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

January 2, 2025

DUVAUGHN JOSEPH LOWDEN, JR., Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 2023B00063
ANN ARBOR ELECTRICAL JATC, Respondent.	)	

Appearances: DuVaughn Joseph Lowden, Jr., pro se Complainant
Robert L. Duston, Esq., for Respondent

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS (FINAL ORDER)

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b.

On May 31, 2023, Complainant, DuVaughn Joseph Lowden, Jr., filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Ann Arbor Electrical JATC, discriminated against him (citizenship status), and retaliated against him.

On August 28, 2023, Respondent filed an Answer.

On August 21, 2023, Respondent filed a Motion to Dismiss pursuant to 28 C.F.R. § 68.10(b).[1]

On August 28, 2023, Complainant filed an Opposition.

Respondent's Motion to Dismiss is GRANTED. The Complaint is DISMISSED WITH PREJUDICE. This is a Final Order. 28 C.F.R. § 68.2.

[1] OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024). 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.

I. COMPLAINT

According to Complainant, he is a "National" of the United States, with "citizenship status" of "American State National" at the time of the alleged discrimination. Compl. 4. Complainant was born in "The United States of America (one of the 50 states of the union),"[2] and provides a national origin of "Michiganian."[3] Compl. 4, 18.

According to Complainant, he does not know how many employees Respondent has. Compl. 6.

Complainant alleges he was discriminated against because of his "citizenship status," when Respondent "fired" him by "cancel[ing] his apprenticeship agreement" on September 23, 2022. Compl. 8, 10. Complainant alleges Respondent "felt [Complainant] was not following directions with the . . . contractor when [Complainant] filled out the paperwork with [his] corrected status as an American State National." Compl. 10.

The Complaint provides the following timeline.

On September 6, 2022, Complainant, who was already enrolled in Respondent's apprentice program, went to the "contractor" location to complete onboarding paperwork with the "contractor." Based on his self-designation as an American State National, he completed an IRS Form W-4V and he claims he was not required to complete the Michigan equivalent form. Compl. 22. As to his Form I-9, he selected "non-citizen national of the United States," adding "American State National" next to his entry. Compl. 22. He presented his driver's license and photos of his social security card. Compl. 22. The staff for the "contractor" (to whom he presented his Form I-9) accepted the form and supporting documents, and at no point did the "contractor" indicate it saw any issue regarding Complainant's authorization to work in the United States. Compl. 22.

On September 7, 2022, the "contractor" informed Complainant that he needed to complete the tax forms (IRS Form W-4 and Michigan equivalent form "MI-W4") in order to continue working. Compl. 22. Complainant was provided with those forms anew and was asked to complete them. Compl. 22. He completed the forms but included information pertaining to his self-designation as an American State National who is "exempt" from paying taxes. Compl. 22.

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[2] As of June 28, 2022, Complainant "renounced all citizenship related to the statutory United States defined as 'the territories and District of Columbia' and its government." Compl. 22.

Complainant also "repatriated to the land of [his] birth known as Michigan and affirmed his allegiance to the same actual and organic state of the Union . . . accept[ing] and reclaim[ing] his political status as an American State National." Compl. 22.

[3] While Complainant identified his "national origin" to IER as "Michiganian," he does not allege national origin discrimination on his OCAHO Complaint Form (when explicitly asked by the form whether he was "discriminated against because of national origin," he checks "No.") Compl. 8.

On September 8, 2022, Complainant was informed the contractor was "laying [him] off." Compl. 23.

On either September 19, 2022, or September 23, 2022,[4] Complainant was separately terminated from the Respondent's apprenticeship program. Compl. 10, 22.

On November 14, 2022, Complainant attended a meeting with Respondent, the purpose of which was an appeal of Respondent's decision to end Complainant's enrollment in the apprenticeship. Compl. 22. According to the Complainant, the training director "cancelled" the apprenticeship agreement because Complainant failed to "follow[] . . . directions during the paperwork process (I-9, W-4, etc.) at [Complainant's] last job assignment at [contractor], claiming that [Complainant] failed to fill out the proper forms and didn't give them the documentation that [Complainant] was 'required by law to give.'" Compl. 22.

On November 30, 2022, Complainant received a letter[5] wherein Respondent "affirmed" its decision 'cancel [his] apprenticeship agreement." Compl. 22.

The Complainant did utilize OCAHO's Complaint form; however, it was somewhat inartfully completed. Because this Complainant is pro se, and because the Court is evaluating the Complaint against the Respondent's Motion to Dismiss, the Court will generously construe the Complaint as raising three allegations in total.

The first allegation relates to his termination of contract employment and apprenticeship which occurred in September 2022. Specifically, Complainant appears to allege that Respondent, who runs the apprenticeship program, discriminated against him, based on citizenship status, when it terminated his apprenticeship. Compl. 10.

The second allegation relates to Respondent's declination to reinstate Complainant in November 2022. Specifically, Complainant appears to allege that Respondent discriminated against him, based on citizenship status, when it declined to "hire"[6] him again into the apprenticeship program. *See* Compl. 22–23 (describing Complainant's attempts to appeal his termination).

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[4] In his Opposition, Complainant affirms a date of September 23, 2022; however, this four-day discrepancy is immaterial to the disposition of the case.

[5] The November 30, 2022, letter is not provided with the Complaint. Additionally, it appears as though Complainant is pursuing/did pursue actions in other fora (Michigan Department of Labor and U.S. Department of Labor). Compl. 23.

[6] Admittedly, Complainant does explicitly check "No" when the OCAHO Complaint Form asks whether "the business/employer refused to hire [him]"; however, the Court will liberally read the Complaint, drawing inferences like this in the Complainant's favor. Compl. 8; *see generally Udala v. New York State Dep't Educ.*, 4 OCAHO no. 633, 390, 394 (1994).

The third allegation also relates to Respondent's declination to reinstate Complainant in November 2022. Specifically, Complainant appears to allege that Respondent retaliated against him (based on an unknown protected activity) when it declined to "hire" him again into the apprenticeship program. Compl. 11. As to this allegation, the earliest known statutorily protected activity appears to be January 19, 2023 (the date Complainant signed his IER Charge Form).

II. MOTION TO DISMISS AND OPPOSITION

A. Respondent's Motion to Dismiss[7]

First, Respondent argues dismissal is proper because Complainant does not allege he is a protected individual as defined by the statute at the time of the alleged discrimination. Mot. Dismiss 7. Respondent notes that, while Complainant considers himself a "national of the United States," he is not covered by the definition of a "non-citizen national" under 8 U.S.C. §§ 1101(a)(21), (22) or 8 U.S.C. § 1408. *Id*. at 7–8.

Moreover, Respondent implicitly concedes (correctly) that U.S. citizens are covered by the statute, but at the motion to dismiss-stage (i.e. looking at the facts alleged as true), Respondent highlights it is Complainant who "specifically denied" that he is a United States Citizen. Mot. Dismiss 8. Respondent characterizes Complainant's "American State National" status as a variation of the "sovereign citizen" concept, which has been rejected as frivolous. *Id*. at 8–10.

> While [Complainant] was born in the United States and legally remains a citizen, whether he likes it or not, his Complaint is based upon a theory that he renounced his U.S. citizenship, has a different legal status, and thus was not required to complete the same paperwork as others. . . . Individuals claiming to have revoked they [sic] U.S. Citizenship, but not claiming to be citizens of other nations but of their own self-proclaimed status, are not within the classes Congress chose to protect in the Act.

Id. at 10.

Second, Respondent argues that the Court should dismiss Complainant's retaliation claim because he does not allege a protected activity as occurring prior to the contractor termination or termination of the apprenticeship. *Id*. at 10–11.

[7] Respondent separately does not concede that it is or was an employer of the Complainant, as it ran an apprenticeship program. Mot. Dismiss 7 n.6.

B. Complainant's Opposition

Complainant does not squarely address whether "American State Nationals" are protected under the statute; rather, he explains the steps he took to assert and formalize his status as an "American State National" ("sign[ing], record[ing], and publish[ing]" documents including birth certificates, "Act of Expatriation," "Oath of Allegiance [to Michigan]," etc). Opp'n 1, 6.

Complainant references the Immigration and Nationality Act, from which he takes the definition of "national" as "a person owing permanent allegiance to a state." Opp'n 3. He notes the INA defines a "national of the United States" as U.S. citizens and "persons, who, though not citizens of the United States, owe permanent allegiance to the United States." Opp'n 3. He explains nationals are eligible to apply for and receive a U.S. Passport (which he has done). Opp'n 3.

Complainant concludes the first section of his opposition filing by noting his "permanent domicile is on the land and soil. . . . [He] is subject to God's law, the law of the Land – Common law (common to all mankind) and Constitutional law . . . ." Opp'n 3. He then cites a series of passages from the Bible. Opp'n 3–4.

In the next section of his Opposition, he returns to the facts alleged in the Complaint and affirms that, at the meeting in November 2022, Respondent informed him he was terminated from the contract employment and then the apprenticeship because he "did not fill out the paperwork properly and [the] contractors cannot employ [Complainant] the way [he] filled it out." Opp'n 5. He also affirms that it is his position that he is not a U.S. citizen. Opp'n 6.

III. LAW & ANALYSIS

A. Standard – Failure to State a Claim Upon Which Relief Can Be Granted

A complaint must contain "[t]he alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred." 28 C.F.R. § 68.7(b)(3). "When a complainant appears pro se, the pleading standard may be 'liberally construed.'" *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 3 (2022) (internal citations omitted).[8] The Court "may dismiss the complaint based upon a motion by the respondent . . . if the [ALJ] determines that the complainant has failed to state a claim upon which relief can be granted." 28 C.F.R. § 68.10(b).

[8] 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.

In resolving a motion to dismiss, "the court must limit its analysis to the four corners of the complaint." *Udala v. New York State Dep't Educ.*, 4 OCAHO no. 633, 390, 394 (1994). The complainant's allegations of fact are accepted as true and all reasonable inferences derived therefrom are drawn in the complainant's favor. *Id.*

B. Anti-Discrimination Provisions of 8 U.S.C. § 1324b – Law & Analysis

As to citizenship discrimination, the statute covers only a discrete group of individuals. It is an "unfair immigration-related employment practice for . . . an entity to discriminate against any individual[9] . . . with respect to the hiring [or firing] . . . in the case of a ***protected individual*** . . . because of such individual's citizenship status." 8 U.S.C. § 1324b(a)(1) (emphasis added).

For the purposes of analyzing this case, it is helpful to distill "protected individuals" into three statutorily-derived categories: (1) citizens of the United States, (2) nationals of the United States, or (3) non-citizens who meet certain criteria[10] at the time of the alleged discrimination. 8 U.S.C. § 1324b(a)(3). *See Contreras v. Cavco, Inc.,* 16 OCAHO no. 1440b, 2–3 (2024).

Understandably, if a Complainant is not a "protected individual" he will necessarily be unable to state a claim upon which relief can be granted under an anti-discrimination theory. As Respondent correctly observed in its Motion to Dismiss, this Complainant does not allege to be in one of the three protected categories.

While Complainant notes that he was born in the United States, he alleges he is not a U.S. citizen. At the motion to dismiss stage, the exercise is not whether Complainant has or will have evidence to support factual assertions; rather, the exercise is one of considering the facts just as he has alleged them. So, in theory, if the case were to advance, an evidentiary record might

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[9] The statute provides a caveat of "other than an unauthorized [non-citizen] as defined in section 1324a(h)(3) on this title," however, this caveat was removed from the text for ease of reading.

[10] A protected individual is also defined as:

> An alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence . . . is admitted as a refugee . . . or is granted asylum . . . but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

8 U.S.C. § 1324b(a)(3)(B).

reveal this Complainant is in fact a citizen of the United States, for the purposes of the motion, he is not, because he alleges he is not, and the Court will take his word for it.

A similarly quick analysis covers the third protected individual category, which are non-citizens who meet specific criteria. As the Complaint makes clear, this Complainant, born in the United States, at no time alleges he has lawful permanent resident status, and thus he would not be covered by the statute under this category.

The second category, "national of the United States," merits a closer analysis, and indeed, based on the Opposition filing, it appears as though Complainant alleges that, as an "American State National," he is a "national of the United States." For the reasons outlined below, an "American State National" is not a "national of the United States."

The phrase "national of the United States" is expressly defined by the INA. A "national of the United States" is a category that includes both U.S. citizens and any individual who otherwise "owes permanent allegiance to the United States." 8 U.S.C. § 1101(a)(22). Complainant alleges he was born within the continental United States, was a U.S. citizen, and later changed his status from U.S. citizen to "American State National." As an "American State National," he owes allegiance only to the state of Michigan,[11] and not the United States.

While the Court's analysis could rest on the laurels of the Complainant's own self-elimination from this protected category, a prudent approach would also consider the statute and OCAHO precedent, (all of which cause the Court to arrive at the same conclusion relative to Complainant's unprotected status).

The anti-discrimination provisions are found in the INA section covering immigration; however, the statute also (in a separate section) covers nationality and naturalization. The nationality and naturalization section of the INA centers some of its framework on an individual's birth location, noting that "a person born in the United States, and subject to the jurisdiction thereof . . . shall be [a] national[] **and** citizen[] of the United States." 8 U.S.C. § 1401(a) (emphasis added).

Non-citizen nationals, by contrast, are persons "born in an outlying possession of the United States on or after the date of formal acquisition of such possession" or "born outside the United States and its outlying possessions [and meeting additional criteria]." 8 U.S.C. § 1408. "Outlying possessions of the United States," another term defined by the INA, expressly includes only American Samoa and Swains Island. 8 U.S.C. § 1101(a)(29). Fatal to Complainant's claim, Michigan[12] is not an outlying possession of the United States. Ultimately, because

[11] Although curiously, he declined to complete Michigan's tax forms, so his allegiance apparently stops short of funding the state.

[12] The Court takes official notice that Michigan's date of statehood is January 26, 1837. The "Wolverine State" became the twenty-sixth state to join the Union following a resolution between it and the state of Ohio over the city of Toledo. 28 C.F.R. § 68.41. *See About Michigan*, State of Michigan, https://www.michigan.gov/som/about-michigan (last visited December 31, 2024).

Complainant (who was not born in, and has no ties to, American Samoa or Swains Island), does not meet the criteria in the definition, he cannot be a non-citizen national.

Because Complainant does not allege he is a protected individual, the analysis necessarily could end here. However, even if Complainant pled he were a protected individual (as he might actually be), OCAHO precedent does not look favorably upon "tax protesters."[13]

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> The use of the term "tax protester" is a permissible shorthand way for a judge to refer to such activities and highlight their relevance." *United States v. Turano*, 802 F.2d 10, 11 (1st Cir. 1986). For disposition of such tax protests before OCAHO administrative law judges (ALJs), *see Manning v. City of Jacksonville*, 7 OCAHO 956 (1997); *Eldon Hutchinson v. GTE Data Systems, Inc*., 7 OCAHO 954 (1997); *Hogenmiller v. Lincare, Inc.*, 7 OCAHO 953 (1997); *D'Amico v. Erie Community College*, 7 OCAHO 948 (1997); *Hollingsworth v. Applied Research Assocs*., 7 OCAHO 942 (1997); *Janet L. Hutchinson v. End Stage Renal Disease Network, Inc.*, 7 OCAHO 939 (1997); *Kosatschkow v. Allen-Stevens Corp.*, 7 OCAHO 938 (1997); *Werline v. Public Serv. Elec. & Gas Co.*, 7 OCAHO 935 (1997); *Cholerton v. Robert M. Hadley Co.*, 7 OCAHO 934 (1997); *Lareau v. USAir*, 7 OCAHO 932 (1997); *Jarvis v. AK Steel*, 7 OCAHO 930 (1997); *Mathews v. Goodyear Tire & Rubber Co.*, 7 OCAHO 929 (1997); *Winkler v. West Capital Fin. Servs.*, 7 OCAHO 928 (1997); *Lee v. Airtouch Communications, Inc.*, 7 OCAHO 926, at 4–5 (1997); *Smiley v. City of Philadelphia*, 7 OCAHO 925 (1997); *Austin v. Jitney-Jungle Stores of Am., Inc.*, 6 OCAHO 923 (1997), 1997 WL 235918 (O.C.A.H.O.); *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO 919 (1997), 1997 WL 242208 (O.C.A.H.O.); *Costigan v. NYNEX,* 6 OCAHO 918 (1997), 1997 WL 242199 (O.C.A.H.O.); *Boyd v. Sherling*, 6 OCAHO 916 (1997), 1997 WL 176910 (O.C.A.H.O.); *Winkler v. Timlin Corp.*, 6 OCAHO 912 (1997), 1997 WL 148820 (O.C.A.H.O.); *Horne v. Town of Hampstead* (Horne II), 6 OCAHO 906 (1997), 1997 WL 131346 (O.C.A.H.O.); *Lee v. Airtouch Communications, Inc.*, 6 OCAHO 901 (1996), 1996 WL 780148 (O.C.A.H.O.), appeal filed, No. 97–70124 (9th Cir. 1997); *Toussaint v. Tekwood Associates*, 6 OCAHO 892 (1996), 1996 WL 670179 (O.C.A.H.O.), appeal filed, No. 96–3688 (3d Cir. 1996) . . . .
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> In every case, the complaint was dismissed.

Hamilton v. The Recorder, 7 OCAHO no. 968, 750, 751 n.2 (1997).

Characterizing this Complainant as a "tax protester" is reasonable based on the facts he pled. Notably, the contractor had no issue accepting his Form I-9 following inspection of his driver's license and just a photograph of his social security card. At no time did the contractor ask for more or different documents from him. Indeed, they appear to have considered him authorized to work in the United States without even examining his actual social security card. What the contractor did take issue with, however, was the Complainant's refusal to complete tax forms (both state and federal).

Complaints which advance theories that the collection of taxes by an employer is an unfair immigration-related employment practice have been characterized as "frivolous[14] . . . collateral tax protests." *Hamilton v. The Recorder*, 7 OCAHO no. 968, 750, 750–51 (1997).

As OCAHO precedent soundly noted:

> It is a jurisprudential truism that 8 U.S.C. § 1324b, which forbids an employer to discriminate, does not reach lawful terms and conditions of employment. Therefore, an employer who requires its employees to submit to lawful and non-discriminatory terms and conditions of employment commits no legal wrong. Employer insistence upon employee federal statutory compliance is lawful. Among the terms and conditions of employment an employer may legitimately and non-discriminatorily impose is the requirement that its labor force submit to tax code and social security mandates. An employer may lawfully insist that employees comply with tax withholding and social security contribution regimens as a condition of employment.

Hamilton, 7 OCAHO no. 968, at 755–56 (internal citations omitted).

The Court now affirms the precedential analysis in *Hamilton* and relies on it when determining an amendment to this Complaint would be futile. *See Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510c, 9 (2024); *see also Wangperawong v. Meta Platforms, Inc.*,

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[14] In *Hamilton*, the Court granted a Motion to Dismiss a complaint it characterized as both "frivolous" and a "tax protest disguised as a claim of unfair immigration-related employment practices." *Hamilton*, 7 OCAHO no. 968 at 750–51. In considering the Complaint "frivolous," the presiding ALJ appeared to take into account both the "perennial tax-protestor representative" and the "volley" of similar cases he lodged. *Id*. The ALJ in that case explained:

> A complaint is frivolous if it lacks an arguable basis in law or fact. "A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist." *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997) (citing *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)). "[T]o take a position which indicates a desire to impede the administration of tax laws is a legally frivolous position." *McKee v. United States*, 781 F.2d 1043, 1047 (4th Cir. 1986), *cert. denied*, 477 U.S. 905 (1986). U.S. citizen claims to be exempt from the income tax have been found to be frivolous *per se*. *LaRue v. Collector of Internal Revenue*, 96 F.3d 1450 (7th Cir. 1996) ("LaRue's argument that he should be treated as a nonresident alien—one that is offered occasionally by tax protestors—is patently frivolous").

Hamilton, 7 OCAHO no. 968 at 750 n.1.

18 OCAHO no. 1510e, 3–7 (2024) (denying motion to amend complaint as futile, as the proposed amendments would not survive a motion to dismiss); *Thompson v. Sanchez Auto Servs., LLC*, 12 OCAHO no. 1302, 8 n.2 (2017).

For these reasons, the citizenship discrimination allegations are DISMISSED WITH PREJUDICE.[15]

C. Anti-Retaliation Provision of 8 U.S.C. § 1324b – Law & Analysis

It is an "unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under [8 U.S.C. § 1324b] or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section." 8 U.S.C. § 1324b(a)(5).

"OCAHO case law has long held that in order to qualify as protected conduct under § 1324b(a)(5), a claim must implicate a right or privilege specifically secured under § 1324b or a proceeding under that section." *Patel v. USCIS Boston*, 14 OCAHO no. 1353a, 3 (2020) (quoting *Cavazos v. Wanxiang America Corp*., 10 OCAHO no. 1138, 2 (2011)). While this Complaint is void of an express mention of qualifying protected conduct, the Court infers that Complainant could rely on his interactions with IER to qualify as protected conduct.

When a protected activity post-dates the Respondent conduct at issue, there is no causation. *See Sperandio v. United Parcel Serv., Inc.,* 15 OCAHO no. 1400e, 13. Here, Complainant takes issue with Respondent's conduct occurring in September and November 2022; however, his earliest instance of discernable protected conduct occurred in January 2023. The two are, thus, unrelated.

Like the discrimination allegations, an amendment revising this allegation would be futile. The timeline cannot be revised, and causation cannot be established. *See Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510c, 9 (2024) (internal citations omitted); *see also Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510e, 3–7 (2024) (denying motion to amend complaint as futile, as the proposed amendments would not survive a motion to dismiss).

For these reasons, the retaliation allegation is DISMISSED WITH PREJUDICE.

[15] *See US Tech Workers v. Slalom, Inc.,* 21 OCAHO no. 1617, 7 (2024) (CAHO Order) for discussion of the consequences of dismissal with prejudice. Finality is appropriate here where amendment would be futile, and dismissing without prejudice would run the risk of encouraging frivolous litigation.

IV. CONCLUSION

Respondent's Motion to Dismiss is GRANTED. This case is DISMISSED WITH PREJUDICE.

This is a Final Order.

SO ORDERED.

Dated and entered on January 2, 2025.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. *See* 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.