

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

October 22, 2021

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

ORDER ON COMPLAINANT’S MOTION TO EXTEND THE  
DEADLINE FOR DISCOVERABLE MATERIAL

I. BACKGROUND

On September 30, 2021, the Court issued an Order on Respondent’s Motion to Compel in which it required Complainant produce discoverable information by October 30, 2021. *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 Extend the Deadline for Discoverable Material (Motion). On October 8, 2021, Respondent filed its response in a submission entitled Combined Response to Motion to Amend or Alter 30th 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).

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<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>.

## II. PARTIES' POSITIONS

### A. Complainant's Motion

Complainant seeks an extension until August 31, 2022 (ten additional months), to comply with the Court's Order on Respondent's Motion to Compel. Mot. 4. He provides several reasons in support of his request, including: his full-time job, extracurricular activities, child care, other pending lawsuits, and numerous Hindu holidays. Mot. 1–4. Complainant also explains that in order to comply, he must review ten months of non-labeled recordings that are “a mix of personal and business recordings.” Mot. 3. Complainant states that unless he has access to his Outlook email account from his former employer (Respondent), which contains his calendar of meetings, he will need to listen to each individual recording to determine if it must be produced. By his estimate, it would take a month to review each month of recording. Mot. 3.

### B. Respondent's Opposition

Respondent is amenable to a “reasonable” extension of time to allow for compliance with the Court's Order on Respondent's Motion to Compel, but it argues ten months is “excessive given the limited scope of the request and interrogatory, and given that Respondent first requested the audio recordings from Complainant nearly a year ago, in October 2020.” Opp'n 3. Additionally,

[Respondent] consents to an extension until January 7, 2022, provided Complainant agreed to begin searching for relevant audio recordings promptly and that by November 15, 2021 he provided recordings for the following dates on which Respondent has reason to believe recordings were made:

- December 27, 2018
- January 28, 2019
- January 31, 2019
- February 12, 2019
- February 25, 2019
- February 28, 2019
- March 11, 2019
- March 18, 2019
- March 25, 2019
- April 2, 2019
- April 8, 2019
- April 10, 2019
- April 11, 2019

- April 18, 2019
- April 23, 2019
- April 29, 2019
- May 13, 2019
- May 15, 2019
- May 28, 2019
- May 24, 2019
- June 18, 2019
- June 25, 2019
- September 5, 2019
- September 17, 2019[.]

Opp'n 1–2.

### III. LEGAL STANDARDS AND ANALYSIS

#### 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.

“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.

As has been the case in all the other instances in which the Complainant provides an unsolicited and impermissible reply filing, the Court will, once again, not consider Complainant’s reply filing.

#### B. Good Cause

The applicable standard for an extension of time is good cause. *Amazon Web Servs., Inc.*, 14 OCAHO no. 1381f, at 3 (quoting *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 2 (2021)); see also *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381i, 3 n.3 (2021) (“The Court also noted that its prior grants of extensions was predicated upon a finding of good cause based on the parties’ representations of due diligence in each specific instance.”). Further, the Court has instructed the parties “that it would carefully scrutinize future requests for extensions.” *Amazon Web Servs., Inc.*, 14 OCAHO no. 1381i, at 3 n.3. “In determining whether good cause exists, a

court should consider ‘whether the moving party acted in good faith, the length of the delay and its effects, and whether the delay will prejudice the non-moving party.’” *Id.* at 3–4 (quoting *Tingling*, 13 OCAHO no. 1324c, at 2).

For the following reasons, Complainant has demonstrated good cause for an extension of time, but insufficient good cause for a ten-month extension of time.

Personal circumstances (to include observance of religious holidays), which are adequately described and articulated to the Court may serve as good cause for an extension of time. This rationale cited by Complainant is good cause for an extension of time, but, again, not a ten-month extension of time.

The volume of discoverable recordings to be produced also does not justify such a lengthy extension of time. Complainant indicates his method of storing and indexing his database of recorded conversations would cause him to spend a significant amount of time searching for the recordings referenced in the Court’s order. A self-imposed disorganized filing system of discoverable information is not good cause for an extension of time.<sup>2</sup> This is particularly true when coupled with the reality that Complainant has been on notice of the discoverable nature of these recordings for approximately one year.

A ten-month delay in the proceedings would be prejudicial to the non-moving party. It is also worth noting that even the moving party in this instance has relayed to the Court concerns about the amount of time that has elapsed since he filed his Complaint. *Amazon Web Servs., Inc.*, 14 OCAHO no. 1381d, at 2. Complainant’s delay in providing Respondent the discoverable information could prevent Respondent from developing argument related to Complainant’s burden, and prevent Respondent from fully developing potential defenses. The delay is prejudicial.

Although Complainant has not met his burden of demonstrating good cause for a ten-month extension, he has provided good cause for a shorter extension. Respondent does not oppose an extension until January 7, 2022.

The Court GRANTS, in part, Complainant’s Motion. Complainant is ORDERED to comply with the Court’s Order in full on or before January 7, 2022. The Court also notes for Complainant that Respondent has identified some dates upon which it has reason to believe Complainant made recordings. The Court declines to impose additional deadlines as requested by Respondent; however, Complainant should begin production immediately of the recordings at issue.

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<sup>2</sup> Insofar as the sharing of Complainant’s Outlook calendar located on Respondent’s server would expedite the process, the parties are encouraged to meet and confer.

Complainant must still complete his due diligence in searching his recordings for discoverable recordings as outlined in the previous Order.

The Court also notes that failure to comply with the Court's Order may result in sanction pursuant to 28 C.F.R. § 68.23(c). *Amazon Web Servs., Inc.*, 14 OCAHO no. 1381j, at 8 (quoting *Ogunrinu v. Law Resources*, 13 OCAHO no. 1332e, 10 (2020)).

#### IV. CONCLUSION

Complainant's Motion to Extend the Deadline for Discoverable Material is GRANTED in part and DENIED in part.

Complainant is ORDERED to provide the responses to discovery outlined in the Court's September 30, 2021 Order on Respondent's Motion to Compel on or before January 7, 2022.

SO ORDERED.

Dated and entered on October 22, 2021.

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Honorable Andrea Carroll-Tipton  
Administrative Law Judge