

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2023A00058
PJ'S OF TEXAS, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Oscar J. Montemayor, Esq., for Complainant
Kevin R. Lashus, Esq., for Respondent

ORDER GRANTING THE UNITED STATES DEPARTMENT OF HOMELAND
SECURITY'S MOTION FOR LEAVE TO AMEND COMPLAINT

I. PROCEDURAL HISTORY

On May 9, 2023, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, PJ's of Texas, Inc. Through the five counts of the complaint, Complainant alleges that Respondent violated the employer sanctions provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Compl. ¶ 6. On June 21, 2023, Respondent filed a Special Appearance, Special Exceptions, and Answer. On July 1, 2025, Complainant filed The United States Department of Homeland Security's Motion for Leave to Amend Complaint. It attached as Exhibit A to its motion the First Amended Complaint Regarding Unlawful Employment. Mot. Amend Ex. A. On February 18, 2026, the parties filed a signed settlement agreement with the Court.

II. LEGAL STANDARDS

OCAHO’s Rules of Practice and Procedure for Administrative Hearings, which generally govern these proceedings,¹ permit a complainant to amend 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 interest and the rights of the parties.” 28 C.F.R. § 68.9(e). “Section 68.9(e) is ‘analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure.’” *United States v. Sal’s Lounge*, 15 OCAHO no. 1394, 2 (2021) (citing *United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998)).² When determining whether to grant leave to amend a complaint, this Court has also looked to federal caselaw interpreting Rule 15. *See, e.g., Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362d, 12–13 (2023); *see also* 28 C.F.R. § 68.1 (providing that “[t]he Federal Rules of Civil Procedure may be used as a general guideline” in OCAHO proceedings).

The United States Court of Appeals for the Fifth Circuit, the federal judicial circuit in which this case arises, *see* 28 C.F.R. § 68.56, considers the following five factors “in determining whether to deny leave to amend a complaint: ‘undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, [and] futility of the amendment ...’” *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 864 (5th Cir. 2003) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *accord United States v. FRC Balance, LLC*, 14 OCAHO no. 1366, 2 (2020) (citing *Hurn v. Ret. Fund Tr. of Plumbing, Heating & Piping Indus. of S. Cal.*, 648 F.2d 1252, 1254 (9th Cir. 1981)). Absent the enumerated factors, leave to amend shall be freely given. *Rosenzweig*, 332 F.3d at 864; *see also* Fed. R. Civ. P. 15(a)(2) (“The court should freely give leave when justice so requires.”).

¹ OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. pt. 68 (2025), are available on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

² 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 after 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 “FIM–OCAHO,” the LexisNexis database “OCAHO,” or on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

III. DISCUSSION

Through the parties' settlement agreement, Respondent admits its failure to comply with 8 U.S.C. § 1324a as set forth in the six counts of Complainant's proposed First Amended Complaint Regarding Unlawful Employment. Settlement Agreement ¶ 6; Mot. Amend. Ex. A. Complainant filed the proposed First Amended Complaint Regarding Unlawful Employment as an attachment to The United States Department of Homeland Security's Motion for Leave to Amend Complaint. Mot. Amend Ex. A. While Complainant did not meaningfully explain why it seeks to amend the complaint, Respondent filed no response to the motion pursuant to 28 C.F.R. § 68.11(b). Therefore, the Court deems the motion to be unopposed. *See United States v. Impact Staffing, LLC*, 21 OCAHO no. 1635a, 2 (2025) (granting a motion that lacked a complete explanation when it was unopposed).

The Court finds that Complainant's proposed amendments to the complaint are appropriate to facilitate a determination of the controversy on the merits in accordance with 28 C.F.R. § 68.9(e). Based upon the Court's consideration of the materials in the record, none of the Fifth Circuit's factors warrant a denial of The United States Department of Homeland Security's Motion for Leave to Amend Complaint.

First, Complainant filed its motion for leave to amend the complaint after indicating its intent to do so during a prehearing conference soon after the Court opened discovery in this case. Therefore, allowing the amendment will not result in any undue delay. Second, while Complainant's motion does not offer any particular reason why leave to amend should be granted, there is no evidence that the amendment is sought in bad faith. Respondent, who had notice of Complainant's intent to amend the complaint, has raised no arguments against amendment.

Third, this is the first time Complainant seeks to amend the complaint, and so no evidence exists of Complainant's "repeated failure to cure deficiencies" in the complaint. *Rosenzweig*, 332 F.3d at 864. Fourth, allowing the amendment will not cause any undue prejudice to Respondent because the amended complaint seeks the same monetary penalty as the original complaint and alleges paperwork violations for the same number of individuals. The amendment only affects some of the violations alleged in Count III of the complaint which are now alleged under a different theory of liability in the new Count VI of the First Amended Complaint Regarding Unlawful Employment. Given the lengthy availability of discovery, the Court finds that Respondent has had time to prepare a defense to the revised allegations. Further, Respondent declined to voice any objection to Complainant's motion by way of an opposition filing. Therefore, the Court finds no undue prejudice exists here.

Fifth, and finally, Complainant's amendment would not be futile, as it appears to state a claim that Respondent violated the employer sanctions provisions of 8 U.S.C. § 1324a. *See Stripling v. Jordan Prod. Co., LLC*, 234 F.3d 863, 873 (5th Cir. 2000) (joining other circuits in interpreting "futility" in the context of an amended complaint "to mean that the amended complaint would fail to state a claim upon which relief could be granted"). For each count in the First Amended Complaint Regarding Unlawful Employment, Complainant alleges Respondent hired the named individuals after November 8, 1986, thereby making them subject to the Employment Eligibility Verification Form (Form I-9) employment eligibility verification requirements, and that one or more violation of those verification requirements is associated with each individual. Mot. Amend Ex. A 2–23. Further, the parties have adopted the six counts within the First Amended Complaint Regarding Unlawful Employment through their Settlement Agreement. Settlement Agreement ¶ 6; Mot. Amend Ex. A.

Therefore, because the proposed amendment of the complaint will facilitate an adjudication of this controversy on the merits, and no circumstances precluding the amendment exist, the Court grants the United States Department of Homeland Security's Motion for Leave to Amend Complaint and permits the First Amended Complaint Regarding Unlawful Employment as the operating pleading in this matter.

IV. ORDERS

IT IS SO ORDERED that The United States Department of Homeland Security's Motion for Leave to Amend Complaint is GRANTED; and

IT IS FURTHER ORDERED that the First Amended Complaint Regarding Unlawful Employment is the operative complaint in this matter.

SO ORDERED.

Dated March 4, 2026.

Honorable Carol A. Bell
Acting Chief Administrative Law Judge