

8 U.S.C. § 1324b Proceeding
OCAHO Case No. 2025B00001

Appearances: Vinay Saini, pro se Complainant
David A. Calles Smith, Esq., Kimberly McNulty, Esq., and Michaelle L. Baumert, Esq., for Respondent

ORDER ON RESPONDENTS' MOTION TO DISMISS

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. On October 1, 2024, Complainant, Vinay Saini, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondents, Sheridan Community Hospital, et al. The complaint alleges Respondents discriminated on the basis of national origin and citizenship status, retaliated against Complainant, and requested more or different documentation than required for the employment eligibility verification process in violation of 8 U.S.C. §§ 1324b(a)(1), (a)(5), and (a)(6).

Respondents filed a Motion to Dismiss on January 27, 2025.

The next day, the Court held a prehearing conference with the parties during which it granted Complainant's oral motion to extend his deadline to respond to the motion to dismiss and stayed discovery pending resolution of the motion, except for discovery related to the issue of

Respondent's number of employees. *Saini v. Sheridan Cmty. Hosp.*, 21 OCAHO no. 1644, 3 (2025).¹

On February 12, 2025, Respondents filed a Motion for Leave to Amend Respondent's Motion to Dismiss, along with an Amended Motion to Dismiss. Complainant filed his opposition to the motion on the same day. On February 25, 2025, the Court issued an Order Granting Respondent's Motion for Leave to Amend Motion to Dismiss and gave Complainant until March 18, 2025, to file an amended response to the motion. *Saini v. Sheridan Cmty. Hosp.*, 21 OCAHO no. 1644a, 4 (2025).

Discovery disputes arose, resolved by the Court on March 31, 2025, in an order granting in part and denying in part Complainant's Motion to Compel. *Saini v. Sheridan Cmty. Hosp.*, 21 OCAHO no. 1644c (2025). Finally, on May 5, 2025, Complainant filed his Opposition to Defendant's Motion to Dismiss.

For the following reasons, Respondents' Motion to Dismiss is granted as to Complainant's national origin discrimination claims and denied as to his citizenship-status discrimination, retaliation and document abuse claims. The Motion to Dismiss is granted as to all claims against the Board of Directors of Sheridan Community Hospital, Members of the Credentialing Committee of the hospital, Directors of "Sheridan Care Clinic," and the Chief Operating Officer.

II. POSITION OF THE PARTIES

a. Respondents' Motion to Dismiss

Respondents argue the complaint must be dismissed for three primary reasons. Mot. Dismiss 1. First, Respondents argue that Complainant's claim of national origin discrimination must be dismissed because OCAHO lacks subject-matter jurisdiction to adjudicate the claim because Sheridan employs more than fifteen employees, and second, that the additional Respondents Complainant included in the complaint cannot be sued in their individual capacities and therefore are not "persons or entities" under 8 U.S.C. § 1324b(a)(1)(A). *Id.* at 3 (citing *Tal v. M. L. Energia, Inc.*, 4 OCAHO no. 639 (1994)). Mot. Dismiss 1–2. Third, and finally, Respondents argue Complainant also fails to state a claim upon which relief can be granted as to each of his four causes of action because Complainant does not allege facts sufficient to support his claims of discrimination, retaliatory practices, and unfair documentary practices.

¹ Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database "FIM OCAHO," the LexisNexis database "OCAHO," and on the United States Department of Justice's website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Specifically, Respondents argue the discrimination claims must be dismissed because the Complainant fails to allege “*any* adverse employment decision” or “*any* causal nexus between his citizenship status and alleged conduct by Sheridan.” Resp’t Br. 11.

Regarding Complainant’s retaliation claim, Respondents argue that Complainant does not plead factual allegations sufficient to show he engaged in a protected activity under § 1324b. Resp’t Br. 13. The document abuse claim fails, Respondents argue, because Complainant has not provided any factual statement that he reached the employment verification stage, and any allegations regarding production of documents were for the purpose of his credentialing evaluation. Resp’t Br. 2–3, 17.

b. Complainant’s Opposition

In response to Respondents’ jurisdictional argument, Complainant contends that § 1324b’s numerosity requirement is not jurisdictional, but rather an element of a claim he must prove, which issue “is not ripe for resolution at this early stage without discovery or evidentiary hearing.” Opp’n 11–12. Next, Complainant argues that the complaint meets OCAHO’s low bar for pleadings with respect to all four claims. Opp’n 15.

Regarding his retaliation claim, Complainant asserts that in the complaint, he alleges he opposed Respondents’ practices when he repeatedly inquired as to the reason his credentials were rejected, and that Respondents had actual knowledge of this opposition and his protected status when they decided not to proceed with his hiring. Opp’n 21–22. Further, he asserts Respondents made threats and false statements which are sufficient to support a retaliation claim. *Id.* at 23–26.

Regarding his document abuse claim, Complainant argues that pre-screening documentary practices serve to improperly limit job applicants’ ability to begin and complete the hiring process and thus can serve as the basis of a document abuse claim. *Id.* at 27–29.

Complainant argues that for each of his claims, the complaint alleges a nexus between Respondents’ unlawful conduct and his citizenship status, as he clearly states Respondents knew of his citizenship status at the time of their unlawful conduct, and that they gave him no reason to believe their decisions were made for reasons other than his citizenship status. Opp’n 29–32.

Finally, as to liability for the additional Respondents named in the complaint, Complainant argues that the fact that they were not named in the IER complaint is not fatal, that IRCA’s reach is not limited to just employers, but to “a person or other entity” as well, which includes agents of an employer, and Respondents form a “single employer” sufficient to find each Respondent jointly and severally liable. Opp’n 35–50.

III. LEGAL STANDARDS – MOTION TO DISMISS

“Dismissal of a complaint is appropriate in situations where, *inter alia*, the Court lacks subject-matter jurisdiction, the complaint is time-barred, or the complainant fails to state a claim.” *Sinha v. Infosys Ltd.*, 14 OCAHO no. 1373d , 6 (2024). OCAHO’s rules do not specifically address a

motion to dismiss for lack of jurisdiction, but it is well established that Fed. R. Civ. P. 12(h)(3), which compels dismissal of actions whenever it appears that the court lacks jurisdiction over the subject matter, may be used as a general guideline. *Ruan v. U.S. Navy*, 8 OCAHO no. 1046, 714, 716 (2000).

Additionally, OCAHO's Rules provide for the dismissal of a complaint "on the ground that the complainant has failed to state a claim upon which relief can be granted." 28 C.F.R. § 68.10(a).² A respondent may move the Court to dismiss a complaint for failure to state a claim, or the ALJ may do so on her own motion. *Id.* § 68.10(b). If the ALJ moves to dismiss the entire complaint on her own motion, she must first give the complainant "an opportunity to show cause why the complaint should not be dismissed." *Id.* However, when the motion to dismiss is made by an opposing party (as is the case here), no such opportunity need be afforded. *Id.*

To state a claim upon which relief can be granted, "OCAHO's rules require only that the complainant set out facts 'for each violation alleged to have occurred.'" *Jablonski v. Kelly Legal Servs.*, 12 OCAHO no. 1282, 10 (2016) (quoting *United States v. Split Rail Fence Co.*, 10 OCAHO no. 1181, 5 (2013) (order by the CAHO)). "The complainant is not required to plead a prima facie case to overcome a motion to dismiss for failure to state a claim upon which relief can be granted." *Sinha*, 14 OCAHO no. 1373d, at 11 (citing *Swierkiewicz v. Sorema*, 534 U.S. 506, 508 (2002); *Kelly Legal Servs.*, 12 OCAHO no. 1282, at 10). "Additionally, complaints of *pro se* complainants 'must be liberally construed and less stringent standards must be applied than when a [complainant] is represented by counsel.'" *Id.* (quoting *Halim v. Accu-Labs Research Inc.*, 3 OCAHO no. 474, 765, 777 (1992)).

When analyzing a motion to dismiss, "the [C]ourt must limit its analysis to the four corners of the complaint." *Jarvis v. AK Steel*, 7 OCAHO no. 930, 111, 113 (1997). However, the Court may also "consider documents incorporated into the complaint by reference" or attached to the complaint itself. *Id.* at 113–14; *S. v. Discovery Fin. Servs.*, 12 OCAHO no. 1292, 8 (2016) (citing Fed. R. Civ. P. 10(c)).

IV. DISCUSSION

a. National Origin Discrimination Claim

The Immigration and Nationality Act prohibits discrimination "with respect to the hiring . . . of the individual for employment . . . because of such individual's national origin." 8 U.S.C. § 1324b(a)(1)(A). The statute provides for certain exceptions to that rule, stating that the prohibition on discrimination "shall not apply to (A) a person or other entity that employs three or fewer employees, [and] (B) a person's or entity's discrimination because of an individual's national origin if the discrimination . . . is covered under [Title VII]." 8 U.S.C. § 1324b(a)(2). Under Title VII, discrimination claims are limited to those against employers with fifteen or more employees.³

² OCAHO's Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

³ Complainant compares Title VII's use of the term "employer" with IRCA's use of the term "person or entity" to argue that under IRCA, "[t]he question of liability turns on the act of hiring,

42 U.S.C. § 2000e(b). Therefore, national origin discrimination claims under 8 U.S.C. § 1324b are limited to those against persons or entities employing between four and fourteen individuals.⁴ See, e.g., *Sinha v. Infosys Ltd.*, 14 OCAHO no. 1373d, 7 (2024).

Respondents argue that Complainant’s claim of national origin discrimination fails because OCAHO lacks subject-matter jurisdiction to adjudicate that claim, since Respondents employ more than fifteen employees. Mot. Dismiss 2. Further, in Respondents’ view, Complainant’s naming individual employees of Sheridan Community Hospital as respondents in this matter does not allow the Court to assert jurisdiction over the national origin claim, either, as Respondents argue they cannot be sued in their individual capacities and therefore are not “persons or entities” under 8 U.S.C. § 1324b(a)(1)(A), and that these entities do not employ any persons. *Id.* at 3 (citing *Tal*, 4 OCAHO no. 639).

Complainant argues that the numerical limit is an element of a claim that a complainant must establish, and therefore the Court should permit discovery and a hearing on whether his national origin discrimination claim against all of the named respondents would be excluded by the numerosity requirement before dismissing the claim. Opp’n 12. Respondents, on the other hand, say that because their challenge of the Court’s jurisdiction over the claim is a “factual” one, the Court may consider “matters outside of the pleadings,” in this case, an affidavit of Sheridan’s CEO saying the hospital employs more than fifteen individuals. Resp’t Br. 6.

Administrative Law Judges (ALJs) in this forum have been inconsistent as to whether the numerosity exclusion is jurisdictional or an element of the claim. Compare *United States v. Mar-Jac Poultry*, 10 OCAHO no. 1148, 7 (2012) with *U.S. v. Facebook*, 14 OCAHO no. 1386b 6–8 (2021). This ALJ has consistently found that the restrictions on the number of employees are jurisdictional. *Zajradhara v. HDH Co., LTD*, 16 OCAHO no. 1417, 2 (2022); *Zajradhara v. E-Supply Enters*, 16 OCAHO no. 1438f, 3–4 (2023). Complainant has the burden to demonstrate that OCAHO has jurisdiction over allegations plead in the complaint. See *Zajradhara v. Misamis Constr. (Saipan) LTD.*, 15 OCAHO no. 1396a, 2 (2022). When a trial court reviews a factual attack on jurisdiction, i.e. one requiring a factual determination to resolve, it may “weigh the evidence

not upon a person’s status as the employer of the protected individual.” Opp’n 13. In other words, as long as the individual participated in the alleged discriminatory employment action, a national origin discrimination claim could proceed against that individual even though they are no one’s employer. However, the exclusionary paragraph in the Act is quite clear that the prohibition against discrimination for a “person or entity” “shall not apply to” a “person or other entity that employs three or fewer employees.” 8 U.S.C. § 1324b(a)(2)(A). The term “person or entity” language used in the liability paragraph is echoed in the exceptions paragraph and quite clearly bars any liability in this instance.

⁴ National origin discrimination claims against employers with fifteen or more employees are properly brought before the EEOC in the first instance. See *Lima v. N.Y.C. Dep’t of Educ.*, 10 OCAHO no. 1128, 8 (2009). The fact that EEOC has not exercised its authority in this case is of no moment; the statute excludes the discrimination claim if the Respondent “is covered” by Title VII, which is interpreted to mean if a claim *could* be brought under Title VII. 8 U.S.C. § 1324b(a)(2)(B).

and satisfy itself as to the existence of its power to hear the case,” including other material in the record, such as evidence and affidavits. *E-Supply Enters.*, 16 OCAHO no. 1438b, at 4. Here, Complainant was provided an opportunity for discovery on this issue, and attached discovery responses to his opposition. *See Saini v. Sheridan Cmty. Hosp.*, 21 OCAHO no. 1644, 3 (2025). Respondents provided a Declaration from Lili Petricevic, Chief Executive Officer and Chief Operations Officer of Respondent hospital, which stated that the hospital employs more than fifteen employees. Decl. Petricevic ¶ 4. Complainant provided interrogatory responses from Respondents in which Respondents stated that Sheridan employed 163 to 166 individuals, while the remaining respondents “do not have any employees.” Opp’n Ex. 2, at 8. Accordingly, the Court finds that Complainant has not met his burden to demonstrate that this tribunal has jurisdiction over this case.

Were the Court to find that the numerosity requirement is an element of a claim as opposed to jurisdictional, however, the Court would still dismiss the claim. Complainant pled that he did not know how many employees the employer had. Compl. 6. Complainant is correct that under Fed. R. Civ. P. 12(c), “[i]f, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.” *See also Barone v. Superior Wash & Gasket Corp.*, 10 OCAHO no. 1176, 2 (2013). The Court need not convert this motion to one for summary judgment, however, as Complainant has not contested the numerosity issue as a factual matter and has not pled sufficient facts to show he would succeed on the merits. In any event, Complainant conducted discovery on this issue, even including the discovery with his motion and thus has had sufficient notice of the issue and an opportunity to respond. Complainant has also not sought to amend the complaint. Accordingly, Complainant’s national origin discrimination claim is DISMISSED WITH PREJUDICE.

b. Citizenship Status Discrimination Claim

An employer is prohibited from discriminating against a protected individual with respect to hiring based on the protected individual’s citizenship status. 8 U.S.C. § 1324b(a)(1)(B); *Sinha*, 14 OCAHO no. 1373d, at 11. A “protected individual” is defined to include “an alien who is lawfully admitted for permanent residence.” 8 U.S.C. § 1324b(a)(3)(B). “A § 1324b complaint must contain sufficient minimal allegations to . . . give rise to an inference of discrimination.” *Jablonski v. Robert Half Legal*, 12 OCAHO no. 1272, 6 (2016). “To give rise to an inference of discrimination, complaints must include information that links the complainant’s protected class and the employment action in question.” *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510c, 7 (2024).

Respondents argue the discrimination claims must be dismissed because the complaint does not allege “any adverse employment decision” or “any causal nexus between his citizenship status and alleged conduct by Sheridan.” Resp’t Br. 11. Respondents point out that the complaint alleges both that Respondents refused to hire Complainant and that they fired him based on discrimination. *Id.* Both of these “contradictory” claims “cannot be true,” argues Respondents. *Id.* In their view, Complainant admits in the complaint that he “end[ed] [his] contractual employment agreement” with them after he failed to complete the hiring process. *Id.* (quoting Compl. 9 § 9(7)).⁵ This

⁵ Citations to the complaint refer to the pagination of the entire pdf document rather than the internal pagination of the complaint form.

failure resulted from Complainant's inability to "provide adequate information for Sheridan to properly evaluate his credentials [as a medical doctor]." *Id.* "Only after that [failure] did Complainant voluntarily terminate[] his employment relationship." *Id.*

These facts do not amount to a constructive discharge, either, Respondents continue, as Complainant "does not present any factual allegations to show that Sheridan 'ma[de] working conditions so intolerable that a reasonable person would be forced to resign.'" Resp't Br. 10 (quoting *Woods v. Philips N. Am., LLC*, 14 OCAHO no. 1371c, 24–28 (2024)). "As such, Complainant has failed to plead that there was any adverse employment action, constructive or otherwise." *Id.*

The Federal Rules of Civil Procedure provide that "[a] party may set out 2 or more statements of a claim or defense alternatively or hypothetically," and [i]f a party makes alternative statements, the pleading is sufficient if any one of them is sufficient." Fed. R. Civ. P. 8(d)(2). Further, a party "may state as many separate claims or defenses as it has, regardless of consistency." Fed. R. Civ. P. 8(d)(3). Accordingly, the mere fact of the inconsistent theories of liability does not render the claim dismissible at this stage. Complainant has asserted both hiring and firing, both of which are adverse actions.

Respondents argue that even if the Court were to find that an adverse employment action occurred, "[t]he Complaint contains no facts, let alone sufficient facts, to infer that any action was taken *because of* [Complainant's] citizenship [or national origin]." Resp't Br. 11 n.4. According to Respondents, Complainant's allegation that Sheridan "'stopped considering [him] for the job' after it learned he was not a U.S. citizen," is merely "a legal conclusion without factual allegations to support [the] assertion." *Id.* at 12.

Complainant, on the other hand, argues the complaint meets OCAHO's "low" bar for pleadings with respect to all four claims alleged. Opp'n 15. According to Complainant, the parties do not dispute that Respondent made him a "conditional offer of employment subject to his qualifications for the role as a medical doctor with [SCH]." Opp'n 18 (quoting Resp't Br. in Support of Mot. Dismiss 8). Their disagreement, rather, relates to whether Respondents' proffered reason for not proceeding with Complainant's hiring, namely, that he did not demonstrate he was qualified for the role, is pretextual. Complainant maintains that "no concerns were made regarding [his] credentials during the 4 month long interviewing process" and that he "submitted all the requested documentation." *Id.* at 19. Moreover, when he inquired as to what Respondents' requirements were and why he did not meet them, Sheridan refused to explain. *Id.* With no further explanation, Complainant argues he was left to infer "that he was discriminated against." *Id.* at 20.

Complainant continues that Respondents' behavior after he "insisted on knowing why his credentials were deemed inadequate" amounts to a constructive discharge, and that the complaint alleges as much. Opp'n 20. In his IER charge, Complainant alleged that Respondents "threatened" him with a for-cause termination and an adverse report to a federal database if he did not agree to voluntarily terminate the employment agreement himself. *Id.* at 20. In his view, "[a]ny reasonable person in his position would have resigned under the circumstances." *Id.*

Turning to the complaint, Complainant alleges that he is a legal permanent resident, that he applied for the position of Medical Doctor on March 11, 2024, that he was qualified for the position, and that Respondents refused to hire him. Compl. 2, 6. As reason for not hiring him, Complainant claims “Respondent alleged that the application I had submitted had not provided adequate information. No specifics of alleged inadequacies were disclosed.” Compl. 7. He further alleges that Respondents continued taking applications from other people after he was not hired, but that no one else was hired for the position and Respondents requested a copy of his visa, with no option to present other documents. Compl. 7, 12.

In Complainant’s IER charge, which was attached to the complaint, Complainant alleges Respondents “interviewed [him] at least 4 times before finally making [him] an employment offer. The offer was contingent upon successfully completing the hiring process,” which included the hospital verifying Complainant’s credentials. Compl. 18. Complainant says he submitted the required documentation, but that he “was informed on April 5, 2024, that the hospital [would] not credential [him].” Compl. 18. Complainant then asked why he would not be credentialed, but “no specific facts supporting this determination were provided by the hospital. Instead, [Complainant] was asked to withdraw [his] candidacy or risk an adverse report impacting [his] professional reputation and future employability.” Compl. 18. He adds that “[t]he hospital stopped considering [him] for the job when it learnt that [he] was not a U.S. citizen.” Compl. 18.

The facts as alleged in the complaint satisfy the minimum requirements to create an inference of discrimination on the basis of citizenship status. Complainant alleges (1) that he is a “protected individual”; (2) that he applied for a position with Respondents for which he was qualified; (3) that Respondents failed to hire him (or terminated his employment) for the position because Complainant allegedly could not be “credentialed,” and (4) that Respondents chose not to move forward with Complainant’s hiring after learning that he was not a U.S. citizen, and after asking for his “visa.” Complainant appears to be arguing that the temporal proximity of the request for his immigration documents and the decision not to credential him without explanation created the inference. Accepting these facts as true and in the light most favorable to Complainant, the Court finds that Complainant pleaded sufficient minimal factual allegations within the four corners of the complaint to give rise to an inference of citizenship-status discrimination in hiring under 8 U.S.C. § 1324b. *Jablonski*, 12 OCAHO no. 1272, at 6. Whether Complainant can meet his burden of proof establishing these allegations is a separate matter not appropriate for determination on a motion to dismiss. Because the claim of discrimination in hiring survives a motion to dismiss, the Court need not determine whether the claim of discrimination in firing states a claim upon which relief can be granted.

Similar to Complainant’s national origin discrimination claim, however, 8 U.S.C. § 1324b(a)(2)(A) provides that claims of citizenship status discrimination cannot be brought against “a person or entity that employs three or fewer employees.” As explained in subsection (e) *infra*, the Court dismisses the claims against the Board of Directors of Sheridan Community Hospital, Members of Credentialing Committee of Sheridan Community Hospital, Directors of Sheridan Care Clinic, and Lili Petricevic as separate entities. Were the case to proceed against them, however, Respondents have provided evidence that these entities do not have any employees, thus, a claim of citizenship status discrimination could not be brought against them in any event. Opp’n Ex. 2, at 8. *Id.*

Accordingly, Respondents' Motion to Dismiss is DENIED with respect to Complainant's citizenship status discrimination claim.

c. Retaliation Claim

Section 1324b(a)(5) makes it unlawful "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 . . . has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section." "Included in the rights protected under section 1324b is 'the right to oppose an employer's alleged discriminatory practices.'" *Ogunrinu v. L. Rescs.*, 13 OCAHO no. 1332j, 11 (2021) (quoting *Diarrassouba v. Medallion Fin. Corp.*, 9 OCAHO no. 1076, 9 (2001)). "Opposition includes 'a broad range of informal actions or statements that employees make in resistance to actions they reasonably perceive to be discriminatory.'" *Id.* (quoting *Wang v. Wash. Metro. Area Transit Auth.*, 206 F. Supp. 3d 46, 76 (D.D.C. 2016)). This opposition must be related to respondent's alleged discriminatory practices, and not general violations of immigration law, as such assertions "fail[] to state a claim upon which relief may be granted under §1324b." *R.O. v. Crossmark, Inc.*, 11 OCAHO no. 1236, 12 (2014).

Respondents argue that Complainant "does not plead a single factual allegation sufficient to show he engaged in protected activity under Section 1324b that could serve as the basis of his retaliation claim." Resp't Br. 13. For Respondents, the complaint's allegations amount to general assertions of opposition to its hiring practices that lack "any reference to discrimination, or any intention to file a complaint with the IER." *Id.* Moreover, and similar to its issues with the discrimination claims, Respondents contend that "Complainant fails to plead any factual allegations to show he was subjected to a materially adverse employment action after he exercised, or claimed he would exercise, his rights under Section 1324b." *Id.* at 14. And finally, Respondents contend the only *actual* protected activity Complainant engaged in, namely, filing an IER charge, post-dates any alleged retaliatory conduct, and therefore "[c]ausation is temporally impossible." *Id.* at 15.

Complainant counters that the complaint alleges he "opposed" Respondents' practices by repeatedly inquiring as to the reason for his not being qualified for the position, and that Respondents had actual knowledge of this opposition and his protected status when they made the decision not to proceed with his hiring. Opp'n 21–22. Complainant also points to his allegation that Respondents falsely accused him of making statements of omissions and misrepresentations in his credentialing application as evidence of retaliatory conduct following his protected activity. *Id.* at 22–23. Complainant maintains that Respondents' threats and false statements constitute adverse employment actions to support a retaliation claim. *Id.* at 23–26.

The Court finds the complaint alleges sufficient facts to state a claim for retaliation under § 1324b(a)(5). In his IER charge, Complainant details that Respondents refused to accredit him for the position of medical doctor despite Complainant's belief that he was qualified for the position. Compl. 18. When he requested an explanation for the refusal to accredit him, "suspect[ing] unlawful factors as motivating the hospital's actions, the hospital threatened and coerced [him] into terminating [his] employment agreement." Compl. 18. Near the end of his charge, Complainant again claims "[t]he hospital retaliated against [him] when [he] expressed [his]

concern about its unlawful practices.” Reading this pro se Complainant’s complaint liberally, the Court understands the term “unlawful practices” to refer to Complainant’s allegations of citizenship status discrimination and document abuse, which he describes with sufficient detail in the same IER charge. Respondents are correct that Complainant’s non-selection occurred prior to his alleged opposition activity, and so it cannot serve as the basis for his retaliation claim. However, § 1324b(a)(5) also makes it unlawful “to intimidate, threaten, [or] coerce” any individual for engaging in protected opposition activity. Therefore, because Complainant alleges he expressed opposition for what he suspected to be Respondents’ discriminatory practices, and that in response to such opposition Respondents “threatened and coerced [him] into terminating [his] employment agreement,” the Court finds he states a claim of retaliation. Respondents’ Motion to Dismiss is DENIED as to that claim.

d. Document Abuse Claim

Section 1324b(a)(6) provides:

A person’s or other entity’s request, for purposes of satisfying the requirements of section 1324a(b) of this title, for more or different documents than are required under [§ 1324a] or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1).

Section 1324a outlines the requirements for verifying the identity and employment authorization of workers in the United States. Therefore, to sustain a claim of document abuse under § 1324b(a)(6), the complaint must allege that more or different documents were requested *for the purpose* of verifying the complainant’s identity and work authorization. This process is done by completing and retaining a Form I-9 for each individual upon their hiring.

Respondents argue that Complainant “has not provided any factual statement that he ever reached the employment verification stage of Sheridan’s hiring process,” and that “he merely relies on conclusory allegations that he was not allowed to present documents of his choosing.” Resp’t Br. at 2–3. Respondents add that “[e]ven if Sheridan requested documentation from Complainant, it did so *not* for the purpose of verifying his identity and work eligibility to complete the I-9 Form, but rather for the purpose of his credentialing evaluation,” which is supported by Complainant’s own admission that he “was not asked to complete an I-9 [F]orm.” *Id.* at 17.

Complainant rejects Respondents’ argument that an employer can only be found liable for document abuse when requests for additional or different documents are made *after* the employee has been officially hired. Opp’n 26–27. In his view, OCAHO case law dictates that “pre-screening” documentary practices that serve to “improperly limit job applicants’ ability to begin, receive further consideration, or complete the hiring process,” can serve as the basis of a document abuse claim when the unfair practice is based on citizenship status, which he argues is the case here. *Id.* at 27–29.

In his IER charge, Complainant alleges that “[d]uring the hiring process, [he] was not asked to complete an I-9 form. Instead, the hospital asked for a copy of [his] ‘visa’ to prove [his] immigration status. [He] was not allowed to present acceptable documentation of [his] choice to prove [his] identity and work authorization.” Compl. 18.

Complainant is correct that document abuse claims can occur even before the specific I-9 process begins. The issue is why the request for documents were made, and if they were made to show eligibility to work in the United States, the claim should, at least, survive the motion to dismiss stage. *U.S. v. Swift & Co.*, 9 OCAHO no. 1068 (2001). Complainant asserts only that he was asked for the documents to prove his immigration status, and that he was not permitted to present documentation of his choice to prove his work authorization. While this is not a model of clarity, looking at the complaint in the light most favorable to Complainant, it is not clear from the complaint that the request was done solely for credentialing purposes, and one could infer that he was asked to provide the documents to determine if he has work authorization. Accordingly, the Court finds Complainant states a claim of document abuse under § 1324b(a)(6) and Respondents’ Motion to Dismiss is DENIED as to that claim.

e. Individual Liability Under § 1324b

Finally, Respondents’ final argument for dismissal is that “Complainant’s attempt to assert any claims against other individuals or entities as named parties respondent to this action is not support[ed] by statute or case law.” Mot. Dismiss 2. Complainant only named Sheridan Community Hospital in his IER charge, but in his OCAHO complaint he added Board of Directors of Sheridan Community Hospital, Members of the Credentialing Committee of the hospital, Directors of “Sheridan Care Clinic,” and the Chief Operating Officer. Compl. 13, 17. Respondents cite 8 U.S.C. § 1324b(d)(2), 28 C.F.R. § 68.4, and *Bozoghlanian v. Magnavox Advanced Prods. & Sys. Co.*, 4 OCAHO no. 695, 953 (1994) for support of the argument that “Complainant is barred from presenting any claims to OCAHO against other individuals or entities in the first instance.” *Id.* at 3. In Respondents’ view, “Sheridan is the sole Respondent to this action.” *Id.* Further, Respondents argue that Complainant did not include these entities in his charge before IER. Resp’t Br. at 18–19.

Complainant argues that all the respondents named in the complaint should be individually liable for his claims for several reasons: (1) while they were not all named in the IER charge, the scope of the charge’s investigation would have reasonably covered these individuals, as they are all “like or reasonably related” to Sheridan Community Hospital, Opp’n 35–38; (2) IRCA contains no “presentment requirement” and so the fact that an individual was not named in the IER charge does not foreclose Complainant’s “right to challenge their involvement in the alleged unlawful practices before this court,” and that even if such a requirement exists, two common exceptions to this rule apply in this case, Opp’n 38–42; (3) IRCA’s reach is not limited to just “employers,” but to “a person or other entity” as well, which courts have interpreted to include agents of an employer, Opp’n 43–46; (4) OCAHO has found respondents individually liable on multiple occasions in the past, Opp’n 46–48; and (5) the Respondents form a “single employer,” sufficient “to warrant that each of the defendants in this case was [Complainant’s] employer and jointly and severally liable with SCH.” Opp’n 48–50.

This Court has previously found that “[t]he pertinent statutory wording [of § 1324b] clearly reveals that Congress did not intend to impose personal liability upon employees of persons and business entities.” *Tal v. M.L. Energia, Inc.*, 4 OCAHO no. 639, 451, 451–52 (1994).⁶ Federal courts, including the Sixth Circuit, have said the same about Title VII. *See Wathen v. Gen. Elec. Co.*, 115 F.3d 400, 405 (6th Cir. 1997) (“An examination of the statutory scheme and remedial provisions of Title VII, convinces us that Congress did not intend to provide for individual employee/supervisor liability under Title VII.”). In the case cited by Complainant, the Court imposed liability on the supervisor *in her official capacity* as the agent of the employer, a city. *Harvey v. Blake*, 913 F.2d 226, 227–228 (1990). The Court was clear that the supervisor was not individually liable. *Id.* In the second case cited by Complainant, the Court stated, “[w]e think the proper method for a plaintiff to recover under Title VII is by suing the employer, either by naming the supervisory employees as agents of the employer or by naming the employer directly.” *Sauers v. Salt Lake Cnty.*, 12 F.3d 1122, 1125 (10th Cir. 1993), citing *Busby v. City of Orlando*, 931 F.2d 764, 772 (11th Cir.1991) (citations omitted). While Complainant correctly notes the difference in wording between Title VII, which prohibits discrimination by an “employer” versus “a person or entity” in § 1324b, this ALJ agrees with the ALJ in *Tal* that this does not mean that the statute intended personal liability. *See* 42 U.S.C. § 2000e–2(a); 8 U.S.C. § 1324b(a)(1); *Tal*, 4 OCAHO no. 639, at 451–52. The statute states “it is an unfair immigration-related employment practice,” referring to actions by an employer. Further, the exclusions for number of employees in 1324b(a)(2)(A) refer to the employer. Lastly, the statute only permits remedies (reinstatement, backpay, training) that an employer (rather than an individual supervisor or employee) can provide. 1324b(g); *see also Wathen*, 115 F.3d 400, 405.

⁶ In support of his argument that these Respondents should be held individually liable under § 1324b, Complainant cites several OCAHO cases arising under § 1324a, as well as an Eighth Circuit case, all of which rely in part on the regulatory definition of “employer” under that statute, found at 8 C.F.R. § 274a.1(g). Opp’n 44, 46 (first citing *Steiben v. I.N.S.*, 932 F.2d 1225, 1226 (8th Cir. 1991); and then citing *United States v. Wrangler’s Country Café, Inc.*, 1 OCAHO no. 138 (1990); *United States v. Ulysses, Inc.*, 3 OCAHO no. 409 (1992); *United States v. Kurzon*, 3 OCAHO no. 583 (1993)). This tribunal adjudicates cases arising under three different statutes, 8 U.S.C. §§ 1324a, b, and c. Section 1324a governs the employment of individuals who are not legally authorized for employment in the United States. In contrast, section 1324b (the statute at issue in this case) governs certain unfair immigration-related employment practices. While the procedural rules governing OCAHO’s proceedings found at 28 C.F.R. pt. 68 apply across all three types of cases, the substantive law at issue in each is different, which means the Court’s substantive decisions in one type of case are not entirely applicable in another. For example, 8 U.S.C. § 1324a is governed by a separate set of regulations, codified at 8 C.F.R. § 274a, that do not apply to §§ 1324b or c. Therefore, a conclusion of the Court that relies on these regulations in a § 1324a case is inapplicable to a § 1324b case. So, when determining whether § 1324b allows for agents or supervisors of an employer to be held individually liable, the Court will limit its analysis to cases arising under that statute or Title VII. *See Chellouf v. Inter Am. Univ. of P.R.*, 12 OCAHO no. 1269, 5 (2016) (“In interpreting § 1324b, OCAHO jurisprudence looks for general guidance in cases arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*”).

It is unclear from the complaint whether Complainant is seeking to assert liability against the individuals within the entities he names, i.e the individual members of the Board of Directors, whether he is naming each Respondent as agents of the hospital, or as entirely separate entities. He alleges only “additional Respondent/employers and/or their agents,” and then refers to each entity by their title, only specifically naming the CEO. Compl. 13. There are no allegations as to why the parties are proper (but the form also does not include a prompt for more detail). In his motion, Complainant seems to argue for individual liability, but then argues that the Respondents are a “single employer.” To the extent he is seeking individual liability, as discussed above, such liability is foreclosed, with a narrow exception.⁷ To the extent he is seeking to hold the hospital liable for the actions of all its employees/agents, he has properly done so by naming the hospital. Courts in the Sixth Circuit routinely dismiss claims against supervisors in their official capacities as redundant when the plaintiff also names the principal entity as a defendant in the suit. *See, e.g., Shelton v. Cuyahoga Metro., Hous. Auth.*, No. 1:23-CV-483, 2024 WL 4336371, at *10 (N.D. Ohio Sept. 27, 2024) (dismissing the redundant official capacity claims in a Title VII action); *Maudlin v. Inside Out Inc.*, No. 3:13-CV-00354-TMR, 2014 WL 1342883, at *3 (S.D. Ohio Apr. 3, 2014) (same). The Complaint does not support a claim that these entities are separate entities that must be named for him to vindicate his rights, but if Complainant did so intend, he may file a motion to amend the Complaint with supporting factual allegations. Accordingly, Respondents’ motion to dismiss the Complaint as to the Board of Directors of Sheridan Community Hospital, Members of the Credentialing Committee of the hospital, Directors of “Sheridan Care Clinic,” and the Chief Operating Officer is GRANTED.

V. CONCLUSION

Respondents’ Motion to Dismiss is GRANTED IN PART AND DENIED IN PART. The motion to Dismiss is GRANTED as to Complainant’s national origin discrimination claim. Complainant’s national origin discrimination claim is DISMISSED WITH PREJUDICE.

Respondents’ Motion to Dismiss is DENIED as to Complainant’s citizenship-status discrimination, document abuse, and retaliation claims.

⁷ In certain instances where a corporation is found liable, “the personal assets of the controlling shareholders may be used to satisfy the debt or liability” if credible evidence is presented that the Court should ignore the corporate form through a process known as “piercing the corporate veil.” *Tal*, 4 OCAHO no. 639, at 452; *see also United States v. Sargetis*, 3 OCAHO no. 407, 101, 110–12 (1992); *McNier v. S.F. State Univ.*, 7 OCAHO no. 947, 411, 426 (1997); *United States v. PM Packaging, Inc.*, 11 OCAHO no. 1253, 6–7 (2015). The party seeking individual liability “bears the burden of establishing that . . . [they are] entitled to pierce the corporate veil,” *Tal*, 4 OCAHO no. 639, at 452, which usually entails a showing of “unfairness, injustice, fraud, evasion of existing obligations, use of the corporation to circumvent a statute, or some other inequitable conduct arising from the misuse of the corporate form.” *United States v. Kurzon*, 3 OCAHO no. 583, 1829, 1866 (1995). Complainant has not asserted any of these, and in any event, such a claim would require additional facts not appropriate for a motion to dismiss.

Respondents' Motion to Dismiss is GRANTED as to all claims against the Board of Directors of Sheridan Community Hospital, Members of the Credentialing Committee of the hospital, Directors of "Sheridan Care Clinic," and the Chief Operating Officer.

The Court will issue a scheduling order under separate cover.

SO ORDERED.

Dated and entered on June 30, 2025.

Honorable Jean C. King
Chief Administrative Law Judge