

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

November 23, 2022

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 2022A00053
	)	
BLACK BELT SECURITY &	)	
INVESTIGATIONS, LLC,	)	
Respondent.	)	
_____	)	

Appearances: Stephanie Robins, Esq., for Complainant  
Eldridge Hawkins, Sr., Esq., and Eldridge Hawkins, II, MBA, JD, for Respondent

## ORDER

### I. INTRODUCTION

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 18, 2022. In the Complaint, ICE alleged that Respondent, Black Belt Security & Investigations, LLC, failed to prepare and/or present Forms I-9 for fifty individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B).

On September 27, 2022, Respondent filed its Request to Extend Time to File Respondent's Answer to the Complaint and Certification in Support. On September 29, 2022, the Court granted Respondent a sixty-day extension of time to file an answer. *United States v. Black Belt Sec. Investigations, LLC*, 17 OCAHO no. 1456, 1 (2022).<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 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

On November 7, 2022, Complainant filed its Motion for Leave to Amend the Complaint, with the Amended Complaint attached. Complainant seeks to amend Count I of the Complaint to show that Respondent failed to prepare and/or present Forms I-9 for twenty-five individuals, and further, that “Respondent failed to prepare and/or present, or in the alternative, failed to timely prepare an additional twenty-five (25) Forms I-9.” Mot. Leave. Respondent did not oppose Complainant’s motion. On November 9, 2022, Respondent filed its Answer.

## II. LEGAL STANDARDS

OCAHO’s rules<sup>2</sup> permit amendment of a complaint “[if] a determination of a controversy on the merits will be facilitated thereby” and “upon such conditions as are necessary to avoid prejudicing the public interests and the rights of the parties[.]” 28 C.F.R. § 68.9(e). “The Court is therefore charged with balancing those interests in determining whether to allow the proposed amendment.” *United States v. KLJ Leasing, LLC*, 16 OCAHO no. 1446, 2 (2022) (citations omitted).

28 C.F.R. § 68.9(e) is “analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure,” which is permissive guidance in OCAHO proceedings. *United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998); *see* 28 C.F.R. § 68.1. Federal Rule 15(a)(1) provides that: “a party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Federal Rule 15(a)(2) further provides that “[i]n all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”

As this case arises in New Jersey, the Court may also look to case law on amendments from the United States Court of Appeals for the Third Circuit. *See* 28 C.F.R. § 68.56. The Third Circuit instructs courts to consider factors enumerated in *Foman v. Davis*, 371 U.S. 178 (1962), including undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by previously allowed amendments, undue prejudice to the opposing party, and futility. *Mullin v. Balicki*, 875 F.3d 140, 149 (3d. Cir. 2017). The Third Circuit further permits courts to consider equities outside the *Foman* factors, such as judicial economy or burden on the court. *Id.* at 149–50.

## III. DISCUSSION

Complainant filed its Complaint on August 18, 2022, and its Amended Complaint on November 7, 2022. Complainant sought the Court’s leave in its motion. *See* Fed. R. Civ. P. 15(a)(2).

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database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

<sup>2</sup> 28 C.F.R. pt. 68 (2022).

Complainant argues that its sought amendment—pleading in the alternative that Respondent failed to timely prepare twenty-five of the fifty Forms I-9 at issue—is made to reflect the Court’s August 18, 2022 decision in *United States v. El Paso Paper Box, Inc.*, 17 OCAHO no. 1451, 1 (2022). *See* Mot. Leave (noting that this decision was issued after the filing of the original Complaint). Given the dictate that a motion to amend should be freely given, and Complainant’s explanation that the amendment is being made in response to recent caselaw, the Court will allow the amendment. The record does not present evidence of bad faith, the amendment was sought relatively close in proximity to the original filing, and there is no evidence of futility. Respondent has not opposed the motion, and the Court does not find undue prejudice to Respondent at this juncture. Therefore, the Court will GRANT Complainant’s motion. The Amended Complaint is now the operative complaint in this case.

The Court observes that Respondent’s Answer is a responsive pleading to the original Complaint and the filings likely crossed in the mail. *See generally* Answer (not denying the allegations set forth in Paragraph D of Count I of the Amended Complaint, a paragraph not in the original Complaint, while generally denying the prior paragraphs). Accordingly, the Court now sets a deadline for Respondent to file an Amended Answer. *See* 28 C.F.R. § 68.9; Fed. R. Civ. P. 15(a)(3); *e.g.*, *United States v. MRD Landscaping & Maint., LLC*, 15 OCAHO no. 1407, 4 (2021).

The Court ORDERS that Respondent file its Amended Answer to the Amended Complaint no later than **December 7, 2022**.

SO ORDERED.

Dated and entered on November 23, 2022.

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Honorable Jean C. King  
Chief Administrative Law Judge