

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

April 30, 2021

A.S.,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2020B00073
	)	
AMAZON WEB SERVICES INC.,	)	
Respondents.	)	
_____	)	

ORDER DENYING COMPLAINANT’S MOTION FOR RECONSIDERATION  
AND PARTIALLY GRANTING MOTION FOR EXTENSION

I. BACKGROUND

On January 28, 2021, the Court issued an Order to Complainant to Show Cause and Invitation for Amicus Curiae (Order to Show Cause). Complainant filed his Response to the Order to Show Cause on February 17, 2021.

Respondent filed a Motion to Dismiss on March 1, 2021 to which Complainant timely filed his opposition to on March 13, 2021.

On April 7, 2021, the Court issued an Order Reframing Scope of Complaint and Partially Granting Motion to Dismiss (Order Reframing Complaint), which addressed the Order to Show Cause and the Motion to Dismiss. In the Order Reframing Complaint, the Court dismissed “claims occurring before June 14, 2019; claims involving a personnel action not related to the hiring, or recruitment or referral for a fee, and citizenship status discrimination claims.” *A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381, 18 (2021).<sup>1</sup>

<sup>1</sup> 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 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,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

On April 14, 2021, Complainant filed instant “Motion to Amend or Alter 7th April 2021 OCAHO Order (Motion to Amend).”<sup>2</sup> Respondent filed an opposition to this motion on April 26, 2021.

On April 27, 2021, Complainant sent a letter to the Court requesting leave to file a reply to Respondent’s opposition to the Motion to Amend.<sup>3</sup> The record on Complainant’s Motion to Reconsider has been fully developed and is ripe for decision, thus the Court DENIES Complainant the opportunity to file a Reply to Respondent’s Opposition.

On April 19, 2021, separate and apart from his “Motion to Amend,” Complainant filed a Motion for Extension of Discovery Period seeking a forty-five day extension of the discovery period. The Complainant’s Motion for Extension of Discovery Period was unopposed. Previously, the Court updated the deadlines with discovery to close on May 24, 2021. *A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381d, 2 (2021).

## II. MOTION FOR RECONSIDERATION

The Court previously explained the standards for motions for reconsideration. *See A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381b, 2 (2021); *A.S.*, 14 OCAHO no. 1381d at 7 n.11. “Trial courts ‘have broad discretion under Rule 54(b) to revisit earlier interlocutory orders [but] that discretion is subject to the caveat that “where litigants have once battled for the court’s decision, they should neither be required, nor without good reason permitted, to battle for it again.”’” *A.S.*, 14 OCAHO no. 1381b at 2 (*citing eTool Dev., Inc. v. Nat’l Semiconductor Corp.*, 881 F. Supp. 2d 745, 749 (E.D. Tex. 2012)).

### a. Reconsideration on Court’s Order Dismissing Citizenship Discrimination

In its March 1, 2021 motion to dismiss, Respondent sought dismissal of citizenship status discrimination claims because the complaint did not raise an inference of discrimination. *A.S.*, 14 OCAHO no. 1381d at 6. Complainant had an opportunity to respond to the motion to dismiss and did in fact file a response for the Court’s consideration. Based on both filings, the Court determined Complainant failed to meet his burden at the pleading phase with respect to citizenship discrimination, and dismissed those portions of his Complaint. *A.S.*, 14 OCAHO no. 1381d at 16.

Complainant now argues in his Motion to Amend that his Complaint raises an inference of citizenship status discrimination and he identifies specific instances in a prehearing statement he attached to his Complaint which he believes gives rise to citizenship discrimination. Mot. to Am. 1–4. The facts referenced and arguments made by Complainant were all available to him at the time of he responded to the motion to dismiss, which was the appropriate time for

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<sup>2</sup> The Court construes the Motion to Amend as a motion for reconsideration because Complainant asks the Court to amend its Order Reframing Complaint based on new arguments.

<sup>3</sup> Generally, replies and sur-replies are prohibited, unless the Court provides otherwise. 28 C.F.R. § 68.11(b).

Complainant to raise such facts and make such arguments. Complainant provides no good cause for his failure to raise these facts and make these arguments prior to the issuance of the Court's order.

Complainant's failure to timely raise these facts in defense of his Complaint is now fatal because motions for reconsideration do not provide a second chance to re-litigate a previously decided issue as doing so would cause "the perpetual reexamination of orders" and "disserve the interest of justice." *A.S.*, 14 OCAHO no. 1381b at 2 (citations omitted). "Where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again." *A.S.*, 14 OCAHO no. 1381b at 2 (citations omitted).

Additionally, Complainant cites to his Prehearing Statement to assert that he raised an inference of citizenship status discrimination.<sup>4</sup> Mot. to Am. 4–5. The Prehearing Statement was filed on October 3, 2020, almost four months after his Complaint, in response to the Court's Order for Prehearing Statements and Initial Disclosures.

A prehearing statement is not an opportunity to assert new claims. *See generally United States v. FRC Balance, LLC*, 14 OCAHO no. 1366, 1–2 (2020). Even assuming arguendo that Complainant had appropriately raised facts and made argument related to this information in his response to the motion to dismiss, the Court cannot and will not consider prehearing statements as the functional equivalent of an amended complaint. These filings are made in response to the Court's orders and they are not an opportunity to amend a complaint via a backdoor process.

#### b. Reconsideration of Court's Order on Discovery

Complainant also seeks reconsideration of the Order Reframing Complaint insofar as it denied his motion to compel discovery. Mot. to Am. 5–6. Complainant does not raise any new arguments that he did not already raise in his motion to compel. Again, as the Court previously explained, the motion to compel was denied as moot because the Order Reframing Complaint redefined the contours of the complaint. *A.S.*, 14 OCAHO no. 1381d at 8. The Court also noted that "[n]either party is precluded from filing motions to compel discovery after receipt of this order[.]" *Id.* To reiterate, if Complainant wishes for the Court to intervene regarding discovery, he must file a motion to compel that complies with the requirements of 28 C.F.R. § 68.23(b), as explained on numerous occasions. *See A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381, 1–2 (2020); *A.S.*, 14 OCAHO no. 1381b, 3–4.

#### c. Timeliness

Additionally, Complainant seeks reconsideration of the Order Reframing Complaint for dismissal of untimely allegations. Mot. to Am. 8–9. Complainant had multiple opportunities to raise such arguments. First, the Court order Complainant "to show cause as to why allegations predicated on the alleged discriminatory behavior prior to June 14, 2019 should not be dismissed for lack of timeliness." *A.S. v. Amazon Webservices, Inc.*, 14 OCAHO no. 1381a, 5 (2021). Second, Respondent also brought its motion to dismiss arguing several claims were time-barred.

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<sup>4</sup> This Prehearing Statement is not to be confused with the prehearing statement he filed in conjunction with his complaint.

A.S., 14 OCAHO no. 1381d at 6. For the same reasons cited above pertaining to citizenship discrimination, the appropriate time in litigation to raise these facts and make these arguments was in response to the Court's specific query on this topic (Order to Show Cause) and in Complainant's response the motion to dismiss.

Complainant's Motion to Amend is denied insofar as it is a motion for reconsideration because the Complainant had access to all facts referenced in the motion at the time the Complaint was filed, Complainant makes no discernable legal arguments not previously available to him, nor does he explain how the Court "misapplied" the law.

### III. OTHER ISSUES RAISED IN MOTION TO AMEND

Complainant utilizes his motion to amend to demand information from the Court. Mot. to Am. 6-9 The Court now takes this opportunity to remind Complainant that a motion is "an oral or written request, made by a person or a party, for some action by an Administrative Law Judge." 28 C.F.R. § 68.2. The Court will not opine of the state or nature of litigation Complainant may or may not have in other administrative fora. The holdings or conclusions of the Texas Workforce Commission are irrelevant to these proceedings. As to the Equal Employment Opportunity Commission (EEOC), the Court has previously explained that "only citizenship-oriented allegations and retaliation-based allegations as potentially before this Court" because Respondent "employs more than fifteen employees [and thus] national origin charges appropriately fall to the EEOC." A.S., 14 OCAHO no. 1381 at 3 (citing *Gonzalez-Hernandez v. Ariz. Fam. Health P'ship*, 11 OCAHO no. 1254, 6 (2015)).

### IV. MOTION FOR EXTENSION OF DISCOVERY PERIOD

Complainant represents that Respondent's counsel agreed to a twenty day extension. Mot. Extension Disc. Period 2. Complainant demonstrated sufficient good cause for only a thirty day extension. Complainant's Motion for Extension of Discovery Period is GRANTED, IN PART.

The deadlines are reset to the following:

Discovery closes: June 23, 2021.<sup>5</sup>

Dispositive motions due: July 23, 2021.

Responses to dispositive motions are due thirty days after the filing of the dispositive motion.

Tentative hearing date: October 2021.

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<sup>5</sup> For clarity, motions to compel must also be filed by that date.

V. CONCLUSION

Complainant's request to file a reply in support of his Motion to Amend is DENIED. Complainant's Motion to Amend is DENIED. Complainant's Motion for Extension of Discovery Period is GRANTED IN PART.

As a courtesy, parties are both reminded that requests for relief should be made by written motion with a certificate of service, as opposed to letter. *See* 28 C.F.R. §§ 68.2, 68.6(a); *United States v. Facebook, Inc.*, 14 OCAHO no. 1386, 1–2 (2021).

SO ORDERED.

Dated and entered on April 30, 2021.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge