

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324B Proceeding
v.)	
)	OCAHO Case No. 2023B00082
SPACE EXPLORATION TECHNOLOGIES)	
CORP., D/B/A SPACEX,)	
)	
Respondent.)	
_____)	

Appearances: Lisa Sandoval, Esq., Laura E. Varela-Addeo, Esq.,
Allena Martin, Esq., and Stephen Dixon, Esq., for Complainant

Charles F. Connolly, Esq., James E. Tysse, Esq.,
Mariya Y. Hutson, Esq., and Miranda A. Dore, Esq., for Respondent

ORDER ON JOINT MOTION TO EXTEND RESPONSE DEADLINES
AND ELECTRONIC FILING

I. PROCEDURAL BACKGROUND

On August 24, 2023, the United States of America, United States Department of Justice, Immigrant and Employee Rights Section (IER) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Space Exploration Technologies Corp., doing business as SpaceX. The complaint alleges that Respondent violated Section 274B of the Immigration and Nationality Act.

On September 6, 2023, OCAHO’s Chief Administrative Hearing Officer (CAHO) sent Respondent via United States Postal Service (USPS) certified mail the complaint and a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) (together, the Complaint package). The CAHO directed Respondent to file an answer within thirty days of receipt of the complaint and

cautioned that failure to answer could lead to default. Notice Case Assign. 3 (citing 28 C.F.R. §§ 68.3(b), 68.9, 68.9(b)). The CAHO further explained that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2023),¹ and that the filing date is the date on which OCAHO receives a party's filing. *Id.* at 1, 3 (citing 28 C.F.R. § 68.8(b)).

As is its standard practice, OCAHO requested a tracking number for the Complaint package and proof of service in the form of a USPS certified mail domestic return receipt. According to the USPS website's certified mail tracking service, the Complaint package was delivered to Respondent on September 11, 2023. Therefore, Respondent's answer to the complaint in this matter is due on October 11, 2023, being thirty days after receipt of the Complaint package by the addressee. *See* 28 C.F.R. §§ 68.3(a)(3), 68.3(b), 68.9(a).

Respondent then filed an Opposed Expedited Motion to Stay Proceedings (Motion to Stay) in this case. OCAHO staff received the Motion to Stay on September 25, 2023, and it was delivered to the undersigned on September 27, 2023.² Through its motion, Respondent sought a stay of this matter until thirty

¹ The parties must familiarize themselves with these rules, including the standards of conduct in 28 C.F.R. § 68.35. OCAHO's rules are available online, including through the homepage for OCAHO on the United States Department of Justice's website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

² Respondent gave an incorrect filing date of September 20, 2023, on the certificate of service for its Motion to Stay and then repeated the error in its federal court filing. *See* Expedited Mot. Stay Proceedings 8; *see also* Plaintiff's Memorandum in Support of its Motion for Preliminary Injunction at 7 *Space Exploration Technologies Corp. v. Bell, et al.*, No. 1:23-cv-00137 (S.D. Tex., filed Sept. 26, 2023). Pleadings—which include motions under OCAHO's rules, *see* 28 C.F.R. § 68.2—are considered filed when they are received by OCAHO, the Chief Administrative Law Judge (ALJ), or the ALJ assigned to the case. *See id.* § 68.8(b). OCAHO did not receive Respondent's Motion to Stay on September 20, 2023, nor did Respondent contact OCAHO on that date regarding any attempted filing. Rather, OCAHO obtained Respondent's Motion to Stay several days later from another court to which it was misdelivered. OCAHO staff informed Respondent by telephone on September 26, 2023, that the Motion to Stay was delivered on September 25, 2023. On September 27, 2023, OCAHO staff informed both parties by email that the

days after receipt of a final judgment in a federal court action it filed on September 15, 2023.³ Expedited Mot. Stay Proceedings 6. Although it provided no advance notice to the Court of its motion and served opposing counsel “by U.S. Mail,” *see id.* at 8,⁴ Respondent requested expedited consideration of its motion “[b]ecause the United States has refused to consent to an extension of SpaceX’s answer date pending the resolution of this matter.”⁵ *Id.* at 1. Respondent further stated that, “[g]iven the prospect of irreparable harm, absent a stay by 5 p.m. on Tuesday, September 26, SpaceX intends to simultaneously seek preliminary injunctive relief [in federal court] to enjoin these proceedings.”⁶ *Id.*

Complainant then filed a Notice of Intent to Oppose Respondent’s Expedited Motion to Stay Proceedings, in which Complainant notified the Court that it would

undersigned received the Motion to Stay on September 27, 2023, after it was delivered on September 25, 2023.

³ In its motion, Respondent identified the federal case as “*Space Exploration Technologies Corp. v. King* [sic], *et al.*, No. 1:23-cv-00137 (S.D. Tex., filed Sept. 15, 2023).” Expedited Mot. Stay Proceedings 1.

⁴ Expedited or emergency motions must be of such a nature that a delay in hearing them will cause serious harm. Counsel shall contact OCAHO staff in advance of filing such a motion and provide as much advance notice as possible of any request for a ruling on a filing. Counsel shall make all reasonable efforts to give actual notice of an expedited or emergency motion to opposing counsel and to timely serve such a motion on all parties to this matter.

⁵ On or before September 26, 2023, Respondent and Complainant reached an agreement to an extension of time for Respondent to file its answer in this case. *See* Plaintiff’s Memorandum in Support of its Motion for Preliminary Injunction at 7, *Space Exploration Technologies Corp.*, No. 1:23-cv-00137 (filed Sept. 26, 2023) (stating that “government counsel agreed to extend SpaceX’s deadline to file its administrative answer until November 10, 2023.”). Given the parties’ agreement and this Order extending the deadline for the answer to the agreed date, Respondent’s stated rationale for expedited treatment of its Motion for Stay is moot.

⁶ On September 26, 2023, Respondent filed a Motion for Preliminary Injunction in the federal court case, seeking an order preliminarily enjoining this matter. *See* Plaintiff’s Motion for Preliminary Injunction, *Space Exploration Technologies Corp.*, No. 1:23-cv-00137 (filed Sept. 26, 2023).

file a response to Respondent's motion in accordance with 28 C.F.R. § 68.11(b). Complainant's Notice was received by OCAHO staff on September 25, 2023, and received by the undersigned on September 27, 2023. At the Court's request, Complainant clarified that it would file its response by the end of the business day on September 29, 2023.

On September 27, 2023, the Court issued an Order on Electronic Filing, directing the parties to participate in OCAHO's Electronic Filing Pilot Program through which they can file electronically in this case. *See* 79 Fed. Reg. 31143 (May 30, 2014). On September 28, 2023, Respondent submitted additional completed electronic filing registration and certification forms for the Court's review.

On September 28, 2023, the parties filed a Joint Motion to Extend Response Deadlines. The parties moved the Court to give Respondent thirty more days to answer the complaint in this matter, making its answer due November 10, 2023. Joint Mot. Extend Resp. Deadlines 1. After stating that Respondent may file one or more dispositive motions "with, before, or around the same time as, its Answer," the parties moved the Court to give Complainant thirty days to file "a response to the Answer and any dispositive motions." *Id.* at 2.

On September 29, 2023, Complainant filed The United States' Opposition to Respondent's Expedited Motion to Stay Proceedings. Through its filing, Complainant argued that the Court should deny Respondent's Motion to Stay because a stay would not promote judicial economy and would harm the United States and the public. Complainant's Opp'n Expedited Mot. Stay Proceedings 1. Further, Complainant argued that a denial of a stay would not harm Respondent. *Id.*

On October 2, 2023, Respondent filed a Motion for Leave to File Reply to the United States' Opposition to Expedited Motion to Stay Proceedings.⁷ It attached

⁷ Respondent did not indicate Complainant's position on its motion. Complainant's response, if any, is due ten days after service. *See* 28 C.F.R. § 68.11(b). Going forward, before filing a motion, the filing party must ask opposing counsel whether there is an objection to the motion, and the motion must state that the conferral occurred, or if not, why not. If there is an objection, the movant must note that fact on the first page of the motion and of any separate brief in support. Joint, uncontested, and agreed motions must be so identified in both the title and the body of the motion. Failure to comply with this procedure may result in the rejection of the party's motion.

Respondent SpaceX’s Reply in Support of Opposed Expedited Motion to Stay Proceedings as Exhibit A to its motion.

II. LEGAL STANDARDS AND DISCUSSION

A. *Joint Motion to Extend Response Deadlines*

Pending before the Court is the parties’ Joint Motion to Extend Response Deadlines (Motion to Extend) filed on September 28, 2023. The parties request: (1) a thirty-day extension of time for Respondent to answer the complaint, namely, from October 10, 2023, to November 10, 2023, and (2) a briefing schedule affording Complainant a reciprocal extension of time “to respond to SpaceX’s Answer and any dispositive motion SpaceX files with, before, or around the same time as, its Answer.”⁸ Joint Mot. Extend Resp. Deadlines 1-2.

OCAHO’s Rules of Practice and Procedure for Administrative Hearings do not provide specific standards for granting extensions, but the standard routinely applied is good cause. *See United States v. Exim*, 3 OCAHO no. 591, 1925, 1929 (1993) (citing *United States v. Moyle*, 1 OCAHO no. 96, 653, 654 (1989)); *United States v. Four Star Knitting, Inc.*, 5 OCAHO no. 815, 711, 714 (1995) (collecting cases). *See also* Fed. R. Civ. P. 6(b)(1) (“When an act may be or must be done within a specified time, the court may, *for good cause*, extend the time”) (emphasis added).⁹

The parties’ justification for seeking to extend Respondent’s answer deadline and give Complainant additional time for its filings is the opposed Motion to Stay

⁸ Although the parties twice refer to Complainant’s anticipated “response” to Respondent’s Answer, Joint Mot. Extend Resp. Deadlines 1-2, OCAHO’s rules only authorize a “reply.” *See* 28 C.F.R. § 68.9(d). The Court therefore construes the parties to be seeking a briefing schedule for Complainant’s reply to Respondent’s answer.

⁹ OCAHO’s rules provide that, “in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation,” the Federal Rules of Civil Procedure may be used as a “general guideline.” 28 C.F.R. § 68.1.

pending before the Court.¹⁰ Joint Mot. Extend Resp. Deadlines 1-2. The parties likewise mention that Respondent is seeking injunctive relief in federal court. *Id.* at 2. Although a motion to stay is not expressly included in the list of defenses that extend the amount of time necessary for a respondent to file an answer to a complaint, *see* Fed. R. Civ. P. 12(b), and OCAHO courts have found that the pendency of a dispositive motion does not necessarily trigger the need to extend case deadlines, *see, e.g., United States v. Facebook, Inc.*, 14 OCAHO no. 1386a, 2-4 (2021) (denying motion to stay discovery pending resolution of a motion to dismiss, finding that Respondent had not demonstrated the requisite good cause), the parties do not advance any additional arguments in support of their Motion to Extend or cite to any statutory, regulatory, or legal authorities that would support a good cause finding. Rather, the parties rely heavily on their own agreement to extend or modify the existing deadlines.¹¹

The Court nevertheless finds that several factors counsel in favor of finding good cause to extend the deadline for an answer in this case. First, the Court does not find, and Complainant does not allege, any prejudice arising from an extension

¹⁰ The parties' joint motion incorrectly states that Respondent's Motion to Stay was filed on September 20, 2023, and that Complainant filed its Notice of Intent to Oppose Respondent's Expedited Motion on September 21, 2023. Joint Mot. Extend Resp. Deadlines 2. As noted above, although service on a party is deemed effective at the time of mailing, *see* 28 C.F.R. § 68.8(c)(1), pleadings are not deemed filed until they are received by OCAHO, the Chief ALJ, or the ALJ assigned to the case. *See id.* § 68.8(b).

¹¹ Two days before filing the Motion to Extend, Respondent represented to the assigned United States District Court Judge in the federal case that its answer in the OCAHO matter was due on November 10, 2023, rather than October 11, 2023. *See* Plaintiff's Motion for Preliminary Injunction at 1, *Space Exploration Technologies Corp.*, No. 1:23-cv-00137 (seeking a ruling "by November 9, 2023, the day before the deadline for SpaceX to file its answer in the administrative proceedings."). Respondent appears to conflate Complainant's agreement with an order from this Court. *See* Plaintiff's Memorandum in Support of its Motion for Preliminary Injunction at 7, *Space Exploration Technologies Corp.*, No. 1:23-cv-00137 (stating that "government counsel agreed to extend SpaceX's deadline to file its administrative answer until November 10, 2023."). It is not. The Court—not a particular party—determines whether an extension of time in this matter is granted, and an application first must be made to the Court.

of time to answer the complaint in this case. Likewise, the Court finds, with Complainant's apparent concurrence, that the length of the extension being sought, namely thirty days, is not so great as to impact substantially these proceedings. *See, e.g., United States v. Satguru Enters., Inc.*, 16 OCAHO no. 1430, 2 (2022) (finding good cause for extension of answer deadline of five weeks, which was unlikely to prejudice the complainant). This is also the first requested extension of time from either party and the request is agreed. *See, e.g., Lowden v. Ann Arbor Elec. JATC Training Ctr.*, 18 OCAHO no. 1490, 2 (2023) (finding good cause to extend the answer deadline where the motion was unopposed and timely filed). Lastly, the Court finds an absence of bad faith here where the parties filed their Motion to Extend before the October 11, 2023, deadline for Respondent's answer. *See* Fed. R. Civ. P. 6(b)(1)(A) (explaining that the court may extend time "if a request is made, before the original time or its extension expires . . ."); *see also* 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165 (4th ed. 2023) ("[A]n application for extension of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party."). The Court finds that these factors amount to good cause and grants the parties' motion to extend the time for Respondent to file its answer. Accordingly, Respondent has until November 10, 2023, to file an answer to the complaint in this case.

The Court turns next to the parties' additional request that the Court set a briefing schedule in this case and give Complainant thirty days to respond to any dispositive motions Respondent files "with, before, or around the same time" as Respondent's answer. Joint Mot. Extend Resp. Deadlines 2. OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that responses to motions are due within ten days after a written motion is served "or within such other period as the [ALJ] may fix." 28 C.F.R. § 68.11(b). Although no dispositive motions have been filed, given the lack of prejudice alleged by Respondent, the relatively short twenty-day extension being sought, the absence of bad faith, and the anticipated efficiency that will follow from setting a briefing schedule, the Court exercises its discretion and finds good cause to extend the default regulatory deadlines in this case and sets a thirty-day deadline for any response Complainant may file to any dispositive motion Respondent files within the prescribed time period.¹² This ruling is limited to dispositive motions Respondent files before or

¹² Although the parties seek a reciprocal thirty-day extension of time for Complainant based off Respondent's proposed filing date of November 10, 2023, they give a date forty days later, being December 20, 2023. Joint Mot. Extend Resp. Deadlines 2. Either the parties erred in calculating the proposed thirty-day

with its answer, and any dispositive motions Respondent may file up to ten days after its answer. After the lapse of the prescribed time period, Complainant shall file any responses within the time period provided under OCAHO's rules or seek additional time from the Court. *See id.*

As for the parties' requested thirty-day extension of time for Complainant to reply to Respondent's answer, OCAHO's Rules of Practice and Procedure for Administrative Hearings do not provide a deadline for replies to answers. *See* 28 C.F.R. § 68.9(d) ("Complainants may file a reply [to an answer] responding to each affirmative defense asserted."). Further, the Court has not set a deadline for any reply to Respondent's answer. Given that no deadline exists, no good cause need be shown to extend it. The Court will exercise its discretion and adopt the parties' proposed briefing schedule and now sets a thirty-day deadline for Complainant's filing of a reply to Respondent's answer.

B. *Additional Electronic Filing Registrations*

On September 27, 2023, the Court issued an Order on Electronic Filing through which it permitted the parties in this matter to designate additional attorneys of record as electronic filers by filing supplemental registration and certification forms. On September 28, 2023, the Court received completed electronic filing registration and certification forms from Respondent for Mariya Y. Hutson, James E. Tysse, and Christopher Cardaci. As Attorneys Hutson and Tysse have entered their appearances in this matter, *see* Order on Electronic Filing 1 n.1, they may now electronically file pleadings in this case. OCAHO shall serve case-related documents electronically on these two additional attorneys of record for Respondent, and all registered electronic filers in this matter shall copy them on their filings to the Court. As Attorney Cardaci has not filed a notice of appearance in this proceeding, he may not file electronically in this case and the Court will not add his email address to the service list at this time.

III. ORDERS

IT IS SO ORDERED that the parties' Joint Motion to Extend Response

deadline or they intended to convey that Respondent will file its contemplated dispositive motions no later than ten days after it files its answer. The Court shall cabin this briefing schedule accordingly and construes "around the same time" to mean a period of ten days.

Deadlines is GRANTED as follows and the following schedule is entered for this case:

1. Respondent, Space Exploration Technologies Corp., doing business as SpaceX, shall file its answer to the complaint in this matter on or before November 10, 2023;
2. Complainant, the United States of America, may file a reply to Respondent's answer no later than thirty days from the date of the filing of Respondent's answer; and
3. Should Respondent file any dispositive motions before, with, or up to ten days after it files its answer, Complainant shall have thirty days from the date of the filing of each dispositive motion to file its response.

IT IS FURTHER ORDERED that Mariya Y. Hutson and James E. Tysse Tysse are extended electronic filing privileges in this case.

SO ORDERED.

Dated and entered on October 10, 2023.

Honorable Carol A. Bell
Administrative Law Judge