

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

August 19, 2026

MICHAEL BROWNE,	)	
Complainant,	)	
	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2026B00020
	)	
	)	
DOORDASH, INC.,	)	
Respondent.	)	
	)	

Appearances: Ian B. Coleman, for Complainant
Stephen H. Smalley, Esq., and Stephanie Generotti, Esq., for Respondent

ORDER SUMMARIZING INITIAL PREHEARING CONFERENCE & GRANTING
COMPLAINANT LEAVE TO AMEND HIS COMPLAINT

Parties attended a prehearing conference on August 19, 2026 at 9:00am PT. During the conference, the Court covered the following:

Settlement Officer Program: OCAHO’s Settlement Officer Program is a free mediation service available to parties.¹ Both parties must consent in writing before the case can enter the program. Parties may make a request for referral “at any time while proceedings are pending up to 30 days prior to the date scheduled for a hearing in the matter.” OCAHO Practice Manual Ch. 4.7(b)(4)(A).

Notice of EOIR Policy Memorandum 25-50: As the Director notes in this Policy Memorandum, OCAHO proceedings “shall be conducted expeditiously, and the parties shall make every effort at each stage of a proceeding to avoid delay.” EOIR PM 25-50 (quoting 28 C.F.R. § 68.1). To that end, “[n]inety-five percent (95%) of immigration-related unfair employment practice cases under INA § 274B should be completed within 510 days of filing.”

¹ Rules regarding enrollment and participation in the Settlement Officer Program can be found in Chapter 4.7 of OCAHO’s Practice Manual. Chapter 4.7 of the Practice Manual can be found here: <https://www.justice.gov/eoir/policy-manual-eoir/part-IV/ocaho/chapter-4-7>.

Amending The Complaint: The Complaint, in its present form, lacks the requisite clarity to proceed further. Specifically, the Court reviewed the Complaint and the IER Charge attached to the Complaint (and incorporated by reference), noting the following:

The IER Charge (beginning at page 16 of the Complaint) is structured in a question and answer format. In the Charge Form, Complainant stated the “discrimination occur[ed] [on] April 19, 2025.” Compl. 17. When asked to “explain in detail what happened...” Complainant relayed:

On February 22, 2025, [Complainant] applied for a Data Scientist Position (Job Reference: DSA-S-102-WA)... [He] subsequently followed up with [Respondent] via email on March 4, March 20, and April 19 [2025], inquiring about the status of [his] application. [He] received no responses to any of these follow-ups. [He took] the lack of acknowledgement or communication as confirmation that [his] application was not being seriously considered.

Compl. 17.

Additionally, the Complaint included email correspondence (from Complainant to IER) dated August 21, 2025² which states: “[Complainant] understands from [IER’s] email that [Complainant’s] citizenship discrimination charge against [Respondent] has been accepted as complete. Please find attached a summary of [Complainant’s] applications and communications with [Respondent].” Compl. 20.

Complainant then provided a list of jobs (including title, the job reference number, and the date on which he applied, among other data) as follows:

1. Data Scientist (DSA-S-102-WA) – applied on February 22, 2025
2. Data Scientist (DS-B-102-SF) – applied on May 12, 2025
3. Data Scientist, Analytics (DS-B-102-SF) – applied on June 1, 2025
4. Data Scientist, Analytics (DSA-B-103-SF2) – applied on July 20, 2025
5. Senior Machine Learning Engineer (SMLE-S-102-SF) – applied on August 4, 2025
6. Applied Scientist, Experimentation and Causal Inference (3014518) – applied on August 6, 2025
7. Manager, Data Science & Analytics (3182646) – applied on August 9, 2025

Compl. 20.

The OCAHO Complaint Form provides a space to describe the personnel action at issue. On the OCAHO Complaint Form in this case, Complainant alleged Respondent refused to hire Complainant for “Data Scientist, Analytics (Multiple Positions), [at Respondent business], San Francisco, CA.” Compl. 7.

² Note this correspondence predates the “Right to File” letter from IER, which is dated December 10, 2025. Compl. 14.

He describes the duties of the position(s) as:

Use quantitative analysis and the presentation of data to see beyond the numbers and understand what drives our business. Requires master's degree or foreign equivalent in Information Systems Management, Computer Science, or related field or relative quantitative discipline and two years of experience in the field of Data Management, Data Analytics, or related occupation.

Compl. 7 (with abbreviations written in full).

From reading the four corner of the Complaint as submitted, it is not clear whether Complainant (1) informed IER of multiple instances of non-selection, and then only sought to pursue (within his OCAHO Complaint) instances of non-selection for Data Scientist positions; or (2) whether he intended the attached IER Charge and correspondence to serve as the full listing of alleged discriminatory instances of non-selection; or (3) whether he intended something entirely different.

This lack of clarity makes it difficult for the parties to engage in discovery and potentially resolve discovery disputes should the arise (among other potential issues). *See generally* 28 C.F.R. § 68.10(b).

To that end, and mindful of the guidance within 28 C.F.R. § 68.9³ and caselaw requiring a generous approach to amendment,⁴ the Court now GRANTS, sua sponte Complainant leave to amend his Complaint.

³ As explained in OCAHO caselaw:

OCAHO Rule 68.9(e) permits 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 interests and the rights of the parties[.]” The Court is therefore charged with balancing those interests in determining whether to allow the proposed amendment. *United States v. Sal’s Lounge*, 15 OCAHO no. 1394, 1–2 (2020) (internal citations omitted).

OCAHO Rule 68.9(e) is “analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure,” a permissible guidance in OCAHO proceedings, see 28 C.F.R. § 68.1. *United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998). Federal Rule of Civil Procedure Rule 15(a)(1) states that:

A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Shater v. Shell Oil Company, 18 OCAHO no. 1504b, 2 (2024)

⁴ In “balancing interests” and considering how a Court should apply its discretion when analyzing an amendment under Rule 15(a), the Supreme Court’s *Foman* case is both binding and highly instructive. *Foman v. Davis*, 371 U.S. 178 (1962). The Supreme Court explained:

The Court encouraged the parties to carefully review *Wangperawong v. Meta Platforms, Inc.* 18 OCAHO no. 1510e (2024) based on the potential issues presented here.

Complainant shall file his amended by Complaint by Wednesday, September 9, 2026. He may do so via a new OCAHO Complaint Form or by way of a traditionally formatted filing.

Respondent shall have 30 days from receipt of the proposed amended to file either a Motion to Dismiss, or an Amended Answer. If a Motion to Dismiss is filed, the Respondent will have an opportunity to subsequently file an Amended Answer, and need not move the Court separately to “stay” any deadlines associated with an Amended Answer. If the Respondent files neither a Motion to Dismiss, nor an Amended Answer, the Court will infer the Answer filed on July 8, 2026 shall serve as the Answer to any Amended Complaint.

After this issue of amendment is resolved, the parties can anticipate a follow-on prehearing conference to discuss discovery. At present, discovery has not yet opened. Parties shall not serve any formal discovery requests; however, they are not precluded from conferring or informally sharing information or evidence related to this case.

SO ORDERED.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

“The Federal Rules reject the approach that pleading is a game of skill in which one misstep by [a party] may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” *Conley v. Gibson*, 355 U.S. 41, 48 (1957)... As appears from the record, the amendment would have done no more than state an alternative theory for recovery...

Rule 15(a) declares that leave to amend “shall be freely given when justice so requires;” this mandate is to be heeded. *See generally*, 3 Moore, Federal Practice (2d ed. 1948), paras. 15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.

Foman at 181-2.