

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. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2023A00070
FRESCO PRODUCE, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Ariel Chino, Esq., for Complainant
Robert H. Crane, Esq., for Respondent

ORDER STAYING COMPLAINANT’S RESPONSE DEADLINE FOR
RESPONDENT’S MOTION TO STAY PROCEEDINGS

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 23, 2023, alleging that Respondent, Fresco Produce, Inc., violated the employer sanctions provisions of 8 U.S.C. § 1324a. Respondent, through counsel, filed an answer on July 28, 2023.

On January 25, 2024, the Court issued an Order Requiring Filing of Notice of Intent to Fine and Prehearing Statements and Scheduling Initial Prehearing Conference. The Court authorized the parties to begin their discovery and ordered Complainant to file a copy of the Notice of Intent to Fine Pursuant to Section 274A of the INA with the Court and serve it on Respondent. Order Requiring Filing Notice Intent Fine & Prehr’s Statements & Scheduling Initial Prehr’s Conf. 2, 4. The Court further ordered the parties to make their initial disclosures and file

prehearing statements with the Court by February 15, 2024, and scheduled an initial prehearing conference for February 21, 2024. *Id.* at 2, 7-9.

Complainant filed a Notice of Filing of the Notice of Intent to Fine on February 13, 2024. Neither party filed the prehearing statement of position ordered by the Court.

On February 20, 2024, the parties filed a Joint Motion for and Consent to Referral to Settlement Officer Program. In this joint motion, the parties moved the Court to refer this matter to the OCAHO Settlement Officer Program and “expressly consent[ed] to participation in the Settlement Officer Program and agree[d] to engage in settlement negotiations in good faith.” Joint Mot. Consent Referral Settlement Officer Program 1. Counsel for both parties signed the joint motion. *Id.*

The Court held the initial telephonic prehearing conference on February 21, 2024, and later issued an order memorializing the conference on March 7, 2024. During the prehearing conference, Respondent’s counsel mentioned seeking a stay of these proceedings until the United States Supreme Court issues a decision in *SEC v. Jarkesy*, No. 22-859 (argued Nov. 29, 2023). Order Memorializing Initial Prehr’g Conf. 3. To the extent that Respondent’s suggestion constituted an oral motion to stay proceedings, the Court explained that it would not exercise its discretion pursuant to 28 C.F.R. § 68.11(a)¹ to accept an oral motion and denied the motion without prejudice, finding insufficient good cause to stay proceedings where no case deadlines had been set. *Id.* at 3-4 (citing *Monda v. Staryhab, Inc.*, 8 OCAHO no. 1002, 86, 91 (1998); and then citing *Ferrero v. Databricks*, 18 OCAHO no. 1505a, 2 (2024)).² The Court explained that a motion to stay proceedings would

¹ OCAHO’s Rules of Practice and Procedure for Administrative Hearings are available on 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 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 been 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 through the

need to be made in writing and that Complainant would be afforded a reasonable amount of time to respond or object to the motion pursuant to 28 C.F.R. § 68.11(b). *Id.* at 4. The parties then reaffirmed their desire for a referral to the OCAHO Settlement Officer Program and consented to abide by the program’s rules. *Id.* The Court granted the parties’ Joint Motion for and Consent to Referral to Settlement Officer Program, finding that the case was appropriate for an initial referral of sixty days with the parties’ consent. *Id.* at 5.

On March 7, 2024, the Court issued an Order Referring Case to OCAHO Settlement Officer Program and Designating Settlement Officer.³ The Court referred this matter to a settlement officer for sixty days beginning on March 18, 2023, and continuing through May 17, 2024. Order Referring Case OCAHO Settlement Officer Prog. & Designating Settlement Officer 4. The Court noted that “[n]o procedural deadlines need to be stayed in this matter for purposes of this referral” and explained that, if the case should not settle through the OCAHO Settlement Officer Program, the Court would schedule another prehearing conference during which it would set a schedule for the case, including dates for the completion of discovery, the filing of dispositive motions and responses, and a contested hearing. *Id.*

On March 8, 2024, this case was enrolled in OCAHO’s Electronic Filing Pilot Program through the Court’s Order on Electronic Filing.⁴

II. RESPONDENT’S MOTION TO STAY PROCEEDINGS

Respondent has now filed a Motion to Stay Proceedings Before OCAHO Pending Supreme Court Decision in *SEC vs. Jarkesy* (Motion to Stay). Respondent

Westlaw database “FIMOCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

³ EOIR Policy Memorandum 20-16 sets forth the OCAHO Settlement Officer Program and is available at <https://www.justice.gov/eoir/page/file/1300746/download>. See also Chapter 4.7 of the OCAHO Practice Manual available at <https://www.justice.gov/eoir-policy-manual/iv/4/7>.

⁴ OCAHO’s Electronic Filing Pilot Program is described in detail in the Federal Register. See 79 Fed. Reg. 31143 (May 30, 2014).

moves the Court to stay all proceedings until “the U.S. Supreme Court issues an opinion in the matter of SECURITIES AND EXCHANGE COMMISSION v. GEORGE R. JARKESY, JR., NO. 22-859,” or until “the end of the current term of the U.S. Supreme Court on Monday, October 6, 2024.” Mot. Stay Proceedings 1-2. Respondent argues that good cause exists for a stay because (a) “affirmation of the Fifth Circuit’s opinion will, by implication, make unconstitutional this proceeding,” (b) “it is an onerous burden on Respondent to bear the expense, effort and human costs of this proceeding,” (c) “the government will not be harmed nor disadvantaged by staying these proceedings,” and (d) “Respondent’s right to a jury trial is an imminent possibility.” *Id.* Complainant’s position on the motion is not known. *Id.* at 1.

III. LEGAL AND REGULATORY STANDARDS

The Executive Office for Immigration Review’s Policy Memorandum 20-16 states that when an Administrative Law Judge (ALJ) determines that referral to the OCAHO Settlement Officer Program is appropriate, the ALJ shall issue an order referring the case to a settlement officer and specify “whether and to what extent the procedural deadlines in this case have been stayed. If settlement is not reached, the presiding ALJ shall set appropriate procedural deadlines upon termination of the settlement officer proceedings.”⁵ EOIR Policy Memo. 20-16 Secs. II.C., D. OCAHO ALJs may stay procedural deadlines during a case’s referral to the OCAHO Settlement Officer Program pursuant to this provision of the Policy Memorandum. *See, e.g., Burke v. Alarm.com, Inc.*, 18 OCAHO no. 1491, 1-2 (2023) (staying all proceedings, including discovery, during the Settlement Officer Program referral period).

OCAHO’s Rules of Practice and Procedure for Administrative Hearings, which govern these proceedings, provide that “[w]ithin ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix, any party to the proceedings may file a response in support of, or in opposition to, the motion” 28 C.F.R. § 68.11(b).

OCAHO’s Rules of Practice and Procedure for Administrative Hearings further vest ALJs with “all appropriate powers necessary to conduct fair and

⁵ EOIR Policy Memorandum 20-16 sets forth the OCAHO Settlement Officer Program and is available at <https://www.justice.gov/eoir/page/file/1300746/download>.

impartial hearings, including, but not limited to, [the ability to] . . . [i]ssue orders and decisions.” See 28 C.F.R. § 68.28(a)-(a)(5); see also *Heath v. Amazee Glob. Ventures, Inc.*, 16 OCAHO no. 1433, 2 (2022) (“The OCAHO Rules vest the Administrative Law Judge (ALJ) with all appropriate powers necessary to regulate the proceedings.”) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1091, 5 (2003)).

IV. DISCUSSION AND ANALYSIS

By order dated March 7, 2024, the Court referred this matter to the OCAHO Settlement Officer Program. The referral to a settlement officer begins March 18, 2024, the same date on which Complainant’s response to Respondent’s Motion to Stay is due under OCAHO’s Rules of Practice and Procedure for Administrative Hearings. Given the referral of the case to a settlement officer by order dated March 7, 2024, and by the authority afforded it through 28 C.F.R. § 68.28(a)(5) and EOIR Policy Memorandum 20-16, Secs. II.C., D., the Court now stays Complainant’s regulatory response deadline on Respondent’s Motion to Stay until such time as the settlement officer refers this matter back to the undersigned for further proceedings.

In reaching this decision, the Court has weighed the factors before it, including the fact that the regulatory deadline for the response falls during the settlement officer referral period, the benefit to the parties of a stay of the regulatory deadline in that it will allow them to focus on settlement discussions, the need to afford Complainant “a reasonable opportunity to respond or to object” pursuant to 28 C.F.R. §§ 68.11(a)-(b) to the varied and potentially complex constitutional arguments raised in Respondent’s Motion to Stay, and the Court’s potential need for supplemental briefing from the parties. The Court also has considered whether staying the response deadline on the pending motion disadvantages either party. It concludes that it does not. No case deadlines have been set or need to be reset to accommodate this stay of the default regulatory response date, and both parties will have a reasonable opportunity to advance their arguments regarding the Motion to Stay before the Court. Further, the OCAHO Settlement Officer Program is a voluntary mediation program through which the parties can work to narrow or resolve issues in this case and from which they may elect to return at any time. See OCAHO Practice Manual Ch. 4.7(e)(3) (explaining that “[s]ettlement negotiations before the settlement officer shall be terminated immediately if a party unambiguously indicates that it no longer wishes to

participate”); *see also* EOIR Policy Memo. 20-16, Sec. V.C. (same). In sum, a stay of the default regulatory response deadline in this case best promotes efficiencies of time and effort for the Court, the parties, and their counsel. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”).

When the settlement officer returns this case to the undersigned, the Court will set a briefing schedule on Respondent’s Motion to Stay, including a deadline for the filing of Complainant’s response pursuant to 28 C.F.R. § 68.11(b).

V. ORDERS

IT IS SO ORDERED that the deadline for Complainant’s response to Respondent’s Motion to Stay Proceedings Before OCAHO Pending Supreme Court Decision in *SEC vs. Jarkesy* is STAYED for the pendency of this case’s referral to the OCAHO Settlement Officer Program; and

IT IS FURTHER ORDERED that, when the referral of this case to the OCAHO Settlement Officer Program concludes, the Court will set a briefing schedule on Respondent’s Motion to Stay Proceedings Before OCAHO Pending Supreme Court Decision in *SEC vs. Jarkesy*, including a revised filing deadline for Complainant’s response pursuant to 28 C.F.R. § 68.11(b).

SO ORDERED.

Dated and entered on March 18, 2024.

Honorable Carol A. Bell
Administrative Law Judge