (citing *United States v. Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, 10 (2012), and then citing *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 5 (2021)). "OCAHO's pleading standard does not require a complainant [to] proffer evidence at the pleadings stage . . . Rather, pleadings are sufficient if 'the allegations give adequate notice to the respondents of the charges made against them.'" *Id.* (quoting *Santiglia*, 9 OCAHO no. 1097, at 10); *see also Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, at 9 ("Unlike complaints filed in the district courts, every complaint filed in this forum, whether pursuant to § 1324a, § 1324b, or § 1324c, has already been the subject of an underlying administrative process as a condition precedent to the filing of the complaint . . . An OCAHO complaint thus will ordinarily come as no surprise to a respondent that has already participated in the underlying process.").

"A § 1324b complaint must contain sufficient minimal allegations to satisfy § 68.7(b)(3) and give rise to an inference of discrimination." *See Jablonski v. Robert Half Legal*, 12 OCAHO no. 1272, 6 (2016). To give rise to an inference of discrimination, complaints must include information that links the complainant's protected class and the employment action in question. *See id.*; *Sharma*, 17 OCAHO no. 1450, at 5.

b. Failure to Hire

First, Respondent argues that Complainant has not provided enough facts to plead discrimination based on citizenship status for failure to hire. Mot. Dismiss 16. Complainant alleges that he applied to work as a Research Data Scientist, Machine Learning and Research Scientist, Applied Core ML and was qualified for the roles, and that Respondent did not hire him because of his citizenship status and national origin. *Id.* Respondent notes that Complainant does not allege whether the positions remained open, whether Respondent continued taking applications from other people, or whether someone else was hired for the positions. *Id.*

As noted above, OCHAO only requires litigants to allege minimal factual allegations to satisfy 28 C.F.R. § 68.7(b)(3) and to give rise to an inference of discrimination. *See Jablonski*, 12 OCAHO no. 1272, at 6 ("Where a complainant alleges no facts from which an adjudicator could reasonably conclude that the opposing party violated the law, dismissal is the appropriate result.").

Here, the Court finds that Complainant's allegations regarding his non-selection do not satisfy OCAHO's pleading standards, because they do not notify Respondent adequately about his theory of liability, i.e., what facts lead him to believe that Respondent's decision not to hire him was caused by discrimination based on citizenship status or national origin. For example, in *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 7 (2022), the Court found that the complainant met OCAHO's pleading standard "because he [] identified a theory by which [the] Respondent allegedly violated 8 U.S.C. § 1324b" when he alleged that the Respondent sought applicants for a

particular position, he applied to this position, he was qualified for this position, he was not selected for the position" and the Respondent "may have alternatively hired a non-citizen into the specific position because of that candidate's citizenship status." The Court found these allegations "succinctly yet clearly" informed the respondent why the complainant brought the suit. *Id*.

In contrast, the entirety of Complainant's allegations related to his non-selection are essentially that he applied for the Research Data Scientist, Machine Learning and Research Scientist, Applied Core ML on January 24, 2023, and was not selected. Compl. 8. Complainant checks "Yes" to the boxes on the complaint form asking whether he was qualified for the job, and whether Respondent was looking for workers; Complainant leaves blank the portions of the complaint form asking why the business refused to hire him, whether the job remained open, whether someone else was hired for the job, and who was hired and why. *Id.* at 8–9. In the box asking any other reasons why Complainant was not hired, he includes a portion of an email he received from Respondent indicating that they had decided not to move forward with him, and were "not able to share specific feedback" about his application. *Id.* at 9.[8] While Complainant applied for the positions shortly after his termination, he does not allege any perceived connection between these events.

While Complainant may not possess information regarding whether Respondent filled the position, and with whom, Complainant must at least identify why he believes the decision was discriminatory. *See, e.g.*, *A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381d, 16 (2021) (dismissing claim of citizenship status discrimination claim when the complainant merely asserted "in a general and conclusory fashion that Respondent discriminated against him based on his citizenship status, without citing to specific facts giving an inference to causation") (citing, inter alia, *Thompson v. Sanchez Auto Servs., LLC*, 12 OCAHO no. 1302, 7–8 (2017) (dismissing discrimination claim where the complaint was "bereft of any allegations related to [] national origin apart from cursory assertions")).

Therefore, Respondent's Motion to Dismiss Complainant's failure-to-hire claim for failure to meet OCAHO's pleading standard is GRANTED, and the claim is DISMISSED without prejudice.

c. Retaliation

Finally, Respondent asks the Court to dismiss Complainant's retaliation for failure to state a claim, as filing a complaint with the EEOC does not constitute a recognized protected activity under § 1324b(a)(5), and because Respondent did not know about his EEOC complaint at the time of his termination. Mot. Dismiss 17–19. Complainant does not respond to this argument.

In order to qualify as protected conduct in this forum, the conduct must implicate some right or privilege specifically secured under § 1324b, or a proceeding under that section. *See A.S.,* 14 OCAHO no. 1381d, at 9 (quoting 8 U.S.C. § 1324b(a)(5)); *Yohan v. Cent. State Hosp.*, 4 OCAHO no. 593, 13, 21-22 (1994) (finding no OCAHO jurisdiction over threats to report employer to

[8] The Court notes that Complainant's answer in this box on the complaint form appears to have been cut off, and page 5 of the complaint form is missing. Insofar as these missing portions of the complaint form contain relevant information, they are not presently before the Court for consideration.

"EEOC, the Immigration Department [sic], the American Counsel General, the ALCU [sic], the NAACP, Georgia Legal Services," or agencies other than IER or OCAHO).

Here, Complainant alleges that Respondent began smearing his reputation following the filing of a charge of discrimination with the EEOC. Compl. 11. While certain post-employment actions may constitute retaliation, *see, e.g.*, *Wanamaker v. Columbian Rope Co.*, 108 F.3d 462, 466 (2d Cir. 1997) ("[P]laintiffs may be able to state a claim for retaliation, even though they are no longer employed by the defendant company, if, for example, the company 'blacklists' the former employee, wrongfully refuses to write a recommendation to prospective employers, or sullies the plaintiff's reputation."), OCAHO precedent is clear that filing an EEOC charge cannot constitute protected activity within the meaning of § 1324b(a)(5). *See A.S.,* 14 OCAHO no. 1381d*,* at 10 ("[F]iling with [the] EEOC is not protected activity within the meaning of 8 U.S.C. § 1324b(a)(5)." (internal quotations and citation omitted); *Crespo v. FAMSA, Inc.*, 13 OCAHO no. 1337, 7 (2019) ("A retaliation claim under § 1324b(a)(5) is limited to retaliation for asserting a right or privilege under § 1324b, and does not extend to retaliation 'for filing or planning to file a charge with an entity other than [IER] or a complaint with an entity other than [OCAHO]'" (citing *Yohan v. Central State Hosp.*, 4 OCAHO no. 593, 21–22 (1994)).

Therefore, Respondent's Motion to Dismiss Complainant's retaliation claim for failure to meet OCAHO's pleading standard is GRANTED, and the claim is DISMISSED without prejudice.

IV. LEAVE TO AMEND

The Court recognizes Complainant's pro se status, as well as the possibility that the deficiencies identified with his retaliation claim may be cured by amendment. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) (a pro se litigant must be given leave to amend his complaint unless it is "absolutely clear" that its deficiencies cannot be cured by amendment). Complainant may file any motion to amend by March 1, 2024. If he chooses to file such a motion, Complainant's motion must identify how his amendments will cure the deficiencies in his Complaint, and must attach the proposed amended complaint. If Complainant is not permitted to amend, or if he chooses not to seek leave to amend, the case will proceed forward with only Complainant's termination discrimination claim based on citizenship status and national origin.

SO ORDERED.

Dated and entered on February 1, 2024

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge