

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

July 1, 2021

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

ORDER ON RESPONDENT’S MOTIONS

I. BACKGROUND

On April 7, 2021, the Court issued an Order Reframing Scope of Complaint and Partially Granting Motion to Dismiss (Order Reframing Complaint) in which it “determine[d] [that] there are three instances of protected activities which could give rise to an allegation of retaliation in this forum.” *A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381d, 17 (2021).<sup>1</sup>

On April 30, 2021, the Court issued an Order Denying Complainant’s Motion for Reconsideration and Partially Granting Motion for Extension providing new deadlines for pre-hearing filings. *A.S. v. Amazon Web Services Inc.*, 14 OCAHO no. 1381e, 4–5 (2021). Currently, discovery closes on and discovery motions are due by June 23, 2021. *Id.* at 4 n.5.

On June 8, 2021, Respondent filed a Motion to Enforce the Court’s April 7, 2021 Order (Motion to Enforce). Complainant filed his Response to Respondent’s Motion to Enforce the Court’s April 7th, 2021 Order (Opposition to Motion to Enforce) on June 14, 2021.

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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>.

On June 17, 2021, Respondent filed a Motion for Extension of Discovery Period (Motion for Discovery Extension) seeking a thirty-day extension of the discovery period. Complainant opposed the motion in his Response to Respondent’s Motion for Extension of Discovery Period (Opposition to Motion for Discovery Extension) dated June 21, 2021.

## II. SUBMISSIONS OF THE PARTIES

### A. Respondent’s Motion to Enforce

Respondent argues that Complainant propounded excessive discovery that exceeds the scope of the Court’s Order Reframing Complaint. Mot. Enforce 6. It states that it “intends to fully cooperate and provide Complainant with the documents to which he is entitled, and therefore asks for the Court’s support in limiting Complainant’s irrelevant demands so Respondent may focus on producing records within the scope of the Order.” *Id.* Alternatively, Respondent argues that the complaint should be dismissed with prejudice as a discovery sanction. *Id.* at 13–14.

### B. Complainant’s Opposition to Motion to Enforce

In his Opposition, Complainant does not directly address the contentions raised by Respondent. Complainant, instead, details concerns related to Respondent’s discovery practices. Complainant characterizes Respondent’s filing as hypocritical because “Respondent is exhibiting the same behavior for which [it] want[s] an action against the complainant.” Opp’n Mot. Enforce 17. Ultimately, Complainant “petitions the Court’s assistance in upholding the previously issued Order in the interest of judicial economy and timely resolution of this matter.” *Id.*

In his filing, Complainant requests the Court “order the Respondent to cooperate in [the] discovery process[;]... order the Respondent to put honest efforts to complete the discovery process in timely manner by providing responses in reasonable time frame[; and]... reinstate the Complainant with all the damages as mentioned in Prehearing statement, dated 3<sup>rd</sup> Oct 2020[.]” *Id.* at 20–21.

### C. Respondent’s Motion for Discovery Extension

Respondent seeks a thirty-day extension of the discovery period. Mot. Disc. Ext. 5. Respondent proffers that the additional time would permit Respondent to complete and provide responses to Complainant and continue attempts to meet and confer. Mot. Disc. Ext. 4–5.

### D. Complainant’s Opposition to Motion for Discovery Extension

Complainant opposes a thirty-day extension, stating that a seven-day extension is appropriate in this case if Respondent agrees to respond to one of his requests. Opp’n Mot. Disc. Ext. 16. According to Complainant, “Respondent is looking for excuses to extend the discovery process, delay the case, even when there is no progress being shown by the Respondent in the discovery phase.” *Id.* at 1. Further, Complainant requests the Court order Respondent to “cooperate in the discovery phase in a timely manner” or “rul[e] in favor of the Complainant[.]” *Id.* at 19.

### III. LEGAL STANDARDS AND ANALYSIS

#### A. Motion to Enforce

28 C.F.R. § 68.11(a) requires a motion to “state with particularity the grounds therefor, and shall set forth the relief or order sought.” Here, although Respondent requests “the Court’s assistance in upholding the previously issued order[.]” Mot. Enforce 13, it is not entirely clear what, specifically, Respondent is requesting. For example, Respondent may be seeking a protective order from Complainant’s discovery requests as outlined in 28 C.F.R. § 68.18(c). Alternatively, Respondent may be seeking enforcement of the Court’s prior order pursuant to 28 C.F.R. § 68.28(b).

Because of the uncertainty, Respondent’s Motion to Enforce is DENIED.<sup>2</sup> Respondent is not precluded from filing another motion in which it clarifies the relief sought. *Cf. Ogunrinu v. Law Resources*, 13 OCAHO no. 1332f, 1–2 (2020) (granting the respondents’ motion to enforce that unequivocally sought enforcement of the court’s order compelling a deposition).

As to Complainant’s Opposition to the Motion to Enforce, the Court notes that an opposition filing or a response to a motion should address the issues raised only by the moving party. *See generally* 28 C.F.R. §§ 68.2, 68.11(a); *see also* 28 C.F.R. § 68.11(b) (emphasis added) (“[A]ny party . . . may file a response *in support of, or in opposition to,* the motion.”). This is not merely an issue of semantics. Requesting new relief in a response to a motion strips the original moving party from an opportunity to respond as replies are generally not permitted in OCAHO proceedings. *See* § 68.11(b). As applied here, Complainant’s request for relief in his opposition is inappropriate as Respondent then does not have an opportunity to respond. Therefore, any requests for relief made in Complainant’s Opposition to Motion to Enforce are DENIED.<sup>3</sup> Complainant is not precluded from filing a new motion requesting relief referenced in his Opposition.

#### B. Motion for Discovery Extension

“OCAHO rules do not provide specific standards for granting extensions, but the standard routinely applied is good cause.” *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 2 (2021) (citations omitted). “Good cause is ‘demonstration of good faith on the part of the party seeking an enlargement of time and some reasonable basis for noncompliance within the time specified in the rules.’” *Id.* (citations omitted). “In determining whether good cause exists, a court should

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<sup>2</sup> As Respondent appropriately cites, dismissal of a complaint is warranted as a discovery sanction in the most extreme cases. *See Kalil v. Utica City Sch. Dist.*, 9 OCAHO no. 1101, 17 (2013). While Complainant’s discovery practices as alleged are concerning, dismissal of the Complaint is an extreme sanction that is not warranted, or not yet warranted.

<sup>3</sup> Additionally, insofar as Complainant intended this opposition to be a motion to compel discovery, it lacks the procedural requirements that 28 C.F.R. § 68.23(b) requires. This Court has instructed Complainant numerous times of those requirements and refers Complainant to those prior orders. *See A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381, 1–2 (2020); *A.S. v. Amazon Webservices Inc.*, 14 OCAHO no. 1381b, 3–4 (2021).

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 (citations omitted).

Here, Respondent has made diligent efforts to meet and confer with Complainant and, based on the filings, appears to have begun production of materials it deemed relevant. Respondent indicated that additional time to produce discovery and to meet and confer with Complainant would reduce the discovery disputes brought before the Court. Respondent has demonstrated good cause for an extension of the discovery period.

In considering Complainant’s opposition to the extension, the Court notes that Complainant is not prejudiced by a thirty-day extension, rather he stands to benefit from the extension as the extension will mean he has time to review Respondent’s materials and evidence, the production of which is not yet complete; and he will have an opportunity to file a timely motion to compel, if appropriate.

Respondent has demonstrated the requisite good cause for an extension. Respondent’s Motion for Discovery Extension is GRANTED.

#### IV. CONCLUSION

Respondent’s Motion to Enforce is DENIED. Complainant’s requests for relief included in his Opposition to Motion to Enforce and Opposition to Motion for Discovery Extension are DENIED.

Respondent’s Motion for Discovery Extension is GRANTED. The deadlines are reset to the following:

Discovery closes: July 23, 2021.<sup>4</sup>

Dispositive motions due: August 23, 2021.

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<sup>4</sup> All discovery-related motions must also be filed by this date.

Responses to dispositive motions are due thirty days after the filing of the dispositive motion.

Tentative hearing date: October 2021.

SO ORDERED.

Dated and entered on July 1, 2021.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge