

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 RESPONENT’S MOTION FOR LEAVE TO FILE REPLY TO THE
UNITED STATES’ OPPOSITION TO EXPEDITED MOTION TO STAY
PROCEEDINGS

I. PROCEDURAL BACKGROUND

On August 24, 2023, the United States of America, United States Department of Justice, Immigrant and Employee Rights Section 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 the unfair immigration-related employment practices provision of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b.

On September 11, 2023, OCAHO served Respondent with the complaint and a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices. OCAHO’s Chief Administrative Hearing Officer directed

Respondent to file an answer within thirty days of receipt of the complaint, being October 11, 2023. Notice Case Assign. 3 (citing 28 C.F.R. §§ 68.3(b), 68.9).¹

On September 25, 2023, Respondent filed an Opposed Expedited Motion to Stay Proceedings (Motion to Stay), seeking a stay of this matter until thirty days after receipt of a final judgment in a federal court action it commenced on September 15, 2023.² Expedited Mot. Stay Proceedings 6. Also on September 25, 2023, Complainant filed a Notice of Intent to Oppose Respondent's Expedited Motion to Stay Proceedings.

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. On September 28, 2023, Respondent submitted additional 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 (Motion to Extend) through which Respondent sought thirty more days to file an answer to the complaint and Complainant sought additional time to reply to the answer and respond to any dispositive motions. Joint Mot. Extend Resp. Deadlines 1-2.

On September 29, 2023, Complainant filed the United States' Opposition to Respondent's Expedited Motion to Stay Proceedings.

On October 2, 2023, Respondent filed a Motion for Leave to File Reply to the United States' Opposition to Expedited Motion to Stay Proceedings (Motion for Leave to File Reply). It attached as Exhibit A to its motion Respondent SpaceX's Reply in Support of Opposed Expedited Motion to Stay Proceedings.

On October 10, 2023, the Court issued an Order on Joint Motion to Extend

¹ OCAHO's Rules of Practice and Procedure for Administrative Hearings are the provisions contained in 28 C.F.R. part 68 (2023). They are available online, including through OCAHO's homepage on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

² *Space Exploration Techs. Corp. v. Bell*, No. 1:23-cv-00137 (S.D. Tex. filed Sept. 15, 2023).

Response Deadlines and Electronic Filing. The Court granted the parties' Motion to Extend and gave Respondent through November 10, 2023, to file its answer to the complaint. *United States v. Space Exploration Techs. Corp.*, 18 OCAHO no. 1499, 9 (2023).³ The Court directed Complainant to file any reply to Respondent's answer no later than thirty days from the date of the answer's filing. *Id.* Should Respondent file any dispositive motions before, with, or up to ten days after it files its answer, the Court afforded Complainant thirty days from the date of the filing of each dispositive motion to file its response. *Id.* Lastly, the Court extended electronic filing privileges to two additional attorneys for Respondent. *Id.*

On October 12, 2023, Complainant filed the United States' Notice of Interim Final Rule and Response to SpaceX's Motion for Leave to File a Reply to the United States' Opposition to the Expedited Motion to Stay Proceedings. Complainant represented in its filing that it does not oppose Respondent's Motion for Leave to File Reply. Complainant's Notice Interim Final Rule & Resp. Mot. Leave to File Reply 1. Complainant further provided notice of an interim rule published by the United States Department of Justice on October 12, 2023, providing that the Attorney General of the United States may review the final orders of OCAHO Administrative Law Judges in cases arising under 8 U.S.C. § 1324b. *Id.* (citing <https://www.govinfo.gov/content/pkg/FR-2023-10-12/pdf/2023-22206.pdf>); *see also* Office of the Chief Administrative Hearing Officer, Review Procedures, 88 Fed. Reg. 70586 (Oct. 12, 2023) (to be codified at 28 C.F.R. pt. 68).

II. LEGAL STANDARDS AND DISCUSSION

³ 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 after 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," the LexisNexis database "OCAHO," or on the United States Department of Justice's website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Pending before the Court is Respondent's Motion for Leave to File Reply to the United States' Opposition to Expedited Motion to Stay Proceedings. OCAHO's Rules of Practice and Procedure for Administrative Hearings do not allow parties to file replies or sur-replies unless the Court provides otherwise. 28 C.F.R. § 68.11(b). A party must seek leave of Court before filing a reply, *see Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1093, 7 (2003), and the decision whether to allow a reply or sur-reply "is solely within the judge's discretion." *Diaz v. Pac. Mar. Assoc.*, 9 OCAHO no. 1108, 3 (2004).

Respondent advances three main arguments in support of its Motion for Leave to File Reply. First, it argues that the Court should allow its reply because the Motion to Stay raises "complex issues" and Complainant "sets forth novel arguments" in its response. Resp't Mot. Leave to Reply 2. Respondent next contends that its reply will develop the record by addressing Complainant's assertions that, while a stay will not harm SpaceX, it will damage the interests of the United States and the public. *Id.* (citing Complainant's Opp'n Expedited Mot. Stay Proceedings 1). Lastly, Respondent asserts that its reply will provide "important authority and argument regarding the appropriate standard by which SpaceX's request should be evaluated" given Complainant's discussion of *United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021), in its response to the Motion to Stay. *Id.* (citing Complainant's Opp'n Expedited Mot. Stay Proceedings 7). Complainant does not oppose Respondent's Motion for Leave to File Reply. *See* Complainant's Notice Interim Final Rule & Resp. Mot. Leave File Reply 1.

The Court exercises its discretion under 28 C.F.R. § 68.11(b) and grants Respondent's Motion for Leave to File Reply. The Court finds that Respondent SpaceX's Reply in Support of Opposed Expedited Motion to Stay Proceedings will further develop the record before the Court, including the parties' arguments regarding the Motion to Stay and the legal authorities upon which they rely. *See, e.g., Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450j, 4 (2023) (granting leave to file sur-reply "[i]n the interest of developing the record"); *Heath v. ASTA CRS, Inc.*, 14 OCAHO no. 1385b, 2 (2021) (granting leave to file reply where "the information in the Reply is essential to determining the exact nature of the dispute between the parties"). Allowing the reply affords Respondent the opportunity to respond to Complainant's arguments regarding the anticipated harm from a potential stay and to state more clearly its position as to the proper test, or factors, to be employed in evaluating the appropriateness of a stay. The Court also notes Complainant's lack of opposition to Respondent's request to file a reply.

III. ORDERS

IT IS SO ORDERED that Respondent SpaceX's Motion for Leave to File Reply to the United States' Opposition to Expedited Motion to Stay Proceedings is GRANTED; and

IT IS FURTHER ORDERED that Respondent SpaceX's Reply in Support of Opposed Expedited Motion to Stay Proceedings shall be considered filed as of the date of this Order.

SO ORDERED.

Dated and entered on October 20, 2023.

Honorable Carol A. Bell
Administrative Law Judge