

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

November 5, 2021

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

Appearances: A.S., pro se  
Leon Rodriguez, Esq. and Dawn Lurie, Esq., for Respondent

ORDER DENYING COMPLAINANT’S MOTION FOR RECONSIDERATION  
OF ORDER ON RESPONDENT’S MOTION TO COMPEL

I. BACKGROUND

On September 30, 2021, the Court issued an Order on Respondent’s Motion to Compel requiring Complainant produce discoverable information. *A.S. v. Amazon Web Servs. Inc.*, 14 OCAHO no. 1381j, 8 (2021).<sup>1</sup>

On October 4, 2021, Complainant filed Complainant’s Motion to Amend or Alter 30<sup>th</sup> September 2021 OCAHO Order (Motion for Reconsideration). On October 8, 2021, Respondent filed its response in a submission entitled Combined Response to Motion to Amend or Alter 30th

---

<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>.

September 2021 OCAHO Order and Motion to Extend the Deadline for Discoverable Material (Opposition).

On October 12, 2021, Complainant filed Complainant's Response to Respondent's Combined Response to Motion to Amend or Alter 30th September 2021 OCAHO Order and Motion to Extend the Deadline for Discoverable Material (Reply).<sup>2</sup>

## II. PARTIES' POSITIONS

### A. Complainant's Motion for Reconsideration

Complainant argues that the "[c]ase scope increased which clearly favors Respondent" as the Court ordered him to produce discovery of information from November 12, 2018. Mot. Recons. 1, 4. In his estimation, the Court's September 30, 2021 Order on Respondent's Motion to Compel increased the scope of the case, in contravention of the Court's April 7, 2021 Order Reframing Scope of Complaint. *Id.* at 7.

He questions the Court's use of the word "may" in its Order, insinuating that the use of the term is unfair. *Id.* at 2.<sup>3</sup> Based on his filing, Complainant believes the use of the word "may" is tied

---

<sup>2</sup> As further explained below, replies filed in derogation of OCAHO procedural rules are not considered by the Court.

<sup>3</sup> The word "may" appears several times in the Order. Complainant does not specify which one is at issue. The Court used the word "may" within the Legal Standards and Discussion sections in the following instances.

"The parties *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)." *Amazon Web Sers., Inc.*, 14 OCAHO no. 1381j, at 4 (emphasis added).

"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.' *United States v. Autobuses Ejecutivos, LLC*, 11 OCAHO no. 1220, 3 (2014) (quoting *United States v. Select Temps., Inc.*, 9 OCAHO no. 1078, 2 (2002))." *Amazon Web Sers., Inc.*, 14 OCAHO no. 1381j, at 4 (emphasis added).

"Unless the objecting party sustains his or her burden of showing that the objection is justified, the Administrative Law Judge *may* order that an answer be served.' 28 C.F.R. § 68.23(a). The party refusing to respond 'must articulate its objections in specific terms and has the burden to demonstrate that its objections are justified.'" *Amazon Web Sers., Inc.*, 14 OCAHO no. 1381j, at

to the July 22, 2021 prehearing conference during which the Court provided a Hindi interpreter at the request of Complainant. *Id.* at 5–6.

Complainant also argues that his objections, while conclusory in nature, should be sufficient because English is not his first language and he is pro se. *Id.* at 6. As a solution, Complainant proffers that the Court “can very well have the English to Hindi interpreter to understand the exact intent of Complainant’s motions/responses.”<sup>4</sup> *Id.*

Additionally, Complainant asks why Respondent, a represented party, is able to assert attorney-client privilege, yet he (pro se) is unable to successfully do the same. *Id.* at 8. Moreover,

---

5 (emphasis added) (quoting *United States v. Employer Sols. Staffing Grp. II, LLC*, 11 OCAHO no. 1234, 3 (2014)).

“Bearing in mind that relevance in this forum ‘has been construed broadly to encompass 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,’ it is clear that Respondent has demonstrated that the verbatim, recorded, statements of implicated employees are relevant to its ability to mount a defense.” *Amazon Web Sers., Inc.*, 14 OCAHO no. 1381j, at 6 (emphasis added).

“As to Respondent’s request for material predating June 15, 2019, specifically material dating back to December 27, 2018, the Court finds the entire requested time-frame to be relevant as it ‘*may* contain evidence of hostile, insubordinate and combative conduct by the Complainant, evidence which would be supportive of Respondent’s position that Complainant’s termination was the result of ongoing conduct of that nature by the Complainant.’” *Amazon Web Sers., Inc.*, 14 OCAHO no. 1381j, at 7 (emphasis added) (quoting Mot. Compel 4).

“Regarding temporal scope of discovery, ‘information both before and after the liability period within a Title VII lawsuit *may* be relevant and/or reasonably calculated to lead to the discovery of admissible evidence and courts commonly extend the scope of discovery to a reasonable number of years both prior to and following such period.’” *Amazon Web Sers., Inc.*, 14 OCAHO no. 1381j, at 7 (emphasis added) (quoting *Owens v. Sprint/United Mgmt. Co.*, 221 F.R.D. 649, 655 (D. Kan. 2004)).

“Thus, the recordings are relevant to Respondent’s defense that Complainant was not fired in retaliation but because of his ongoing behavior, behavior which *may* have occurred prior to June 15, 2019.” *Amazon Web Sers., Inc.*, 14 OCAHO no. 1381j, at 7 (emphasis added).

<sup>4</sup> As a reminder, 28 C.F.R. § 68.7(e) requires “[a]ll documents presented by a party in a proceeding [to] be in the English language or, if in a foreign language, accompanied by a certified translation.” If Complainant elects to submit filings in Hindi, he must provide a certified translation.

Complainant contends that he is being unfairly treated after the undersigned found he “lied” on his complaint about his case with the Equal Employment Opportunity Commission (EEOC). *Id.* at 6. He attempts to lessen the misrepresentation by again asserting that he informed the Immigrant and Employee Rights Section (IER) of the U.S. Department of Justice’s Civil Rights Division of his EEOC activity (information which he withheld from the Court). *Id.* at 9. Further, Complainant asks what information gets passed from IER to OCAHO. *Id.* In conclusion, he states “For the foregoing reasons, Complainant request the honorable court to amend or alter 30<sup>th</sup> September 2021 order.” *Id.* at 10.

### B. Respondent’s Opposition

Respondent asserts that while “Complainant essentially raises two arguments in support of his Motion to Amend Order,” Complainant “does not actually request any specific relief.” Opp’n 3. Although Complainant “takes issue with the Order’s use of the phrase ‘may contain evidence’, accusing the Court of having ‘already decided the final outcome of this case,’ he does not actually rebut Respondent’s claim or the Order’s finding that the requested information is relevant.” Opp’n 3–4 (quoting Mot. Recons. 1–2). Further, Respondent notes Complainant did not provide further clarification of his objections to Respondent’s discovery requests. Opp’n 4.

In response to Complainant’s qualms with the Court’s ruling on his claims of attorney-client privilege, Respondent clarifies that it had “properly asserted the doctrine of attorney-client privilege by producing its privilege log, and Complainant is not actually requesting any relief or making any challenge to Respondent’s assertion of attorney-client privilege with regard to any specific document(s).” Opp’n 4. Moreover, Respondent argues that “[t]o the extent Complainant is claiming that audio recordings he made of conversations with Respondent’s employees that are being sought by Respondent’s discovery request are somehow protected from disclosure because of the attorney-client privilege, there is no apparent basis for any assertion of privilege.” Opp’n 4.

## III. LEGAL STANDARDS

### A. Replies to Motions

OCAHO regulations at 28 C.F.R. § 68.11 prohibits replies unless the Court provides otherwise. *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381b, 2 (2021); *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381d, 3 n.3 (2021); *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381f, 3 (2021); *Amazon Web Servs., Inc.*, 14 OCAHO no. 1381d, at 5.

## B. Motion for Reconsideration

The Court construes Complainant’s Motion to Amend or Alter 30<sup>th</sup> September 2021 OCAHO Order as a motion for reconsideration. *See Amazon Web Servs., Inc.*, 14 OCAHO no. 1381b, at 3.

Because “OCAHO’s Rules of Practice and Procedure do not contemplate motions for reconsideration of interlocutory orders[.]” the Court turns to the Federal Rules of Civil Procedure for guidance.<sup>5</sup> *Amazon Web Servs., Inc.*, 14 OCAHO no. 1381b, at 2 (first citing *Ogunrinu v. Law Resources*, 13 OCAHO no. 1332b, 4 (2019); and then quoting 28 C.F.R. § 68.1). “Although the Federal Rules of Civil Procedure do not specifically address motions for reconsideration, ‘courts address such motions under Rule 54(b) for interlocutory orders[.]’” *Id.* (quoting *Lexington Ins. Co. v. Ace Am. Ins. Co.*, 192 F. Supp. 3d 712, 714 (S.D. Tex. 2016)). Pursuant to Rule 54(b), parties may file motions for reconsideration of interlocutory orders. *Id.* (citing *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 336 (5th Cir. 2017)).

“The standard of review for reconsideration of interlocutory orders is ‘as justice requires.’” *Lexington Ins. Co.*, 192 F. Supp. 3d at 714 (citations omitted). 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.’” *eTool Dev., Inc. v. Nat’l Semiconductor Corp.*, 881 F. Supp. 2d 745, 749 (E.D. Tex. 2012) (quoting *Official Comm. of the Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP*, 322 F.3d 147, 167 (2d Cir.2003)). *Cf. Austin*, 864 F.3d at 336 (citations omitted) (“Under Rule 54(b), ‘the trial court is free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law.’”). “[C]ourts should exercise their power “sparingly in order to forestall the perpetual reexamination of orders and the resulting burdens and delays,” which disserve the interests of justice.” *Theriot v. Bldg. Trades United Pension Tr. Fund*, 408 F. Supp. 3d 761, 765 (E.D. La. 2019) (citations omitted).

*Amazon Web Servs., Inc.*, 14 OCAHO no. 1381b, at 2.

---

<sup>5</sup> 28 C.F.R. § 68.2 defines an order as interlocutory when it “decides some point or matter, but is not a final order or a final decision of the whole controversy; it decides some intervening matter pertaining to the cause of action and requires further steps to be taken in order for the [Court] to adjudicate the cause on the full merits[.]”

#### IV. DISCUSSION AND ANALYSIS

##### A. Complainant's Reply

“At no point did Complainant request from the Court permission to file a response, and similarly, at no point did the Court sua sponte grant leave to the parties to file additional matters on this issue. Because this filing is in contravention of § 68.11(b), [Complainant's Reply] will not be considered.” *Amazon Web Servs., Inc.*, 14 OCAHO no. 1381b, at 3. Therefore, the Court will only consider Complainant's Motion for Reconsideration and Respondent's Opposition.

##### B. Substance of Complainant's Motion for Reconsideration

As the Court has previously stated, “a motion is ‘an oral or written request, made by a person or a party, for some action by an Administrative Law Judge [ALJ].’” *Amazon Web Servs., Inc.*, 14 OCAHO no. 1381e, at 4 (quoting 28 C.F.R. § 68.2). The Court will only address the portions of Complainant's motion that seeks the undersigned to take “some action.” *See id.*; *see also* 28 C.F.R. § 68.2.

Ultimately, Complainant has not provided sufficient argument, evidence, or law in support of reconsidering the Order on Respondent's Motion to Compel. *See Amazon Web Servs., Inc.*, 14 OCAHO no. 1381e, at 4. “The Court has discretion in reversing a decision even without additional evidence or argument; however, [Complainant's Motion for Reconsideration] makes no argument asserting justice requires a different result.” *Id.* As has been the case with Complainant's previous motions for reconsideration, here, Complainant again attempts to “battle” for the Court's decision, but has not provided good reason for it. *Id.* “[C]ourts should exercise their power [to reverse a decision on reconsideration] ‘sparingly in order to forestall the perpetual re-examination of orders and the resulting burdens and delays,’ which disserve the interests of justice.” *Id.* (quoting *Theriot*, 408 F. Supp. 3d at 765). Complainant's Motion for Reconsideration is DENIED.

Notwithstanding the denial of Complainant's Motion for Reconsideration, the Court elects to provide clarity on several of the matters referenced by Complainant in his motion.

The Court's Order on Respondent's Motion to Compel requires Complainant “to produce audio recordings responsive to the discovery request of conversations held on or after November 12, 2018 that Complainant possess.” *Amazon Web Servs., Inc.*, 14 OCAHO no. 1381j, at 8. Rather than request the undersigned to take some action, Complainant merely makes a statement alleging change in the scope of the case.

Notably, the Order on Respondent's Motion to Compel did not change the scope of the case. As the Court explained in its Order, the temporal scope of discoverable information runs from the beginning of Complainant's employment with Respondent because applicable circuit precedent

dictates that “information both *before* and after the liability period . . . may be relevant and/or reasonably calculated to lead to the discovery of admissible evidence and courts commonly extend the scope of discovery to a reasonable number of years both prior to and following such period.” *Id.* at 7 (emphasis added) (citing *Owens v. Sprint/United Mgmt. Co.*, 221 F.R.D. 649, 655 (D. Kan. 2004)).

Complainant also takes issue with the use of the word “may” in the Court’s Order, presumably within the context of analyzing the relevance of a discovery request. Complainant does not present any new facts, arguments, or intervening change in law. Again, as has already been outlined in the Court’s Order, relevance is defined to “broadly encompass 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.” *United States v. Autobuses Ejecutivos, LLC*, 11 OCAHO no. 1220, 3 (2014) (emphasis added) (quoting *United States v. Select Temps., Inc.*, 9 OCAHO no. 1078, 2 (2002)). Per 28 C.F.R. § 68.18(b), “the parties *may* obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding[.]” Complainant provides no logical, or even coherent, reason why the Court should avoid mirroring language provided in regulation and case law.

## V. CONCLUSION

Complainant’s Motion for Reconsideration of the Order on Respondent’s Motion to Compel is DENIED.

SO ORDERED.

Dated and entered on November 5, 2021.

---

Honorable Andrea Carroll-Tipton  
Administrative Law Judge