

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

August 13, 2025

RAVI SHARMA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2022B00023
	)	
NVIDIA CORP.,	)	
Respondent.	)	
	)	

Appearances: Robert J. Barton, Esq., and Marie-Lise Baroutjian, Esq., for Complainant
Patrick Shen, Esq., K. Edward Raleigh, Esq., and Samantha Caesar, Esq.,
for Respondent

PRE-HEARING ORDER TWO

On November 21, 2024, the Court issued an Order Denying Summary Decision, which caused the case to advance to a pre-hearing phase. *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450l (2024).¹

On April 8, 2025, the Court issued an Order which provided a revised prehearing schedule. This schedule contained deadlines for prehearing statements, exchange of proposed exhibits, and a deadline (July 28, 2025) by which parties were to file any motions pertaining to witnesses and exhibits.

On July 28, 2025, Complainant filed a “Motion to Exclude Certain of Respondent’s Proposed Exhibits.”

On August 7, 2025, Respondent filed its Opposition.

¹ 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>.

I. COMPLAINANT’S MOTION TO EXCLUDE EXHIBITS

Complainant seeks to exclude several proposed exhibits. Specifically, Complainant argues “Respondent’s Proposed Exhibits J, K, L, and M should be excluded . . . because they were not produced in discovery² . . . [and] Exhibits A-1 and A-2 [should be excluded] because Respondent has not produced the underlying data which is purportedly summarized [therein].”³ Mot. Exclude 1. Complainant argues the inclusion of these exhibits “would undermine Complainant’s due process right to adequate notice and the opportunity to respond meaningfully.” Mot. Exclude 5.

Complainant also takes issue with Respondent’s “Proposed Exhibit A,” arguing it is “inadmissible because [the declarant] does not have personal knowledge of the interview or hiring process for the [position at issue].” Mot. Exclude 1. Complainant argues the declarant’s lack of personal knowledge renders the proposed exhibit both irrelevant and unreliable. Mot. Exclude 6–8.

As to Exhibits A-1 and A-2, Complainant characterizes these as “charts summarizing internal data for which the underlying data was not produced to Complainant during discovery.” Mot. Exclude 8. Complainant then cites to OCAHO regulations at 28 C.F.R. § 68.40,⁴ which states, in part, “Compilations, charts, summaries of data, and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties.”

Finally, Complainant argues “Respondent should be precluded from introducing declarations of any witnesses unless that witness is made available for cross-examination.” Mot. Exclude 2.

II. RESPONDENT’S OPPOSITION

As to Exhibits J, K, L, and M, Respondent relies on OCAHO regulations at 28 C.F.R. § 68.43(b),⁵ and notes its compliance with the deadlines provided by the Court to exchange exhibits, and notes the exhibits were furnished “at least several months in advance of the hearing.” Opp’n 3.

² Complainant does not provide any further detail on what was requested in discovery and whether these documents would have been responsive.

³ In furtherance of its position, Complainant argues the Court may rely on Federal Rule of Civil Procedure 37(c)(1), and then provides Ninth Circuit caselaw which outlines the burdens on the producing party when the Rule is triggered. Mot. Exclude 3–4.

⁴ OCAHO’s Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

⁵ “If the Administrative Law Judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.” 28 C.F.R. § 68.43(b).

As to Exhibits A, A-1, and A-2, Respondent clarifies these exhibits were previously included⁶ in Respondent’s Motion to Summary Decision. Opp’n 5 n.5. As to the declaration, Respondent asserts the declarant does in fact have personal knowledge, and that knowledge may be explored at hearing. Opp’n 6. As to the charts and other compilations of data at A-1 and A-2, Respondent argues they are admissible under Federal Rule of Evidence 1006,⁷ and “were prepared to streamline the presentation of voluminous underlying data.” Opp’n 7. Respondent notes that it will “produce the original, which is a spreadsheet extracted directly from Workday . . . for Complainant’s examination, with appropriate redactions of personally identifiable information for applicants not at issue in this case” to meet the requirements of 28 C.F.R. § 68.40(b) and Fed. R. Evid. 1006.

III. LAW & ANALYSIS⁸

A. Exhibits J, K, L, and M Will Not Be Excluded Based on Complainant’s Arguments

Complainant lodges an objection to these proposed exhibits based on arguments rooted in discovery-related issues, citing Federal Rule of Civil Procedure 37(c)(1) as the basis for which exhibits should be excluded. For the reasons that follow, Rule 37(c)(1), in this instance,⁹ does not require exclusion.

First, Rule 37(c)(1) states “If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.”

While the Federal Rules are frequently used as guidance in the forum, OCAHO regulations expressly cover the topics at issue, and are controlling. *See* 28 C.F.R. §§ 68.18–23. OCAHO regulations outline the general methods by which parties can obtain discovery, and outline an administrative law judge’s ability and discretion to shape or limit discovery in any particular case. 28 C.F.R. § 68.18(a)–(c).

⁶ The Court did previously inform parties that, while exhibits attached to the summary decision motion practice are already in the record, they may provide them anew for ease of handling at hearing.

⁷ “The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.” Fed. R. Evid. 1006.

⁸ Consistent with 28 C.F.R. § 68.40(c), the Court now memorializes its decision on objections to Respondent’s proposed evidence for inclusion in the record.

⁹ This may not be the cases when the Court requires parties to provide Initial Disclosures as outlined in FRCP 26(a)(1), or when the Court orders the parties to supplement under FRCP 26(e). Even then, it is worth noting that the FRCP do not set forth a specific timeline to supplement. Separately, in instances where parties choose to rely on expert-derived evidence, FRCP 26(e) and thus FRCP 37(c)(1) may be triggered—but this is not wholly inconsistent with OCAHO regulations on that point. *See* 28 C.F.R. 68.18(d)(1)(ii).

OCAHO regulations expressly outline a party's duty to supplement. Specifically, "[a] party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his or her response to include information thereafter acquired."¹⁰ 28 C.F.R. § 68.18(d).

Beyond this, it is difficult to further analyze Complainant's assertion (as the discrete discovery request which triggered his assertion was not provided), and why or how the Court should apply the applicable OCAHO regulatory provision to come to a different conclusion.

The Court did consider Complainant's arguments pertaining to due process, wherein he raised a concern that consideration of the exhibits "would undermine Complainant's due process right to adequate notice and the opportunity to respond meaningfully." The remedy to such a concern would be time, not exclusion.

To that end, Complainant is invited to file a motion demonstrating good cause for additional time to review these exhibits so that he may be adequately prepared for hearing, which will tentatively be held late-Fall 2025. Such a motion must be filed within 10 days of issuance of this Order.

B. Exhibits A-1 and A-2 Will Not Be Excluded Based on Complainant's Arguments

While on the one hand, these exhibits are already in the record as attachments to the Motion for Summary Decision, to the extent the Court is to apply the post-summary decision procedural regulations, Complainant advances a point worth considering. Ultimately, Respondent's assessment of the regulation on point is correct, and Respondent has offered a way forward which the Court now adopts.

OCAHO regulations for evidence at hearing note that "Compilations, charts, summaries of data, and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties." 28 C.F.R. § 68.40(b).

Again, the remedy is not exclusion, rather it is examination of the underlying material. To that end, Complainant is invited to file a submission indicating whether it intends to "examine" the material which underlies the exhibits at issue. Such a filing must be submitted within 10 days of the issuance of this Order (not that the examination must be complete within 10 days, only that the Complainant must inform the Court and Respondent of its intent to examine the material within 10 days). It is the Court's expectation that the parties can confer (without Court involvement) on the logistics of such an examination.

C. Exhibit A Will Not Be Excluded Based on Complainant's Arguments

Complainant argues the declarant lacks personal knowledge; Respondent disagrees. This issue is best developed and captured on the record at hearing as these kinds of foundational issues are best resolved by "argument and debate" contemplated at 28 C.F.R. § 68.40(c).

¹⁰ There are exceptions to this rule, but none apply here.

IV. CONCLUSION

The Complainant's objections and the rationale by which they are overruled are preserved in the record by way of this written order. Complainant shall be mindful of the 10-day deadline for the motion/filing referenced in this Order. After the deadline or receipt of the motion/filing, parties can anticipate a prehearing conference where the Court will hear input on the structure of the hearing and other logistical issues, as appropriate. In preparation for this hearing, parties are encouraged to carefully review the Final Orders issued in *Zajradhara v. Ranni's Corp.*, 16 OCAHO no. 1426h (2024) and *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432m (2024) so they are best prepared to meaningfully participate in the prehearing conference.

SO ORDERED.

Dated and entered on August 13, 2025.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge