

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

August 20, 2024

US TECH WORKERS, ET AL.,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00089
	)	
BOARD OF TRUSTEES OF	)	
THE UNIVERSITY OF ILLINOIS,	)	
Respondent.	)	
_____	)	

Appearances: John Miano, Esq., for Complainant  
Mary Deweese, Esq., and Kelli Meilink, Esq., for Respondent

ORDER TO SHOW CAUSE (COMPLAINANT) – SUBJECT MATTER JURISDICTION

I. PROCEDURAL HISTORY

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On March 19, 2024, Complainant, US Tech Workers, et al., filed a complaint alleging that Respondent, Board of Trustees of the University of Illinois,<sup>1</sup> violated 8 U.S.C. § 1324b(a)(1)(B). On July 11, 2024, Respondent filed its Answer.

II. LAW & DISCUSSION

The Court “has an independent duty to ensure it only adjudicates matters of which it has subject matter jurisdiction.” *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510b, 2 (2024).<sup>2</sup> The

<sup>1</sup> The Complaint initially named “Discovery Partners Institute.” In its June 3, 2024 filing, Respondent explained “Discovery Partners Institute is an institute of the University of Illinois. The Board of Trustees of the University of Illinois is the ‘body corporate and politic’ of the University of Illinois with the ‘power . . . to sue and be sued.’” Mot. Extension 1 n.1 (quoting 110 ILCS 305/1); see also *US Tech Workers et al. v. Bd. of Tr. of the Univ. of Ill.*, 20 OCAHO no. 1592, 1-2 (2024).

<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 subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will

burden of establishing subject matter jurisdiction rests on the party invoking it (i.e. the Complainant). See *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417, 2 (2022).

Sovereign immunity<sup>3</sup> may be an issue of subject matter jurisdiction in the Seventh Circuit.<sup>4</sup> For the purposes of sovereign immunity, “[s]tate agencies are treated the same as states.” *Kroll v. Bd. of Trustee of Univ. of Ill.*, 934 F.2d 904, 907 (7th Cir. 1991) (citing *Alabama v. Pugh*, 438 U.S. 781, 781-82 (1978)). Further, it appears “[u]niversit[ies] and [their] Board[s] of Trustees are state agencies for sovereign-immunity purposes . . . .” *Haynes v. Ind. Univ.*, 902 F.3d 724, 731 (7th Cir. 2018) (citing *Perick v. Ind. Univ.-Purdue Univ. Indianapolis Athletics Dep’t*, 510 F.3d 681, 695 (7th Cir. 2007)). Finally, “[s]tate sovereign immunity principles” also “generally apply to actions brought by private parties in administrative adjudications.” *Yeung v. Wash. State Dep’t of Licensing*, 17 OCAHO no. 1473b, 3 (2024) (citing *Fed. Mar. Comm’n v. S.C. Ports Auth.*, 535 U.S. 743, 760 (2002)).

### III. CONCLUSION

Based on the identity of the Respondent, the Court may not have subject matter jurisdiction over this Complaint. Absent a submission from Complainant demonstrating subject matter jurisdiction, this Complaint may be dismissed for lack of subject matter jurisdiction.

Complainant must submit a filing addressing this issue by September 6, 2024 if it desires an opportunity to be heard. Respondent shall have 10 days from the date it receives Complainant’s submission to submit a response for the Court’s consideration (if Complainant provides no submission, then Respondent must submit a filing by September 16, 2024 if it desires to be heard). Parties should consider reviewing *Yeung v. Wash. State Dep’t of Licensing*, 17 OCAHO no. 1473b (2024) when formulating a submission.

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always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

<sup>3</sup> “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI; see also *Yeung v. Wash. State Dep’t of Licensing*, 17 OCAHO no. 1473b, 3 (2024).

<sup>4</sup> Since the Respondent in this case is based in Illinois, the Court may look to the case law of the relevant United States Court of Appeals, here the Seventh Circuit. See 28 C.F.R. § 68.57. *McHugh v. Ill. Dep’t Transp.*, 55 F.4th 529, 532 (7th Cir. 2022); see also *Lapides v. Bd. of Regents of the Univ. Sys. Of Ga.*, 535 U.S. 613, 624 (2002).

SO ORDERED.

Dated and entered on August 20, 2024.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge