

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

Jeffrey Eisenberg,  
*Plaintiff*

v.

United Airlines, Inc.,  
*Defendant*

Case No. 1:25-cv-10890  
Magistrate Judge Laura K. McNally

*(Effective 9/10/25, moved to US Federal District Court  
pursuant to SOX "take out" provision following  
administrative exhaustion in DOL.)*

**SUPPLEMENTAL FILING REGARDING SUA SPONTE CONVERSION AND DUE  
PROCESS VIOLATIONS**

**Introduction**

Complainant submits this supplemental filing to clarify and streamline the record showing that the Administrative Law Judge's sua sponte conversion of an unadjudicated Motion to Dismiss into a Motion for Summary Judgment, followed by immediate entry of final judgment with prejudice, deprived Complainant of due process and exceeded the tribunal's authority. The record also reflects pervasive docket irregularities and discovery derailments that render the administrative record unreliable for purposes of substantial-evidence review. Relief requested is limited to the grounds and evidence already of record; citations and quotations are preserved verbatim herein.

**The August 25, 2025 Sua Sponte Conversion and Final Judgment**

1. On August 25, 2025, the presiding ALJ sua sponte converted an undocketed March 28, 2025 Motion to Dismiss into a Motion for Summary Judgment on the basis that both the motion and Complainant's April 10, 2025 response attached exhibits. The order is captioned "ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT."
2. The last docketed Motion to Dismiss that was dismissed on March 10, 2025 for being premature (i.e. filed prior to pleadings complaint) had an appendix with three exhibits. One was what OSHA presented to United as Plaintiff's position statement (oddly not the position statement provided at case filing and itself assigned a tracking number ECN 113604). The other two exhibits were Dismissal notice with Enclosed Secretary's findings provided to Defendant on November 17, 2024 and a copy of Findings provided to Plaintiff one month later on December 17, 2024, to which United was put on copy.
3. While there was much discussion of a refiled Motion to Dismiss, the only possible candidate entries in the docket fell on March 27, 2025 but those were held by a Motion to Stay a Response to Pleadings otherwise due April 1, 2025 and another March 27, 2025 Motion certifying the same. This is confirmed by the fact that United's Counsel in O'Melveny & Myers provided a "courtesy" data dump of all filing in the case then to date on

August 1, 2025. In that data dump, March 27, 2025 entries are consumed by the aforementioned filings on Stayed deadlines. The docket does not reflect any entries on March 28, 2025, nor are there any other date/content type docket entries that make for possible matches. Ergo, the “Motion to Dismiss” that was later converted to a Motion for Summary Judgement on August 25, 2025 did not exist and any resulting MSJ had no entitlement to vest into an MSJ.

4. Even if one wishes to pretend a physical MSJ existed, the entire conversion process was spoiled by failed due process otherwise.
5. Note that neither party requested conversion before August 25, 2025, and no advance warning was provided. The ALJ stated in footnote 1: “For reasons discussed below, the undersigned converted Employer’s Motion to Dismiss into a Motion for Summary Judgement.”
6. In the same order, the ALJ entered a final order resolving the case, depriving the non-movant of any opportunity to respond to the converted motion or the court’s sua sponte procedure. The conversion and final disposition were entered in a single late-night filing.
7. Discovery was barely underway at the time of conversion and judgment. Respondent’s repeated noncompliance with discovery deadlines and the court’s multiple scheduling resets underscore the premature nature of summary disposition.
8. The ALJ’s urgency appears tethered to the broadened scope created by exhibits appended to the Motion to Dismiss and the court’s own show-cause order of April 1, 2025, demanding Complainant justify why the Motion to Dismiss should not be granted.
9. A forensic review indicates the referenced “live” Motion to Dismiss did not exist on the docket after an earlier MTD was dismissed as premature; thus, there was nothing valid to convert to summary judgment.

### **Coercive Acceleration of Federal “Kick-Out” and Compressed Deadlines**

7. On June 23, 2025, Complainant announced the intent to remove the SOX claim to federal district court pursuant to 18 U.S.C.A. § 1514A(b)(1)(B).
8. At a July 7, 2025 status conference, the ALJ stayed the SOX claim at DOL and ordered Complainant to “kick it out within 60 days,” assuring that if the 60-day period was missed the remedy would be a further status conference, not adverse merits action. Quoted: “Tomorrow by tomorrow, Mr. Eisenberg – I’m going to grant your oral motion to stay your SOX claim for 60 days .I expect – fully expect, unless you tell me otherwise, that you will kick it out within 60 days . If you don’t, we’re gonna have another status conference , because then we got a big issue with two cases going that are overlapping at the same time. And you want to do that before anything substantive comes from the AIR case, okay? So before that 60 days is up, I think that will give you plenty of time, considering the time limits and the time that comes in the kick- out provision will go past that. So you will be fine” (CRC Salomon Transcript of Jul 7 2025 Status Conference, p. 57:5-15).
9. The ALJ lacked authority to impose a 60-day filing requirement that truncated Complainant’s statutory window to file in federal court, effectively coercing an accelerated timetable under threat of unspecified adverse action, later compounded by the August 25, 2025 sua sponte conversion and immediate final judgment.

10. The compressed, overlapping deadlines forced a tradeoff between preserving ARB appellate rights on a 10-business-day clock following August 25, 2025 and completing the SOX kick-out within the ALJ's 60-day expectation, contrary to the ALJ's own July 7 assurance that the only consequence of delay would be a status conference.

### **Docket Irregularities and Record Integrity Concerns**

11. The ALJ's August 25 order includes factual assertions that are contradicted by the procedural history, including the claim that Complainant proceeded pro se as of May 14, 2025 and the characterization of the May 21, 2025 conference and consolidation. The order stated: "Originally, Complainant was represented by counsel, who withdrew after filing a Pleading Complaint in the SOX cases. Complainant is proceeding pro se as of May 14, 2025... Because the cases were consolidated and the SOX claim had yet to commence, I dismissed the Motion to Dismiss, not on the merits, but because the cases, now consolidated, were starting anew."
12. The May 21, 2025 status conference transcript expressly reflects that it was a hearing in two claims—AIR21 (2025-AIR-00014) and SOX (2025-SOX-00027)—contrary to later docketing and captioning anomalies. Quoted: "This is a hearing in two claims. This is a hearing in, first, AIR21. It is Case Number 2025-AIR-00014. The second claim is 2025-SOX-00027. ... My name is Heather Leslie."
13. Complainant has sought missing OALJ records via FOIA since September 29, 2025, including items removed from the docket (e.g., April 21 and July 21 filings).
14. Post-judgment docket manipulations occurred in both AIR and SOX dockets, including entries contradicting prior filings and a SOX dismissal with prejudice on September 17, after the tribunal had lost jurisdiction upon the federal court file-stamp on September 10.
15. Given these anomalies, Complainant cautions that an administrative "pull" of the record is not equivalent to a properly maintained record; the taint necessitates heightened scrutiny.

### **Discovery Noncompliance and Prejudice**

16. Respondent ignored initial disclosures ordered January 31 for 21 days, then failed to comply with the ALJ's initial discovery directives following transfer, requiring repeated rescheduling orders on May 22, July 7, and July 21.
17. Respondent's June 23 responses were meager and largely objections, served just before Complainant's re-pleadings, and initial responses due May 12 were late. Outstanding RFDP items that Respondent did not contest were not produced despite repeated requests, including hours before the August 25 ruling.
18. Complainant's request for decision on the pleadings, including to be heard on damages after Respondent's third failure to serve timely responses, was denied as "not prejudicial," and a request to be heard on damages was rejected as premature pending resolution of a purported MTD that, as noted above, was not on the docket.

### **OSHA Blacklisting Claim and ALJ's Deference Statements**

19. OSHA summarized Complainant's blacklisting claim as follows: "In brief, Complainant alleged that on October 21, 2024, Respondent changed his eligibility for re-hire to ineligible

for rehire in retaliation for his history of engaging in protected activity related to safety compliance issues under AIR21 and for corporate governance and shareholder disclosure issues under SOX. Complainant continued to allege that the retaliation was due to him filing a preceding whistleblower complaint with the Occupational Safety and Health Administration.” (OSHA Investigator Kathy Steward).

20. The ALJ stated in the August 25 order: “As stated above, the January 21, 2005 [sic] claim is his SOX claim which Complainant will be filing in federal district court. I will not make any findings as to this claim, in deference to his pro se status.” The ALJ further noted: “I am aware that Complainant mentions AIR-21 in this statement, however, as it is associated with the claim filed on January 21, 2005 [sic] in conjunction with his SOX claim, I will not make any conclusions regarding this in deference to any federal court claim and the arguments made there.”
21. The blacklisting occurred on October 21, 2024—the same date OSHA docketed the initial complaint for investigation.

### **Procedural History Highlights Bearing on Due Process**

22. Complainant initiated his OSHA complaint on October 9, 2024.
23. On June 23, 2025, Complainant announced intent to remove the SOX matter to federal court.
24. The ALJ scheduled a status conference on May 14, 2025 that was held a week later on May 21, 2025 status conference after granting counsel’s withdrawal on May 14, 2025, despite stating that no hearing had yet been scheduled when granting withdrawal. The ALJ waited a few hours to send the scheduling order which was sent exclusively to the SOX docket and captioned exclusively to the SOX case number (OALJ 2025-SOX-00027). The May 21 conference resulted in an omnibus order “codifying” multiple dispositive motions, surprising Complainant who had just lost counsel.
25. The ALJ later unconsolidated the AIR and SOX matters on July 7, despite earlier representations, and admonished Complainant for not objecting sooner; Complainant noted the transcript was not available until around June 19, limiting the ability to lodge an evidentiary objection earlier.
26. Complainant moved to disqualify the ALJ before the July 7 conference; the ALJ conducted the conference, then entertained—but did not immediately rule on—the disqualification motion, after which Complainant rescinded in light of the events at the conference.
27. Appellate deadlines were further complicated by a government shutdown and opposing counsel’s miscalculation of business days related to Labor Day; Respondent initially failed to file in EFS, which the ARB clerk corrected.

### **Argument**

28. The August 25, 2025 sua sponte conversion and same-day entry of final judgment violated basic due process by denying the non-movant notice and a meaningful opportunity to respond to a materially different dispositive motion, especially where discovery was incomplete and Respondent’s noncompliance was ongoing.

29. The conversion appears to have been predicated on a non-existent live MTD, rendering the conversion procedure ultra vires. A tribunal cannot convert what is not on the docket.
30. The ALJ's coercive imposition of a 60-day "kick-out" deadline, paired with assurances of a mere status conference if missed, and followed by the abrupt August 25 conversion and final order, manufactured overlapping deadlines that forced Complainant to triage appellate rights under duress, tainting the fairness of the proceedings.
31. Material docket irregularities, record removals, and post-judgment alterations—combined with contradictory statements in the August 25 order versus earlier transcripts—undermine the integrity of the record for appellate review and warrant heightened skepticism of any "complete record" pull.
32. The ALJ's own statements deferring findings on the SOX-related blacklisting to federal court underscore that key merits questions were acknowledged to be outside the ALJ's purview at that stage, yet the ALJ simultaneously issued a final adverse order—further evidencing procedural inconsistency and prejudice.

## **Conclusion**

For the foregoing reasons, the Court should recognize that the administrative disposition resulted from ultra vires conversion and denial of due process, compounded by discovery noncompliance and record taint. Appropriate corrective relief should issue consistent with the Court's authority and the evidentiary record cited herein. [Relief to be specified consistent with prior filings and jurisdictional posture.]

## **Preservation of Record Citations and Quotations**

All quotations and citations above are preserved verbatim from the administrative record and filings, including the ALJ's August 25, 2025 order and OSHA findings, as cited.