

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

US TECH WORKERS ET AL.,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00077
	)	
ZEBRA TECHNOLOGIES, CO.,	)	
Respondent.	)	
	)	

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Appearances: John M. Miano, Esq., for Complainant  
K. Edward Raleigh, Esq., and Patrick Shen, Esq. for Respondent

ORDER GRANTING LEAVE TO REPLY  
AND GRANTING STAY OF ANSWER DEADLINE

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, US Tech Workers, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 19, 2024, alleging that Respondent Zebra Technologies Company<sup>1</sup> discriminated on the basis of citizenship status in violation of 8 U.S.C. § 1324b(a)(1).

On May 13, 2024, Complainant filed a Motion to Consolidate and for Leave to File a Consolidated Amended Complaint. Complainant seeks to consolidate this case with the other 41 cases presently pending in this court.

On May 23, 2024, Respondent filed its Motion to Dismiss and a Motion to Stay Answer Deadline Pending Motion to Dismiss and Motion to Consolidate. In its Motion to Stay Answer Deadline, Respondent argues that it has offered good cause for a stay of proceedings, citing that its motion to dismiss would be dispositive if granted. Further, Respondent argues that if Complainant's Motion to Consolidate is granted Respondent would not be required to provide an answer to the current Complaint. Mot. Stay Ans. Deadline 1. Respondent alternatively argues

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<sup>1</sup> In its Complaint, Complainant identified Respondent as Zebra. In its motion for Extension to File Answer, Respondent identifies itself as Zebra Technologies Co. The case caption is amended to reflect Respondent company's name as indicated in its motion.

that the Motion to Consolidate, if granted, “would render filing an answer in this action moot, given that Respondent would be required to answer again in the consolidated action.” *Id.* at 6.

On May 24, 2024, Respondent filed its Opposition to Complainant’s Motion to Consolidate. The matter has now been fully briefed.

On June 3, 2024, Complainant filed its Response to Respondent’s Motion to Dismiss as Motion for Partial Summary Judgment. Respondent thereafter filed its Motion for Leave to Reply to Complainant’s Response to Motion to Dismiss, along with a copy of Respondent’s Reply in Support of Respondent’s Motion to Dismiss as an exhibit.

## II. MOTION FOR LEAVE TO REPLY TO COMPLAINANT’S RESPONSE TO MOTION TO DISMISS

The Court first addresses Respondent’s Motion for Leave to File Reply. Under OCAHO’s Rules of Practice and Procedure, parties may not file a “reply to a response, counter-response to a reply, or any further responsive document” without the permission of the presiding Administrative Law Judge. 28 C.F.R. § 68.11(b).<sup>2</sup> Parties “must seek leave of leave of Court” to file a reply not already authorized and “the decision whether to allow a reply or sur-reply is ‘is solely within the judge’s discretion.’” *United States v. Space Exploration Techs., Corp.*, 18 OCAHO no. 1499a, 4 (2023) (quoting *Diaz v. Pac. Mar. Assoc.*, 9 OCAHO no. 1108, 3 (2004) (additional citations omitted). In the past, the Court has weighed whether a requested 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).

In its Motion for Leave to Reply, Respondent states that its “request is properly and timely filed” and that its reason for requesting a reply is “to inform he Court of case law relevant to its determination.” Mot. Leave Reply 2. Respondent also argues that Complainant will not be prejudiced by Respondent’s Reply.

The Court GRANTS Respondent’s Motion for Leave to Reply. Respondent’s reply will assist the Court in addressing Complainant’s arguments and was timely requested. Complainant has not opposed the Reply, and the Court does not find it would be prejudiced. Accordingly, Respondent’s Reply in Support of Respondent’s Motion to Dismiss is accepted and now part of the record.

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<sup>2</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>.

## III. MOTION TO STAY

Under OCAHO's Rules of Practice and Procedure, the Administrative Law Judge are vested with "all appropriate powers necessary to conduct fair and impartial hearings." 28 C.F.R. § 68.28(a); see also Heath v. Amazee Glob. Ventures, Inc., 16 OCAHO no. 1433, 2 (2022) (citing Hsieh v. PMC-Sierra, Inc., 9 OCAHO no. 1091, 5 (2003)); Leuthphova v. Printful, Inc., 19 OCAHO no. 1536, 1 (2024) (accord). Among those powers is the power to issue stays of proceedings. United States v. Black Belt Sec. & Investigations, 17 OCAHO no. 1456b, 2 (2023) (citing Hsieh, 9 OCAHO no. 1091, at 5). The issuance of a stay "calls for the exercise of judgment, which must weigh competing interests and maintains an even balance," and "should not be granted absent a clear bar to moving ahead." See Heath v. ConsultAdd, 15 OCAHO no. 1395b, 2 (2022) (quoting Landis v. N. Am. Co., 299 U.S. 248, 254 (1936), and then quoting Monda v. Staryhab, Inc., 8 OCAHO no. 1002, 86, 91 (1998)).

Here, the Court finds that it would be appropriate to issue a stay of Respondent's answer deadline pending adjudication of the Motion to Dismiss, which is potentially case dispositive, and the Motion to Consolidate, which would result in an Amended Consolidated Complaint if granted.

Accordingly, Respondent's Answer deadline is STAYED pending resolution of Complainant's Motion to Consolidate and Respondent's Motion to Dismiss.

SO ORDERED.

Dated and entered July 18, 2024.

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John A. Henderson  
Administrative Law Judge