

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

August 12, 2024

US TECH WORKERS, ET AL.,	)	
Complainant,	)	
	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 2024B00067
	)	
	)	
BMO BANK, N.A.,	)	
Respondent.	)	
_____	)	

Appearances: John M. Miano, Esq., for Complainant  
Leon Rodriguez, Esq. and Dawn M. Lurie, Esq. for Respondent

ORDER DENYING RESPONDENT’S MOTION FOR LEAVE TO FILE REPLY AND  
GRANTING WITHDRAWAL OF COUNSEL

I. PROCEDURAL HISTORY

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On March 19, 2024, Complainant filed a complaint alleging Respondent, BMO Bank, violated 8 U.S.C. § 1324b(a)(1)(B).

On May 7, 2024, Respondent filed its Answer to Complaint.

On June 17, 2024, Respondent filed a Motion to Dismiss and a Motion to Stay Proceedings (the request to stay the proceedings was denied). The Motion to Dismiss argues the Complaint fails to state a claim upon which relief can be granted, Mot. Dismiss 6-11, or based on an alternate reading, an allegation involving a conspiracy lies outside the Court’s subject matter jurisdiction, *id.* at 11-13. Further, Respondent argues the nature of the Complainant’s status is unknown, which would preclude it from filing a Complaint in the forum. Mot. Dismiss 13-14.

On June 25, 2024, Complainant filed its Response, which is titled “Response to Respondent’s Motion to Dismiss as Motion for Partial Summary Judgment.” Complainant argues, among other things:

Respondent's motion raises two questions of law that can be addressed in partial summary judgment. First, whether a recruitment campaign specifically for hiring members of the unprotected class of H-1B nonimmigrants constitutes discrimination against the protected class of U.S. workers. Second, whether companies that form a coalition to engage in a recruitment campaign targeting the hiring of H-1B nonimmigrants share collective liability for the unlawful acts of the coalition.

Resp. Mot. Dismiss 2.

On July 5, 2024, Respondent filed its Motion for Leave to File a Reply. Respondent requests the Court’s leave to file a reply brief, arguing that Complainant “ask[s] for . . . declaratory judgment” in its Response, Mot. Leave Reply 1, and that Complainant “fails to set forth the legal standard they wish this Court to decide their motion or plead the requisite elements required by OCAHO for a moving party to succeed on a motion for summary judgment,” Mot. Leave Reply 1-2. Respondent attached the proposed reply. *Id.*, Ex. 1.

On July 11, 2024, Complainant filed its Response to Respondent’s Motion to File a Reply. However, rather than addressing Respondent’s reasons for requesting leave to reply, Complainant’s submission argues in opposition to the substantive portion of Respondent’s proposed reply filing (i.e. Complainant appears to submit a sur-reply).

On August 5, 2024, Respondent filed a motion to withdraw one of its counsel, Mr. North.

## II. MOTION FOR LEAVE TO FILE A REPLY DENIED

Under OCAHO’s Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024), “no reply to a response, counter-response to a reply, or any further responsive document shall be filed” without permission from the presiding Administrative Law Judge. 28 C.F.R. § 68.11(b). As a result, parties “must seek leave of Court before filing a reply . . .” *United States v. Space Expl. Techs. Corp.*, 18 OCAHO no. 1499a, 4 (2023) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1093, 7 (2003)); *see also Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362g, 4 (2024).

The choice to permit a reply or sur-reply is discretionary. *US Tech Workers et al. v. Relativity*, 20 OCAHO no. 1579, 2 (2024) (citing *Space Expl. Techs. Corp.*, 18 OCAHO no. 1499a, 4 (2023)). The Court may consider whether permitting a reply would develop the case record or address novel issues or arguments. *Id.* at 3 (citing *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450j, 3 (2023)).

The motion before the Court is one of dismissal under several “Rule 12” theories. The Court will consider the propriety of granting or denying the request to dismiss this case based on those theories. To the extent the non-moving party does not address those theories/ arguments raised by Respondent, those non-responsive portions of the Response filing will not impact the Court’s analysis when adjudicating the motion. *See generally A.S. v. Amazon Web Servs.*, 14 OCAHO no. 1381j, 5 (2021) (“[R]equests for relief should not be submitted in a response or opposition to a motion because ‘requesting new relief in response to a motion strips the original moving party from an opportunity to respond . . . .’”) (quoting *A.S. v. Amazon Web Servs.*, 14 OCAHO no. 1381f, 3 (2021)).

Here, Respondent properly seeks leave to submit a reply filing; but the proposed reply filing would only address matters unrelated to theories/arguments originally outlined in Respondent’s Motion to Dismiss. Such a proposed reply would do little to advance the analysis of the original theories presented. Under these circumstances, the moving party (Respondent) has not demonstrated the utility of a reply filing.

While the Court appreciates Respondent’s adherence to the procedural requirements of the forum, the Motion to Seek Leave is DENIED.

### III. RESPONDENT’S COUNSEL’S MOTION TO WITHDRAW IS GRANTED

Pursuant to 28 C.F.R. § 68.33(g), “[w]ithdrawal or substitution of an attorney or representative may be permitted by the Administrative Law Judge upon written motion,” and the “Administrative Law Judge shall enter an order granting or denying such motion for withdrawal or substitution.”

Respondent has complied with the regulatory requirements, and withdrawal of one of the counsel will not impact case management.

The Court GRANTS the Motion to Withdraw as Counsel (Mr. North). *See generally United States v. Facebook, Inc.*, 14 OCAHO no. 1386e, 3, 6 (2021).

SO ORDERED.

Dated and entered on August 12, 2024.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge