

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

April 23, 2026

VARUN MANGEWALA,)	
Complainant,)	
)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00051
)	
SAIL INTERNET INC.,)	
Respondent.)	
_____)	

Appearances: Varun Mangewala, pro se Complainant
Collin D. Cook, Esq., Eryne Walvekar, Esq., and Geoff Forney, Esq., for
Respondent
Erik Lang, Esq., for the United States

ORDER DENYING COMPLAINANT’S MOTION TO COMPEL

I. PROCEDURAL HISTORY

On May 24, 2025, Complainant filed a Motion to Compel Discovery Responses (which he later asked to amend via a separate motion). Complainant’s Amended Motion to Compel cross-references evidence attached to his Motion to Compel, including a letter dated May 15, 2025, that it sent to Respondent which he claims “thoroughly identifies each outstanding deficiency” and “explains why each item remains essential.” Am. Mot. Compel¹ 3; Complainant’s Evidence.²

On June 3, 2025, Respondent filed its Opposition to the Motion to Compel.

¹ Complainant’s Amended Motion to Compel is not paginated. It was submitted with Complainant’s Motion to Amend the prior Motion to Compel. Page citations refer to the combined PDF submission.

² The documents attached to Complainant’s May 24, 2025, Motion to Compel, which are referenced in the Amended Motion to Compel will be referred to as “Complainant’s Evidence.” Because the documents are not all paginated, page citations refer to the pages of the combined PDF submission.

After the conclusion of the parties' participation in the Settlement Officer Program, the Court held a prehearing conference where it confirmed the parties' positions on the discovery issues. *See* March 25, 2026 Order Summarizing Pre-hearing Conf. (POST SOP).

II. LEGAL STANDARDS

Under OCAHO's Rules of Practice and Procedure,³ a party "may move the Administrative Law Judge [ALJ] for an order compelling a response or inspection in accordance with the request" when "a party upon whom a discovery request is made . . . fails to respond adequately or objects to the requests or to any part thereof." 28 C.F.R. § 68.23(a).

A motion to compel must include:

- (1) The nature of the questions or request;
- (2) The response or objections of the party upon whom the request was served;
- (3) Arguments in support of the motion; and
- (4) A certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the [ALJ].

28 C.F.R. § 68.23(b).

Complainant's Amended Motion to Compel describes or otherwise provides sufficient specificity; provides Respondent's objections; contains argument; and demonstrates parties met and conferred.⁴ For these reasons, Respondent's Amended Motion to Compel complies with the regulatory requirements of 28 C.F.R. § 68.23(b). *See United States v. Terrapower, LLC*, 19 OCAHO no. 1548f, 4 (2025).⁵

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2026), can be found in the Electronic Code of Federal Regulations. *See* <https://www.ecfr.gov/current/title-28/chapter-I/part-68>.

⁴ While Respondent initially argued Complainant failed to sufficiently meet and confer with Respondent on the discovery questions, Respondent's counsel advised the Court at the March 2026 Prehearing Conference that it now takes the position the parties met and conferred. Opp'n 2-4; March 25, 2026 Order Summarizing Pre-hearing Conf. (Post SOP) 1.

⁵ 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>.

Litigants in proceedings before OCAHO generally “may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding.” 28 C.F.R. § 68.18(b).

“Relevance ‘broadly encompass[es] any matter that bears on, or that could reasonably lead to other matter that could bear on, an issue that is or may be in the case.’” *A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381j, 4-5 (2022) (quoting *United States v. Autobuses Ejecutivos, LLC*, 11 OCAHO no. 1220, 3 (2014)). “Unless the objecting party sustains his or her burden of showing that the objection is justified, the [ALJ] may order that an answer be served.” 28 C.F.R. § 68.23(a). The Court has explained that “[t]he party refusing to respond ‘must articulate its objections in specific terms and has the burden to demonstrate that its objections are justified.’” *Id.* at 5 (quoting *United States v. Employer Sols. Staffing Grp. II, LLC*, 11 OCAHO no. 1234, 3 (2014)). “Generalized or conclusory assertions of irrelevance, overbreadth or undue burden are not sufficient to constitute objections.” *United States v. Allen Holdings, Inc.*, 9 OCAHO no. 1059, 5 (2000).

III. ANALYSIS OF EACH REQUEST⁶ SECTION

A. Request for Production Section 1⁷

(1.1) Produce all documents showing the projects assigned to the intern⁸ after Complainant’s termination in March 2023.

(1.2) Provide detailed descriptions of each project the Intern was assigned post-March 2023.

(1.3) Produce documents specifying the technical skills required for these projects.

⁶ Several of Complainant’s “requests” are in fact interrogatories rather than requests for production. For example, Request 1.8 includes a request that Respondent “specify who” assigned certain projects to Complainant, and Request 6.2 includes a request that Respondent “explain how the decision was made to distribute” certain tasks. Complainant’s Evidence 2-9.

Requests for the production of documents are distinct from written interrogatories and are governed by different Rules (as are requests for admissions and requests for depositions). *See* 28 C.F.R. §§ 68.19-68.22.

While Complainant’s request cited the general Rule for discovery, 28 C.F.R. § 68.18, the bulk of the requests most closely resemble a request for production under 28 C.F.R. § 68.20 (as they ask Respondent to “*produce* the following documents and information relevant to the claims and defenses in this matter.” Complainant’s Evidence 6 (emphasis added)). To the extent Complainant asks the Court to compel responses to interrogatories, such a motion is **DENIED** because Complainant did not serve written interrogatories on Respondent that clearly request an answer “in writing.” *See* 28 C.F.R. § 68.19.

⁷ The Court has summarized the requests presented in the Motion.

⁸ Complainant alleges that he was terminated by Respondent while an “intern,” alleged to be a “foreign worker” remained. Compl. 8 (citations to the Complaint are to the combined PDF submission).

(1.4) Provide evaluations or performance reports on the Intern’s contributions to these projects.

(1.5) Provide a detailed list of all tasks performed by the Intern, including recurring responsibilities and ad hoc tasks assigned after the Complainant’s layoff.

(1.6) Produce a comprehensive list of all tasks, ad hoc responsibilities, and projects assigned to the Intern before March 2023 ... any evaluations, progress reports, or documentation related to these tasks and responsibilities ... [and] produce detailed descriptions of the projects assigned to the Intern before March 2023, including objectives, deliverables, and outcomes.

(1.7) Produce a side-by-side comparison of the Intern’s tasks and projects before March 2023, and then after March 2023 ... and the tasks after March 2023. Then specify whether there were substantial changes in the nature, complexity, or volume of the tasks and projects assigned. Finally, explain how this comparison aligns with the company’s justification for retaining the Intern over the Complainant. Provide any communications, meeting notes, or internal documentation discussing these comparative changes.

(1.8) Provide documentation, emails, memos, or communications showing instances where Complainant was assigned “coding projects.” Specify who, if anyone, assigned these alleged “coding projects,” along with project descriptions and technical requirements. Also provide documentation of project origin, technical specifications, and deliverables. Further, provide any internal communications, performance reviews, or documentation discussing the Complainant’s technical capabilities in relation to these alleged coding projects.

Also, clarify whether the Intern’s tasks under the Complainant’s supervision involved routine task delegation, coaching, and quality assurance as part of standard supervisory responsibilities; and clarify whether the company considered oversight, coaching, and quality control performed by the Complainant over the Intern’s tasks as a limitation of the Complainant’s technical abilities.

Complainant’s Evidence 7-8.

Complainant argues no documents have been produced in response to these requests. For 1.1 through 1.7, Complainant states documents would provide comparator information; and for 1.8 he argues these documents are “necessary to assess the legitimacy of Respondent’s rationale.” *Id.* at 154.

For requests 1.1, 1.3, 1.4, and 1.8, Respondent claims it has produced all responsive documents and information related to this request and that if nothing was produced, it is because no responsive document exists. *Opp’n* 4-5.

Respondent objects to requests 1.2, 1.5, 1.6, and 1.7, and argues the requests present an undue burden on Respondent, as it would impermissibly require Respondent to “compile the relevant information in a neat little package.” *Id.* at 6-7 (quoting *Noakes v. Case W. Reserve Univ.*, No. 1:21-CV-01776-PAB, 2022 WL 17811630, at 7 (N.D. Ohio Dec. 19, 2022)).

As it relates to requests 1.1, 1.3, 1.4, and 1.8, Respondent represents it has produced all responsive documents. The Court cannot compel Respondent to produce a document which does not exist. *See United States v. Volvo Trucks North America, Inc.*, 7 OCAHO 994, 1088, 1094 (1998) (denying a motion to compel to the extent material was provided or “does not exist”). Given Respondent’s representation as a party before the Court⁹ and the absence of contrary assertion by Complainant that specific responsive documents do exist, the Motion to Compel is **DENIED** as to these requests for production.

As it relates to requests 1.2, 1.5, 1.6, and 1.7, Complainant requests Respondent do more than produce responsive documents. Indeed, Complainant styles them as requests for detailed descriptions, lists, or side-by-side comparisons. Respondent “does not have a duty to create records” or compile documents.¹⁰ *See Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450d, 9 n.16 (2025). Respondent is only “tasked with disclosing relevant information and records that already exist.” *Id.* Even assuming, arguendo, these requests were for responsive documents in the possession of Respondent, they would be duplicative (compare, for example, request 1.4 and 1.8 with requests 1.5 through 1.7). *See Saini v. Sheridan Community Hospital, Et Al*, 21 OCAHO no. 1644c, 7 (2025) (denying a motion to compel when an earlier request sought the same information). The Motion to Compel is **DENIED** as to these requests for production.

B. Request for Production Section 2

(2.1) Produce the initial (May 2022) job description for the Intern and produce the Intern’s new job description when he became a full time Data Analyst (circa January 2023).

⁹ Absent suggestion to the contrary, the Court presumes parties “act with integrity, and in an ethical manner,” as required under OCAHO’s Rules. 28 C.F.R. § 68.35(a); *see also* 28 C.F.R. § 68.35(b) (explaining “[t]he [ALJ] may exclude from proceedings parties, witnesses, and their representatives for ... refusal to adhere to reasonable standards of orderly and ethical conduct [or] failure to act in good faith”).

¹⁰ Respondent argues these requests are unduly burdensome. While the result is the same (i.e. Respondent will not be ordered to create new documents or assemble information in a particular way from existing responsive documents), it is worth noting that an “unduly burdensome” objection presumes a condition not present here.

In discovery, a party is obligated to produce responsive documents in its possession, and in such a circumstance an objection of “unduly burdensome” means the time, money or effort to produce the documents is simply too great relative to the value of the case. *See Ravines De Schur v. Easter Seals-Goodwill Northern Rocky Mountain, Inc.*, 15 OCAHO no 1388d, 13 (2021) (explaining that the party opposing discovery requests based on undue burden must demonstrate “‘that the time or expense involved in responding to requested discovery is unduly burdensome,’ and the burden ‘imposes an obligation to provide sufficient detail and explanation about the nature of the burden in terms of time, money and procedure required to produce the requested document’” (quoting *Horizon Holdings v. Genmar Holdings*, 209 F.R.D. 208, 213 (D. Kan. 2002)). It can be a problem of scope, or it could be a function of the characteristics of the documents sought.

In any event, here, the issue is even more basic. Respondent has provided all responsive documents in its possession. The objectionable requests here appear to be duplicative, or request Respondent engage in a “production” endeavor beyond its discovery obligations.

(2.3) Provide all communications with Complainant regarding the Intern's initial reporting structure, including emails requesting the Complainant supervise the Intern, and provide any subsequent changes to the Intern's reporting structure during their time as an Intern.

(2.4) Produce copies of all performance evaluations or assessments of the Intern (from May 2022 to January 2023 as an Intern and then from January 2023 onward as a Data Analyst).

(2.5) Provide salary details (base salary, bonuses, other compensation/adjustments) for the Intern (from May 2022 to January 2023 as an Intern and then from January 2023 onward as a Data Analyst).

(2.6) Produce communications, notes, or memos regarding the change of the Intern's job title upon becoming a full-time employee.

Complainant's Evidence 8-9.

For requests 2.1 and 2.2, Complainant states that, while he did receive his previous job description, he did not receive a job description for the Intern. *Id.* at 154. He argues the requested documents are relevant as they provide comparator information. *Id.*

For requests 2.3 and 2.4, Complainant states he received no responsive documents, and he requires these documents to compare his performance to the Intern's performance. *Id.*

For requests 2.5 and 2.6, Complainant states that a partial salary history was provided that showed the Intern's salary transition from an employee earning \$40 per hour to a full-time salary of \$110,000. He argues these documents "are required to evaluate equity, consistency, and alignment with company compensation policy." *Id.*

For requests 2.1 through 2.6, Respondent claims it has produced all responsive documents and information related to this request and that if nothing was produced, it is because no responsive document exists. Opp'n 4-5.

As it relates to requests 2.1 through 2.6, Respondent represents it has produced all responsive documents. The Court cannot compel Respondent to produce a document which does not exist. *See Volvo Trucks North America, Inc.*, 7 OCAHO 994, at 1094 (denying a motion to compel to the extent material was provided or "does not exist"). Given Respondent's representation as a party before the Court¹¹ and the absence of contrary assertion by Complainant that specific responsive documents do exist, the Motion to Compel is **DENIED** as to these requests for production.

¹¹ *Supra* note 9.

C. Request for Production Section 3

(3.1) Produce documents showing changes to the Intern’s workload after March 2023, including “a breakdown of recurring tasks, ad hoc responsibilities, and project ownership,” and specify if there were any documented workload concerns, such as task overflow or unmet deadlines.

(3.2) Produce records or communication about the Intern’s hours after March 2023.

(3.3) Provide records (including approval or denials of requests) showing the Intern’s use of leave or work on “off-days.”

Complainant’s Evidence 10.

For requests 3.1 through 3.3, Complainant states that no responsive documents were provided. *Id.* at 154. He argues these documents are relevant because they could support his claim that Respondent benefited economically by retaining an employee subject to visa restrictions “because companies that exploit visa-based labor often overburden foreign workers to gain cost savings.” *Id.* at 154-55.

For request 3.1, Respondent claims it has produced all existing responsive documents and information related to the request. *Opp’n* at 4-5.

For requests 3.2 and 3.3, Respondent objected to the requests and argues they are not relevant to Complainant’s Claim. *Id.* at 5-6.

As it relates to request 3.1, Respondent represents it has produced all responsive documents. The Court cannot compel Respondent to produce a document which does not exist. *See Volvo Trucks North America, Inc.*, 7 OCAHO 994, at 1094 (denying a motion to compel to the extent material was provided or “does not exist”). Given Respondent’s representation as a party before the Court¹² and the absence of contrary assertion by Complainant that specific responsive documents do exist, the Motion to Compel is **DENIED** as to these requests for production.

As it relates to Requests 3.2 and 3.3, the Court concludes the requested documents are not relevant, even in discovery. “Relevance ‘broadly encompass[es] any matter that bears on, or that could reasonably lead to other matter that could bear on, an issue that is or may be in the case.’” *A.S.*, 14 OCAHO no. 1381j, at 4-5 (quoting *Autobuses Ejecutivos, LLC*, 11 OCAHO no. 1220, at 3).

Complainant, as the moving party, bears the burden to establish relevancy of the requested documents. *Heath v. Consultadd and an Anonymous Employer*, 15 OCAHO no. 1395a, 9 (2022) (“The party seeking discovery bears the burden of proof on relevancy.”). Here, he has not done so, instead only providing generic speculation about what “companies” do and how they treat foreign workers. Such theories (about labor practices and foreign workers and/or compliance with visa programs) are not relevant, as these theories and issues are not litigated in this forum. *See U.S. Tech Workers Et Al., v. BMO Bank*, 20 OCAHO no. 1586b, 13 (2024) (explaining that

¹² *Supra* note 9.

concerns regarding “the existence of the H-1B visa program or whether a particular business has complied with that visa program” are “policy-related concerns” that are not relevant in OCAHO proceedings); *see also Zajradhara v. Ranni’s Corp.*, 16 OCAHO no. 1426e, 4 (2023) (explaining that a discrimination claim cannot be proven through evidence of visa fraud or a company’s labor practices alone); *Zajradhara v. Aljeric General Services, LLC*, 16 OCAHO no. 1432f, 6 (2023) (same). Therefore, the Motion to Compel is **DENIED** as to these requests for production.

D. Request for Production Section 4

(4.1) Produce copies of all communications made by, between, or among any former or current Sail employees, since September 1, 2022, that relate to the Complainant’s work performance, his termination, and any requests for references or letters of recommendation.

(4.2) Produce all notes, emails, memoranda, or other documents reflecting or discussing any potential letter of reference or recommendation for the Complainant, including any such letter referenced by [the three individuals] who informed the Complainant of his termination.

(4.3) Produce all drafts (including emails) of any letters of reference or recommendation that any current or former Sail employee created or proposed for the Complainant (regardless of whether they were provided to Complainant or a third party).

(4.4) Produce all documents related to whether Sail, or any current or former employee of Sail, would or would not provide a reference or recommendation letter (or email) for or about the Complainant, including but not limited to all documents reflecting or communicating about any request or decision on that topic.

Complainant’s Evidence 10-11.

For requests 4.1 through 4.4, Complainant states he received one document (email correspondence) related to a reference letter. *Id.* at 155. He argues internal communications about his performance and termination could establish pretext. *Id.*

For requests 4.1 through 4.4, Respondent claims it has produced all existing responsive documents and information related to the request. *Opp’n* 4-5.

As it relates to requests 4.1 through 4.4, Respondent represents it has produced all responsive documents. The Court cannot compel Respondent to produce a document which does not exist. *See Volvo Trucks North America, Inc.*, 7 OCAHO 994, at 1094 (denying a motion to compel to the extent material was provided or “does not exist”). Given Respondent’s representation as a party before the Court¹³ and the absence of contrary assertion by Complainant that specific responsive documents do exist, the Motion to Compel is **DENIED** as to these requests for production.

¹³ *Supra* note 9.

E. Request for Production Section 5

(5.1) Provide an explanation and any documentation related to “HR” referencing the Intern as an “Engineer,” even though the Intern’s title was “Data Analyst.” Also produce any internal communications, interview notes, hiring documentation, or other materials where the Intern’s role was discussed or categorized as “engineering” rather than “data analysis.” Specify how the Intern’s actual job responsibilities align with the title “Data Analyst” as opposed to “Engineer” and clarify whether there were any discussions or considerations about hiring the Intern under the title “Engineer” instead of “Data Analyst.” Finally, provide an explanation and supporting documentation of the changes in the Intern’s responsibilities that warranted changing their title from “Business Analyst” to “Data Analyst.”

(5.2) Provide an explanation and supporting documentation regarding: why the CFO did not show interest in Complainant’s inquiries about the Intern becoming a “full-time employee (FTE);” why, after the Intern’s outreach to the CFO about becoming a FTE, the CFO still declined to engage Complainant on this topic; and why, later, the Intern was ultimately retained as an FTE.

Complainant’s Evidence 11-12.

For requests 5.1 and 5.2, Complainant states that no responsive documents (or justifications) were provided. *Id.* at 155. He argues inconsistencies in the title “matter because Respondent relies heavily on the Intern’s alleged technical qualifications as justification for terminating [him].” *Id.*

For requests 5.1 and 5.2, Respondent claims it has produced all existing responsive documents and information related to this request. Opp’n 4-5.

As it relates to requests 5.1 and 5.2, Respondent represents it has produced all responsive documents. The Court cannot compel Respondent to produce a document which does not exist. *See Volvo Trucks North America, Inc.*, 7 OCAHO 994, at 1094 (denying a motion to compel to the extent material was provided or “does not exist”). Given Respondent’s representation as a party before the Court¹⁴ and the absence of contrary assertion by Complainant that specific responsive documents do exist, the Motion to Compel is **DENIED** as to these requests for production.

F. Request for Production Section 6

(6.1) Provide the names, titles, and roles of all individuals who assumed the Complainant’s responsibilities after March 2023 and specify which individual had specific tasks, projects, or duties.

(6.2) Provide any documentation, emails, or internal communications discussing the reasoning behind the allocation of the Complainant’s responsibilities to any particular individuals.

¹⁴ *Supra* note 9.

(6.3) Produce documents comparing the skills, qualifications, and experience of these individuals to the Complainant's qualifications, and provide any performance evaluations or personnel files related to these individuals post-March 2023.

(6.4) Provide documents showing whether any additional workload impacted compensation/promotions, and whether any individual received workload adjustments.

(6.5) Produce all communications, emails, meeting notes, or memos discussing how the Complainant's tasks and responsibilities would be reassigned after his termination.

Complainant's Evidence 12-13.

For requests 6.1 through 6.5, Complainant states that no responsive documents were provided. *Id.* at 155. He argues the information is important "to determine whether [his] role was truly eliminated or if the stated reasons were manufactured after the fact." *Id.*

For requests 6.1, 6.2, 6.4, and 6.5 Respondent claims it has produced all existing responsive documents and information related to these requests. Opp'n 4-5.

Respondent objects to request 6.3 and argues the request presents an undue burden on Respondent, as it would impermissibly require Respondent to "compile the relevant information in a neat little package." *Id.* at 6-7 (quoting *Noakes*, No. 1:21-CV-01776-PAB, 2022 WL 17811630, at 7).

As it relates to requests 6.1, 6.2, 6.4 and 6.5, Respondent represents it has produced all responsive documents. The Court cannot compel Respondent to produce a document which does not exist. *See Volvo Trucks North America, Inc.*, 7 OCAHO 994, at 1094 (denying a motion to compel to the extent material was provided or "does not exist"). Given Respondent's representation as a party before the Court¹⁵ and the absence of contrary assertion by Complainant that specific responsive documents do exist, the Motion to Compel is **DENIED** as to these requests for production.

As it relates to request 6.3, Complainant requests Respondent do more than produce responsive documents. Indeed, Complainant styles it as a request for a comparative document ("comparing the skills, qualifications, and experience of" certain individuals to Complainant). Respondent "does not have a duty to create records." *See Sharma*, 17 OCAHO no. 1450d, at 9 n.16. Respondent is only "tasked with disclosing relevant information and records that already exist." *Id.* Even assuming, *arguendo*, these requests were for responsive documents in the possession of Respondent, they would be duplicative (compare, for example, Request 6.3 and the other requests in Section 6). *See Saini*, 21 OCAHO no. 1644c, at 7 (denying a motion to compel when an earlier request sought the same information). The Motion to Compel is **DENIED** as to these requests for production.

¹⁵ *Supra* note 9.

G. Request for Production Section 7

(7.1) Provide documents comparing the Complainant's and Intern's qualifications.

(7.2) Provide rationale documents justifying the Intern's retention over the Complainant.

(7.3) Provide personnel files, evaluations, and records of employees in comparable roles.

(7.4) Provide data on hiring, promotions, layoffs, and terminations for roles similar to the Complainant's over the last 5 years.

Complainant's Evidence 13.

For requests 7.1 through 7.4, Complainant states that no responsive documents were provided. *Id.* at 155. He argues the information is important to identify "disparate treatment, patterns of discrimination, and whether Respondent has disproportionately retained foreign workers over similarly qualified U.S. citizens." *Id.*

Respondent objects to requests 7.1 and 7.4 and argues the requests present an undue burden on Respondent, as it would impermissibly require Respondent to "compile the relevant information in a neat little package." Opp'n 6-7 (quoting *Noakes*, No. 1:21-CV-01776-PAB, 2022 WL 17811630, at 7).

For requests 7.2 and 7.3, Respondent claims it has produced all responsive documents and information related to these requests and that if nothing was produced, it is because no responsive document exists. *Id.* at 4-5.

As it relates to request 7.1, Complainant requests Respondent do more than produce responsive documents. Indeed, Complainant styles it as a request for a comparative document ("comparing the Complainant's and the Intern's qualifications"). Respondent "does not have a duty to create records" or compile documents in any particular manner for presentation to Complainant. *See Sharma*, 17 OCAHO no. 1450d, at 9 n.16. Respondent is only "tasked with disclosing relevant information and records that already exist." *Id.* Even assuming, arguendo, these requests were for responsive documents in the possession of Respondent, they would be duplicative (compare, for example, Request 7.1 and Request 7.2 and 7.3). *See Saini*, 21 OCAHO no. 1644c, at 7 (denying a motion to compel when an earlier request sought the same information). The Motion to Compel is **DENIED** as to these requests for production.

As it relates to requests 7.2 and 7.3, Respondent represents it has produced all responsive documents. The Court cannot compel Respondent to produce a document which does not exist. *See Volvo Trucks North America, Inc.*, 7 OCAHO 994, at 1094 (denying a motion to compel to the extent material was provided or "does not exist"). Given Respondent's representation as a party before the Court¹⁶ and the absence of contrary assertion by Complainant that specific

¹⁶ *Supra* note 9.

responsive documents do exist, the Motion to Compel is **DENIED** as to these requests for production.

Request 7.4 is unduly burdensome (among other issues). The Complaint involves two discrete allegations. One pertaining to Complainant's termination from a position in March 2023, and the other pertains to a Respondent employee's declination to provide a reference letter (requested on two occasions (March 2023 and September 2023). Compl. 8-9. The request spans five years, which is an excessive amount of time given the actions at issue all occurred within a six-month window. Furthermore, the Complainant seeks "data" about multiple personnel actions taken by Respondent across a five-year timeframe.

The Complainant's argument does little to address the burden identified by the Respondent. Instead, Complainant justifies his request by asserting it could show a pattern of "disproportionately retained foreign workers over similarly qualified U.S. citizens." Again, evidence regarding generalized "pattern"-based theories are minimally (if at all) relevant (As the Complainant must show discrimination when he, specifically, was terminated while his comparator foreign worker remained.) *See Ranni's Corp.*, 16 OCAHO no. 1426e, at 4 (explaining that a discrimination claim cannot be proven through evidence of visa fraud or a company's labor practices alone); *Aljeri General Services, LLC*, 16 OCAHO no. 1432f, at 6 (same). Given the limited (if any) probative value of such evidence and the cumbersome nature of a request that would "threaten disruption to or hinder a respondent's normal business operations," request 7.4 presents an undue burden on Respondent. *Sefic v. Marconi Wireless*, 9 OCAHO no. 1123, 16 (2007). The Motion to Compel is **DENIED** as to this request for production.

H. Request for Production Section 8

(8.1) For each individual who separated from employment with Sail since January 1, 2022, and who did not sign a severance agreement, produce all documents constituting or reflecting communications or agreements regarding: their refusal to sign, reference or recommendation letters, modifications to proposed severance agreement, and any potential litigation related to their departure.

Complainant's Evidence 13.

For request 8.1, Complainant states that no responsive documents were provided. *Id.* at 156. He argues the information is relevant to assess whether Respondent had an unlawful preference for hiring foreign nationals over U.S. workers. *Id.*

For request 8.1 Respondent claims it has produced all existing responsive documents and information related to the request and that if nothing was produced, it is because no responsive document exists. Opp'n 4-5.

As it relates to request 8.1, Respondent represents it has produced all responsive documents. The Court cannot compel Respondent to produce a document which does not exist. *See Volvo Trucks North America, Inc.*, 7 OCAHO 994, at 1094 (denying a motion to compel to the extent material

was provided or “does not exist”). Given Respondent’s representation as a party before the Court¹⁷ and the absence of contrary assertion by Complainant that specific responsive documents do exist, the Motion to Compel is **DENIED** as to these requests for production.

I. Request for Production Section 9

(9.1) Provide policies on hiring in effect from December 2022 to March 2023.

(9.2) Provide promotion policies during the same period.

(9.3) Provide policies on layoffs in effect in March 2023.

Complainant’s Evidence 14.

For requests 9.1 through 9.3, Complainant states that no responsive documents were provided. *Id.* at 156. He argues the information is important to determine if Respondent followed its own procedures when it terminated him and retained an Intern. *Id.*

For requests 9.1 through 9.3, Respondent claims it has produced all existing responsive documents and information related to these requests. Opp’n 4-5.

As it relates to requests 9.1 through 9.3, Respondent represents it has produced all responsive documents. The Court cannot compel Respondent to produce a document which does not exist. *See Volvo Trucks North America, Inc.*, 7 OCAHO 994, at 1094 (denying a motion to compel to the extent material was provided or “does not exist”). Given Respondent’s representation as a party before the Court¹⁸ and the absence of contrary assertion by Complainant that specific responsive documents do exist, the Motion to Compel is **DENIED** as to these requests for production.

J. Request for Production Section 10

(10.1) Produce all agreements, MOUs, or documentation signed with U.S. Immigration and Customs Enforcement (ICE), USCIS or any other U.S immigration agencies regarding the hiring, employment authorization, or visa sponsorship of the Intern.

(10.2) Provide all communications with ICE, USCIS or any other U.S immigration agencies concerning the Intern’s employment authorization, visa status, audits, or compliance requirements related to their employment at Sail.

(10.3) Produce any records, audits, or compliance reports submitted to or received from ICE, USCIS or other U.S immigration agencies regarding the Intern’s employment or visa sponsorship.

¹⁷ *Supra* note 9.

¹⁸ *Supra* note 9.

Complainant's Evidence 14.

For requests 10.1 through 10.3, Complainant states that, in response, he received a single email that he sent to the Intern. *Id.* at 156. He states that no other responsive documents were provided. *Id.* He argues the information is important to assess whether Respondent had an unlawful preference for hiring foreign nationals over U.S. workers. *Id.*

For requests 10.1 through 10.3, Respondent argues the requests are not relevant to Complainant's claim. Opp'n 5-6.

Requests 10.1 through 10.3, are not relevant, even in discovery. While the immigration and work-authorization status of the Intern are relevant to Complainant's claim, Respondent does not dispute it sponsored the Intern's H-1B visa petition.¹⁹ *See generally Ravines De Schur*, 15 OCAHO no. 1388d. Requests related to correspondence between an employer and the U.S. Government about audits or compliance generally, are not relevant to the issue before the Court here, to wit: whether this Complainant was treated differently (and to his detriment) because of his citizenship status (relative to the H-1B visa worker he identified). Similarly, documents related to how the Intern obtained his status are not relevant. *Id.* at 10. Therefore, the Motion to Compel is **DENIED** as to these requests for production.

IV. CONCLUSION

Complainant's Motion to Compel is DENIED. The Court now sets a deadline for motions seeking summary decision, which are due by June 5, 2026. Parties shall have 30 days to respond to any such motion.

SO ORDERED.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

¹⁹ Respondent argues that the disclosure of this and other information "would include significant sensitive personal documentation and information related to the employee." Opp'n at 5. However, OCAHO has explained that "there is no general privilege for personnel records," which "are the kinds of records which are routinely requested and produced in employment discrimination cases." *Sefic*, 9 OCAHO no. 1123, at 18..

A protective order under 28 C.F.R. § 68.18(c) is always an available tool to address such concerns. *See generally United States v. Facebook Inc.*, 14 OCAHO no. 1386d (2021); *United States v. Terrapower, LLC*, 19 OCAHO no. 1548h (2026).