

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

October 24, 2024

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 2024A00015
	)	
ZARCO HOTELS INCORPORATED,	)	
Respondent.	)	
_____	)	

Appearances: ACC Jodie Cohen, for Complainant  
Kian Zarrinnam, pro se Respondent

ORDER SUMMARIZING PREHEARING CONFERENCE & GRANTING MOTION TO  
DISMISS IN PART AND AMEND IN PART THE COMPLAINT

I. BACKGROUND

This case arises under the employer sanctions provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Zarco Hotels Incorporated, on November 9, 2023.

On December 26, 2023, Respondent filed an Answer and Motion to Dismiss, which was denied. *United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518b (2024).<sup>1</sup>

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<sup>1</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 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>.

On June 25, 2024, Respondent filed a Motion for Summary Decision. After receiving an extension, Complainant filed its Opposition to Respondent's Motion for Summary Decision on September 26, 2024. On the same day, Complainant also filed a Motion for Leave to Amend Complaint.

On October 1, 2024, Respondent filed a Motion to Request Immediate Prehearing Conference.<sup>2</sup>

## II. PREHEARING CONFERENCE SUMMARY

The Court held a telephonic prehearing conference with the parties on October 22, 2024.

The Court initially sought clarification from Complainant regarding its proposed Amended Complaint. Complainant agreed with the Court's understanding of the motion and proposed amended complaint – namely that Complainant sought to dismiss Count I in its entirety and reduce the number of violations in Count II, while asserting an alternate charging theory alongside the original charging theory outlined in the Complaint. The functional result was a reduction in the scope of liability for the Respondent, with no new Forms I-9 or individuals added to the proposed revised Count.

The Court noted Respondent's time to oppose the motion to amend the Complaint had lapsed; however, Respondent was still provided an opportunity to be heard on the colloquy the Court held with Complainant's counsel. Respondent stated he opposed the amendment in so far as he believed the case should be dismissed in its entirety, a position he did not timely provide in writing in response to the motion.

In any event, the Court informed the parties it would grant Complainant's motion and would permit an amendment to the Complaint (dated as of the issuance of this Order). The Court accepted the amendment because it noted it was unopposed by Respondent, was based on good cause, and ultimately, was not prejudicial to Respondent (as his liability narrowed as a result of the proposed amended Count). *See generally United States v. Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475a, 2 (2023) (allowing for an amended complaint when similar conditions were present).

For the benefit of the parties and the record, the revised Count before the Court is as follows:

Respondent failed to prepare and/or present the Form I-9, or in the alternative, failed to properly complete section 2 of the Form I-9 and/or correct technical failures for nine

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<sup>2</sup> The Court had a prehearing conference already scheduled when this motion was filed (the October 22, 2024 prehearing conference memorialized in this Order). The Respondent's rationale for advancing the prehearing conference forward by one week was predicated on Complainant's most recent filings (response to Respondent's dispositive motion and motion to amend the Complaint). *See generally* Mot. Requesting PHC. Respondent stated he desired a "prehearing conference to discuss [the pending motions]." *Id.* at 3. Because the Court disfavors discussing pending motions with parties, and because the Motion was filed only three weeks before the Court was already scheduled to meet with the parties, the Court instead determined it most prudent to hold the prehearing conference as scheduled, effectively denying this motion as MOOT.

(9) individuals. The total penalty now sought by Complainant for these nine alleged violations is \$6,316.90.

Because the Complainant's motion to amend the Complaint was granted, the Court revised the case schedule as follows:

November 22, 2024	Amended Answer Due <sup>3</sup>
January 21, 2025	Deadline to complete discovery/ file discovery-related motions
March 1, 2025	Deadline to file dispositive motions (summary decision)

Deadline for the parties to file responses to dispositive motions<sup>4</sup> – 30 days after receipt of the motion

The only filings now pending before the Court are Respondent's original Motion for Summary Decision (with the companion Complainant Opposition to the Motion for Summary Decision).

As explained at the conference, because the Complaint was amended, parties will have an opportunity to submit revised summary decision motions (deadline set forth above). Any such revised motion should be filed after the close of discovery. If the deadline for dispositive motions elapses, and neither party has filed a revised motion, the Court will adjudicate the Respondent's motion, which was previously filed.

SO ORDERED.

Dated and entered on October 24, 2024.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge

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<sup>3</sup> The Court referred the parties to OCAHO's regulations, or Rules of Practice and Procedure, which can be found at 28 C.F.R. pt. 68 (2024). Section 68.9 deals with filing an answer to a complaint. Subsection (a) states that "[w]ithin thirty (30) days after the service of a complaint, each respondent shall file an answer." Subsection (c) explains the information a typical answer should contain. Subsection (e) authorizes an ALJ to allow the complainant to amend their complaint "at any time prior to the issuance of the Administrative Law Judge's final order based on the complaint," if the amendment will facilitate a resolution of the controversy.

<sup>4</sup> 28 C.F.R. § 68.11 discusses the general procedure for the filing and granting of motions, which motions include a motion for summary decision, a motion to amend the complaint, or a motion to compel discovery. Subsection (b) states that a party normally has ten (10) days to submit a response to a written motion. However, this section also allows for the judge to extend the response period if they see fit. In this case, the period to respond to a Motion for Summary Decision has been extended to 30 days.

Once a party responds to a written motion, the moving party generally may not submit a reply to the response unless they first seek the permission of the Court to do so. 28 C.F.R. § 68.11(b). This can be done by filing a motion seeking leave to file a reply.