

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

September 22, 2025

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|---------------------------------|---|-----------------------------|
| UNITED STATES OF AMERICA,       | ) |                             |
| Complainant,                    | ) |                             |
|                                 | ) |                             |
|                                 | ) | 8 U.S.C. § 1324a Proceeding |
| v.                              | ) | OCAHO Case No. 2025A00040   |
|                                 | ) |                             |
|                                 | ) |                             |
| TALIS CONSTRUCTION CORPORATION, | ) |                             |
| Respondent.                     | ) |                             |
|                                 | ) |                             |

Appearances: Connor F. McNulty, Esq., for Complainant  
Karina Janine Ordonez, Esq., for Respondent

ORDER GRANTING COMPLAINANT LEAVE TO AMEND COMPLAINT & HOLDING IN  
ABEYANCE RESPONDENT MOTION TO DISMISS

On May 2, 2025, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Talis Construction Corp. The Complaint alleges Respondent violated the employment eligibility verification requirements of 8 U.S.C. § 1324a(a)(1)(B) with respect to forty-eight individuals. Compl. 3–8.

On June 5, 2025, Respondent filed its Answer and a Motion to Dismiss. Respondent argues the Complaint fails to meet OCAHO’s pleading standard because the “Complaint alleges vague, confusing, and ambiguous violations; [and] “fails to include a concise statement of facts for each alleged violation.” Mot. Dismiss 6–10. Respondent argues a sufficiently pled complaint must have facts identifying the specific paperwork violation contained in the Form I-9 for each individual named in the complaint. *Id.* at 10–12. Because of these deficiencies, Respondent concludes the complaint fails to provide adequate notice to Respondent, frustrating its ability to “formulate a defense,” and frustrating the Court’s ability to “evaluate the legal validity of the claims.” *Id.*

On June 11, 2025, Complainant filed its Opposition. Complainant contends the allegations in the Complaint are sufficiently pled, and do place Respondent on notice. Specifically, Complainant argues it “provide[d] the employees’ first and last name for each violation; the citation for the violation; that the employee failed to properly complete section one and/or the employer failed to complete section two or three; whether the violation was... substantive... or a violation for failing to prepare or present.” Opposition 2-3. Further, Complainant argues it “indicate[d] the base penalty amount... [and its application of the] statutory factors.” *Id.* 3.

## I. CONTENTS OF THE COMPLAINT

The Complaint contains a total of forty-eight alleged violations, divided into five separate Counts.<sup>1</sup>

In Count I, Complainant alleges that Respondent hired eight individuals for employment after November 6, 1986, and that Respondent failed to ensure the individuals properly completed section 1 of the Form I-9 and/or that it failed to properly complete section 2 or section 3 of the Form I-9, in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. 3. This Count contains additional language, to wit: “Substantive paperwork violations with statutory factors.” *Id.*

In Count II, Complainant alleges that Respondent hired one individual for employment after November 6, 1986, and that Respondent failed to ensure the individual properly completed section 1 of the Form I-9 and/or that it failed to properly complete section 2 or section 3 of the Form I-9, in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. 4. This Count contains additional language, to wit: “Form I-9 with statutory factors identified as notice of suspect documents.” *Id.*

In Count III, Complainant alleges the Respondent hired thirty-five individuals for employment after November 6, 1986, and that Respondent failed to ensure the individuals properly completed section 1 of the Form I-9 and/or that it failed to properly complete section 2 or section 3 of the Form I-9, in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. 5–6. This Count contains additional language, to wit: “Form I-9 with statutory factors.” *Id.*

In Count IV, Complainant alleges that Respondent hired three individuals for employment after November 6, 1986, and that Respondent failed to ensure the individuals properly completed section 1 of the Form I-9 and/or that it failed to properly complete section 2 or section 3 of the Form I-9, in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. 7. This Count contains additional language, to wit: “Form I-9 with statutory factors identified suspect document employee.” *Id.*

In Count V, Complainant alleges that Respondent hired one individual (the employee is named) for employment after November 6, 1986, and that Respondent failed to prepare and/or present the Form I-9 for this individual upon the government’s request. Compl. 8.

Complainant attaches to the Complaint the Notice of Intent to Fine, which contains language identical to the language in the Complaint. Complainant attaches the hearing request, and Respondent’s counsel’s notice of appearance provided pre-Complaint to Complainant. Complainant also provides a document from the Arizona Corporation Commission, which notes the date of incorporation, and the identity the principals, including the Chairman of the Board of Directors, the Director, and the President of the business.

Counts I through IV allege the Respondent (or its employee) failed to “properly complete” one of the three sections of the form, although Complainant provides no further information about how or why it came to this charged conclusion. The Counts, with their almost identical charging language, are divided into the four separate Counts, with no further information or explanation as to why these Forms I-9 have been categorized in distinct ways. Finally, Count V makes clear that

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<sup>1</sup> Each Count has a proposed penalty assessment per violation.

the Complainant anticipated receipt of a Form I-9 for an individual; however, this individual also appears to be both the Director and Chairman of the Board of Directors for the Respondent business (according to the documents attached to the Complaint).

## II. LAW & ANALYSIS – COMPLAINT DOES NOT MEET PLEADING STANDARD

OCAHO’s Rules provide that a party “may move for a dismissal of the 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).<sup>2</sup>

“This rule is modeled after Federal Rule of Civil Procedure 12(b)(6).” *US Tech Workers v. BMO Bank*, 20 OCAHO no. 1586b, 9 (2024) (citing *S. v. Discover Fin. Servs., LLC*, 12 OCAHO no. 1291, 8 (2016)).<sup>3</sup> “In considering a motion to dismiss, the court must limit its analysis to the four corners of the complaint.” *Udala v. New York State Dep’t of Educ.*, 4 OCAHO no. 633, 390, 394 (1994). Moreover, “[t]he complainant’s allegations of fact are accepted as true and all reasonable inferences derived therefrom are drawn in the complainant’s favor.” *US Tech Workers*, 20 OCAHO no. 1586b, at 9 (citing *Udala*, 4 OCAHO no. 633, at 394).<sup>4</sup>

OCAHO’s Rules require that a complaint contain (1) “A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated”; (2) “The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred”; and (3) “A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.” 28 C.F.R. § 68.7(b)(1)–(4).

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<sup>2</sup> OCAHO’s Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

<sup>3</sup> 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>.

<sup>4</sup> As an aside, Respondent does not seek a more definite statement pursuant to Federal Rule of Civil Procedure 12(e), which is a “procedural option available to a Respondent as an alternative to dismissal.” *United States v. Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475f, 3 fn.1 (2024). A respondent may pursue either option when faced with a deficient complaint. Perhaps more pointedly, Complainant does not argue, in the alternative, for an opportunity to provide a more definite statement. Again, no party has asked the Court to consider this option, which may be appropriate when a Complaint appears unintelligible, and “fails to specify the allegations in a manner that provides sufficient notice.” See *Swiekiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).) See *United States v. Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475g, 22 (2024).

OCAHO precedential case law provides further context as to what a “clear and concise statement of facts” means<sup>5</sup> in cases arising under § 1324a. See *United States v. Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475g (2024). The Chief Administrative Hearing Officer (CAHO) concluded “the bulk of the [complaint met] OCAHO’s pleading standard [in that case].” *Id.* at 15. There, Complainant put forth “clear and concise statement of facts” when it included a “table which lists, for each count, the employee’s name, the employee’s hire date, and a more specific description of the alleged deficiency or violation for that employee’s Form I-9.... [along with the violated] statutory provision.” The CAHO thus concluded “[a]lthough this alleged violation of law is an admittedly general one, it does track the relevant statutory language and is sufficient—when coupled with the more detailed factual allegations in Tab A of the [Complaint]—at this stage of the proceeding.” *Id.* at 16.

With the regulatory standard and precedential caselaw in mind, the Court turns to the Complaint in this case, and concludes it is insufficiently pled. It does not provide additional data about the employee as was provided in *Walmart, Inc (Bethlehem)*, it does not provide any description – at all – of what the alleged deficiency is. Instead the Complainant only places Respondent on notice there is a problem somewhere on the Form in one of, or possibly all of, the three sections. In carefully reviewing the four corners of the Complaint, it is impossible for the Court to divine what Complainant’s theory is, and such a Complainant de facto strips the Respondent of the notice required in these proceedings (as Respondent argues in its motion).

### III. LAW & ANALYSIS – COMPLAINANT SHALL BE GIVEN LEAVE TO AMEND

This leaves the Court, and the parties, with an insufficiently pled Complaint. While Complainant certainly could have proactively sought leave to amend (and has indeed done precisely that in prior similarly-situated cases),<sup>6</sup> for the reasons outlined below, the Court shall grant, sua sponte, Complainant leave to amend the Complaint to conform to OCAHO’s pleading standards.

“If a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints...” 28 C.F.R. 68(e). “OCAHO Rule 68.9(e) is ‘analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure.’” *United States v. KLJ Leasing, LLC*, 16 OCAHO no. 1446, 2 (2022); citing *United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998).” According to Federal Rule of Civil Procedure

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<sup>5</sup> As the Chief Administrative Hearing Officer explained in his Order, the “sole dispute [before him] was whether the [complaint] contained ‘[t]he alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred.’” *United States v. Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475g 14 (2024).

<sup>6</sup> See *United States v. RS&L Inc., D/B/A Total Employment And Management (TEAM)*, 13 OCAHO no. 1333 (2019); see also *United States v. KLJ Leasing, LLC*, 16 OCAHO no. 1446 (2022); see also *United States v. Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475a (2023).

15(a)(2), “a party may amend its pleading... [with] the court’s leave. The court should freely give leave when justice so requires.”<sup>7</sup>

In considering what justice requires, the Court first considers the unique procedural nature of cases arising under § 1324a. These cases arrive in the forum because the Respondent has requested a hearing – an entitlement enshrined in the statute. It stands to reason that, implicit in that right to a hearing, is sufficient notice of the proposed violation. Amending a deficient complaint, then, would allow for the hearing (to which Respondent is entitled), to proceed.

The allegations in this Complaint are indeed insufficient; however, amendment does not appear to be futile. In fact, the Complainant has successfully amended prior complaints in other cases with the same deficiency.<sup>8</sup>

#### IV. CONCLUSION AND ORDERS

The Respondent’s Motion to Dismiss shall be HELD IN ABEYANCE.

Complainant is GRANTED leave to amend the Complaint. Complainant must file its First Amended Complaint by October 10, 2025. Failure to timely file the First Amended Complaint may result in dismissal of the case.

Respondent shall have 30 days from the date the First Amended Complaint is filed to file an Amended Answer, if it chooses to do so.

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<sup>7</sup> The Court acknowledges that, in the Ninth Circuit, leave to amend (when it is requested by a party), should be granted with “extreme liberality.” *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d, 708, 712 (9th Cir. 2001).

In instances where it is the Complainant moving the Court to amend a complaint, the Court would consider the factors [one of which is futility] outlined in *Foman v. Davis*, 371 U.S. 178 (1962), and that the Ninth Circuit (as this is a case arising in Arizona) has instructed that: “Absent prejudice, or a strong showing of any of the... *Foman* factors, there exists a **presumption** under Rule 15(a) in favor of granting leave to amend.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (emphasis in original).

Here, Complainant did not seek leave to amend, and so while the *Foman* factors are highly instructive, the analysis is not completely analogous (i.e. *Foman* takes into account bad faith or dilatory motive, which is not at issue when the Court moves sua sponte).

<sup>8</sup> This observation may be limited to Counts I through IV. Count V appears to contemplate a violation of the law where the named employee may have either ownership or control over the enterprise. If true, then this Count may not be viable, Complainant should carefully review OCAHO precedent prior to crafting its Amended Complaint. *See United States v. Intelli Transport Services, Inc.* 13 OCAHO 1319 (2019); *see also United States v. Speedy Gonzalez Construction, Inc.* 11 OCAHO 1228 (2014); *see also United States v. Visiontron Corp.* 13 OCAHO 1348 (2020).

The Prehearing Conference shall be reset to a later date pending resolution of this issue.

SO ORDERED.

Dated and entered on September 22, 2025.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge