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

December 18, 2024

In re Investigation of:	)	
	)	
SAIL INTERNET, CORP.,	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2025S00013
	)	

AMENDED ORDER DENYING PETITION TO MODIFY OR REVOKE SUBPOENA[1]

I. PROCEDURAL HISTORY

At issue is an administrative subpoena the undersigned issued at the request of the Immigrant and Employee Rights Section, Civil Rights Division of the Department of Justice (IER or the government) in aid of its investigation of Sail Internet, Inc. The investigation began because of a charge from Varun Mangewala (charging party) alleging that Petitioner discriminated against him based on his citizenship status, in violation of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b, when it terminated him and retained a temporary visa worker in his place. Opp. 2 & Ex. B. The subpoena was signed on October 29, 2024, and according to Respondent's motion, served on November 1, 2024. Subpoena, Opp. 3.

On November 14, 2024, Petitioner filed its Petition to Modify or Revoke OCAHO Subpoena. On November 20, 2024, IER filed its Opposition to Petition to Revoke or Modify Subpoena.

II. STANDARDS

Per 28 C.F.R. § 68.25(c), an entity "served with a subpoena who intends not to comply with it has ten days after service of the subpoena in which to file a petition to revoke or modify it." Subsequently, the entity that applied for the subpoena has eight days after receipt of the petition to respond to it. *Id.*

[1] The Court issued an Order Denying Petition to Modify or Revoke Subpoena in the above-captioned case on December 5, 2025. This Amended Order amends that Order solely to correct a clerical error in the case caption.

The requirements for enforcement of an administrative subpoena are minimal. *In re Investigation of Space Expl., Techs.*, 20 I&N Dec. no. 1378, 1–2 (2020) (citations omitted).[2] Generally, an administrative subpoena is enforceable if "1) the investigation is within the statutory authority of the agency, 2) the subpoena is not too indefinite, and 3) the information sought is reasonably relevant to the charge under investigation." *Id.* at 3 (first citing *In re Investigation of NHS Human Servs.*, 10 OCAHO no. 1198, 3 (2013) and then citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) and *EEOC v. Univ. of Pa.*, 850 F.2d 969, 981 (3d Cir. 1988), *aff'd*, 493 U.S. 182 (1990)). "If the three elements are satisfied, the subpoena will be enforced unless petitioner meets the 'lofty burden' of proving that 'the inquiry is unreasonable because it is overbroad or unduly burdensome.'" *Id.* (citing *Investigation of Hyatt Regency Lake Tahoe*, 5 OCAHO no. 751, 238, 243 (1995) (quoting *EEOC v. Children's Hosp. Medical Ctr. of N. Cal.*, 719 F.2d 1426, 1428 (9th Cir. 1983)).

III. DISCUSSION

A. Timeliness

According to IER's Opposition brief, the subpoena was served on November 1, 2024. Op. 3. Petitioner included the Federal Express Airbill in its petition, which shows that it was sent via "FedEx Priority Overnight" on October 31, 2024, to Petitioner. Pet. 13.[3] Per OCAHO's rules, a petition to revoke or modify the subpoena was due on or before November 11, 2025. *See* § 68.25(c). The Petitioner mailed the petition to Respondent via FedEx Overnight on November 12, 2025. Pet. 6. OCAHO did not receive the petition until November 14, 2025. Per 28 C.F.R. § 68.8(b), "[p]leadings are not deemed filed until received by the Office of the Chief Administrative Hearing Officer of the Administrative Law Judge assigned to the case." Inferring that the subpoena was served on November 1, 2024, and thus the petition to revoke had to be received by OCAHO on November 12, the petition is "deficient and must be denied for its untimeliness." *In re Investigation of Space Expl. Techns*, 20 I&N Dec. no. 1378, at 2 (citing *In re Investigation of Hyatt Regency Lake Tahoe*, 5 OCAHO no. 751, at 240 (denying the petition as untimely because it was filed four days after the statutory filing date). The Court will proceed to analyze the petition in any event, given that IER's affiant did not include the date the subpoena was received by Petitioner, and the airbill does not contain a date stamp showing when it was received.

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[2] 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 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," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

[3] The attachments to the petition are not paginated or separated by attachment number, thus this order refers to the PDF page number.

B. Enforceability of Administrative Subpoena

i. Subpoena

IER's subpoena consists of nine discrete requests for production, two of which have sub-requests. Subpoena Attach. A. The Subpoena asks for information about the charging party's job performance, information about how and why the temporary visa worker who replaced him was hired, and information about Petitioner's policies and practices regarding providing reference letters. *Id.* Petitioner objects to the subpoena in general based on four grounds: (1) the requested information is outside the statutory authority of IER, (2) the Subpoena is too indefinite, (3) the information sought is not reasonably relevant to the charge under investigation, and (4) the Subpoena is overly broad and burdensome. Pet. 1. Petitioner then objects to each request specifically.

ii. Requests 1 and 2

The first two requests seek information regarding the hiring of the temporary visa worker who replaced Complainant. Subpoena Att. A. Petitioner argues that the decision of whether to hire this person is outside the scope of IER's authority to investigate the charging party's discrimination claim because he is the sole person sponsored by Petitioner for an H-1B visa, and therefore there cannot be a pattern and practice of discrimination. Pet. 2. In addition, this request is not reasonably related to the charge under investigation, petitioner argues, as the charging party asserts discrimination solely due to the decision to end his employment with the Petitioner. *Id.*

IER argues that the charging party asserts Petitioner discriminated against him when Petitioner trained a temporary visa worker to do the same work that he was performing while the visa worker was an intern working on a student visa. Opp. at 5–6. Petitioner then hired the visa worker as a permanent employee, promised the visa worker H-1B sponsorship just before terminating the charging party, terminated the charging party, and then had the visa worker assume the charging party's duties after the termination. *Id.* at 6. Thus, information about the hiring and sponsorship of the temporary visa worker is at the heart of the claim, as comparing Petitioner's reasons for its treatment of the two workers is critical to assessing the claim of discrimination. *Id.*

IER has the authority to, on its "own initiative, conduct investigations respecting unfair immigration-related employment practices . . . ." 8 U.S.C. § 1324b(d)(1). This authority exists independent of whether a charge was filed. *United States v. Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, 8 (2012). Moreover, IER has authority "to broaden the scope of an existing investigation beyond the allegations made in a particular charge." *Id.* (citing *In re Investigation of Wal-Mart Distrib. Ctr. #6036*, 5 OCAHO no. 788, 551, 553–54 (1995)). Further, "relevance in the context of an investigatory subpoena is given an exceedingly generous construction." *In re Investigation of Conoco, Inc.*, 8 OCAHO no. 1048, 728, 735 (2000) (citing *EEOC v. Shell Oil Co.*, 466 U.S. 54, 68–69 (1984)). Relevance "has been construed to include 'virtually any material that might cast light on the allegations against the employer.'" *Hyatt Regency Lake Tahoe*, 5 OCAHO no. 751, at 243 (quoting *Shell Oil Co.* 466 U.S. at 68–69).

The undersigned agrees with IER that these requests are at the heart of the charge in this case; that a person was treated differently because of his citizenship—in this case the allegation is that a non-citizen was hired, retained and sponsored to do the same job that a protected individual was doing, and the protected individual was fired instead of the non-citizen based on his citizenship status. The circumstances surrounding why Petitioner chose to hire the visa worker to do the same duties as the charging party, how the two workers performed, and why the visa worker was retained while the citizen worker was not entirely relevant to the charge. While Petitioner is correct that the charge is not a pattern and practice claim, there is no authority to suggest that IER is limited to investigating pattern and practice claims.

iii. Request 3-7

Request 3 seeks information about the charging party's work performance, his layoff, and his request for a letter of reference. Subpoena Attach. A. Requests 4-7 seek information about letters of reference specific to the charging party as well as company policies regarding reference letters. Petitioner objects, arguing that the request is overly broad and unduly burdensome because IER previously requested such information. Pet. 2. Petitioner also objects to any requests for information relating to letters of reference as this issue is not reasonably relevant to the charge under investigation. *Id.* Obtaining a letter of reference, argues Petitioner, is not a legal right under 8 U.S.C. § 1324b and is outside the scope of 8 U.S.C. § 1324b as the statute is limited to discrimination with respect to hiring, recruitment, or discharge of an employee. Pet. 2–3. Regarding retaliation, "one cannot be deemed as being threatened or retaliated for not getting something that one is not legally entitled to, such as a reference letter." *Id.* at 3.

IER responds that while it did request similar information, Petitioner produced only a small number of documents responsive to this request, and it produced no information regarding the performance of either the charging party or the temporary visa worker who replaced him. Opp. at 12, Ex. B. Further, IER argues that the charging party included a retaliation claim in his Complaint that "respondent retaliated against him for complaining of citizenship status discrimination by reneging on its promise to provide him a reference letter," and that IER is fully within its authority to investigate this claim regardless of whether the charging party asserted it in the charge. Opp. at 6–7. IER argues that refusing to provide a letter of reference and reneging on a promise to do so are adverse actions sufficient for a retaliation claim. Opp. at 7–8.

As noted above, IER may broaden the scope of an existing investigation, and relevance is exceedingly broad, thus seeking information about a retaliation claim that either arose in the course of investigating the claim or that the charging party included in its complaint is within IER's authority. In arguing that a reference letter cannot form the basis of a retaliation claim because there is no legal right to it, the Petitioner misunderstands the thrust of a retaliation claim. The claim is that the Petitioner took retaliatory action against the charging party—refusing to issue a referral letter because he intended to or did reach out to IER—a right protected by the statute. "8 U.S.C. § 1324b(a)(5)'s prohibition on intimidation or retaliation is broadly drawn, and includes intimidation, threats and coercion." *Zarazinski v. Anglo Fabrics Co., Inc.*, 4 OCAHO no. 638, 428, 447 (1994). Further, "[w]hile the protection of nonretaliation statutes does not extend to trivial or petty annoyances, any action that would dissuade a reasonable worker from engaging in protected conduct may come within its ambit." *Breda v. Kindred Braintree Hosp., LLC*,

10 OCAHO no. 1202, 11 (2013) (citing *Thompson v. N. American Stainless*, *LP*, 131 S.Ct. 863, 867–68 (2011)). Whether a given action rises to the level of retaliation will depend on the circumstances such as how the company took the action, what was said, the history between the parties, and ultimately whether a reasonable worker would be dissuaded from engaging in protected conduct.[4] Given that requests are allowed for "virtually any material that might cast light on the allegations against the employer," IER's request to investigate the circumstances of Petitioner's alleged refusal to provide the reference letter in retaliation for protected conduct is relevant to the issues in the case. *Hyatt Regency Lake Tahoe*, 5 OCAHO no. 751, at 243. Whether Petitioner had a policy and acted consistently with that policy is probative of the charge. *See Li Zu v. Avalon Health Care, Inc.*, 806 F. App'x 610 (10th Cir. 2020) (finding that former supervisor's alleged failure to provide job reference for former employee did not constitute materially adverse employment action in retaliation claim since supervisor followed employer's usual practice as spelled out in its employee handbook). At the very least, such information could have a bearing on the motivation behind the termination.

As to burden, Petitioner has the heavy burden of proving that an administrative subpoena is unduly burdensome. *Hyatt Regency Lake Tahoe*, 5 OCAHO no. 751 at 243 (citations omitted). Petitioner must prove that compliance with a subpoena "would seriously disrupt its normal business operations" given that "the costs of complying with government subpoenas are a normal cost of doing business which should be borne by the company." *In re Tropicana Casino and Resort*, 9 OCAHO no. 1060, 2 (2000). "Generalized and unsupported claims of undue burden do not meet this standard." *In re Investigation of Univ. of S. Fla.*, 8 OCAHO no. 1055, 843, 848 (2000) (citations omitted).

Petitioner did not provide any further explanation beyond a generalized statement about the extent of the burden in responding to this request and has thus not shown that the request is unduly burdensome. Further, as noted by IER, to the extent Petitioner has already produced information, or does not have the information, it can so indicate in its response. Petitioner's petition to revoke Request 3-7 is denied.

iv. Requests 8 and 9

In these requests, IER seeks information about any employees who separated from employment with Sail since September 1, 2022, including requests for all letters of reference and recommendations created by Petitioner since that time (Request 8), and information about each individual who refused to sign a severance agreement (Request 9).

Petitioner reiterates its objection regarding reference letters, and then argues that the request is overly broad and burdensome, as these requests cover a two- and three-year period, respectively.

[4] Some courts have suggested that refusing to write a reference letter may constitute retaliatory action. *See Pantchenko v. C.B. Dolge Co.,* 581 F.2d 1052, 1055 (2d Cir. 1978) (reversing district court's decision that refusal to write a reference did not suffice as adverse action for a Title VII retaliation claim); *Memnon v. Clifford Chance US, LLP*, 667 F. Supp. 2d 334, 344 (S.D.N.Y. 2009) ("[T]he withholding of a recommendation letter likely is an adverse employment action in the retaliation context.").

IER counters that these requests are not unduly burdensome, as, based on its investigation, there are relatively few individuals at issue. Opp. at 12.

As noted above, Petitioner has merely noted that the request is burdensome. This assertion does not meet the standard articulated in *Tropicana* and falls within the admonishment in *Univ. of S. Fla.* that "[g]eneralized and unsupported claims of undue burden do not meet this standard." *Tropicana Casino and Resort*, 9 OCAHO no. 1060, at 2; *Univ. of S. Fla.*, 8 OCAHO no. 1055, at 848.

Accordingly, Sail Internet's Petition to Modify or Revoke OCAHO Subpoena is DENIED. Petitioner is directed to comply with the subpoena numbered 2025S00013 within fourteen (14) days of the date of this order. In the event of noncompliance within that time, IER is hereby authorized without further application to this office to seek enforcement in the appropriate district court of the United States pursuant to 8 U.S.C. § 1324b(f)(2) and 28 C.F.R. § 62.25(e).

SO ORDERED.

Dated and entered on December 18, 2024.

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Honorable Jean C. King
Chief Administrative Law Judge