UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUAN ELIEZER MARTINEZ-ANDINO

Plaintiff,

v.

MARKWAYNE MULLIN,
Secretary of the Department of Homeland Security, et al.,

Defendants.

Civil Action No. 26-1208 (BAH)

MOTION FOR AN EXTENSION OF TIME *NUNC PRO TUNC* TO FILE ANSWER TO THE AMENDED COMPLAINT AND MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR A DEFAULT

Defendants, by and through undersigned counsel, moves pursuant to Federal Rule of Civil Procedure 6(b)(1)(B), for a sixteen-day enlargement of time, *nunc pro tunc*, until July 23, 2026. Defendants further request that the Court deem the filing of the attached Answer as the filing of the Answer. Pursuant to Local Civil Rule 7(m), Defendants requested Plaintiff's position and Plaintiff, through counsel, stated that he opposed the extension of time. Plaintiff then rushed to file a meritless motion for default, and Defendants further submit this document as a memorandum in response to that motion.

BACKGROUND

On April 10, 2026, Plaintiff initiated this action by filing a complaint (ECF No. 1) and emergency motion for a temporary restraining order (ECF No. 20). The parties appeared at a hearing on April 10, 2026. *See* Minute Entry, Apr. 10, 2026, after which it granted in part and denied in part Plaintiff's motion, see Apr. 10, 2026, Min. Order. That same day, Plaintiff filed a second motion for a temporary restraining order. *See* Pl.'s 2d Mot., ECF No. 8. The Court ordered Defendants to respond, Apr. 10, 2026, Min. Order, and Defendants did so on April 13, 2026, *see* Response, ECF No. 10.

Following a schedule entered into by consent, Apr. 15, 2026, Jt. Status Rep., Plaintiff filed his Amended Complaint (ECF No. 19), and, on May 20, 2026, Defendants moved to dismiss and oppose the second motion for a temporary restraining order (*see* ECF No. 21, 22).

On June 23, 2026, the Court denied Defendants' motion to dismiss and ordered, among other things, that Defendants facilitate Plaintiff's return to the United States and Defendants provide status reports every 48 hours. *See* Order at 1–2, No. 26. Further, the Court ordered the parties to "submit a joint status report indicating whether plaintiff intends to move for a preliminary injunction or other immediate relief, and proposing a schedule to govern further proceedings." *Id.* at 2.

Accordingly, in the absence of a judicial order, the Answer to the Amended Complaint became due on Tuesday, July 7, 2026. *See* Fed. R. Civ. P. 12(a)(4)(A) ("[I]f the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action[.]").

On July 3, 2026, the parties filed a Joint Status Report that noted that the parties had not agreed on a schedule. *See* July 3, 2026, Jt. Status Rep. ("The parties are still discussing the schedule to govern further proceedings.").

The Court ordered the parties to file a Joint Status Report on by July 8, 2026, that would "indicat[e] whether plaintiff intends to move for a preliminary injunction or other immediate relief, and propos[e] a schedule to govern further proceeding." July 4, 2026, Min. Order. In the Joint Status Report, the parties set forth competing proposals for schedules to brief Plaintiff's motion for a preliminary injunction. *See* July 8, 2026, Min. Order. Neither party addressed the deadline to answer. *See id.*

Subsequently, the parties briefed Plaintiff's motion for a preliminary injunction, with Defendants filing their opposition on July 17, 2026. During the process of finalizing the opposition, Defendants realized they had failed to file their answer and drafted and finalized its answer and the motion for an extension of time.

On July 23, 2026, at 1:04PM, pursuant to Local Rule 7(m), counsel for Defendants reached out to opposing counsel "in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement." LCvR 7(m). Through counsel, at 3:02PM, Plaintiff replied that he would oppose without elaboration. At 4:35 PM, the undersigned requested elaboration. Plaintiff then filed a motion for default around 5:08PM.

Plaintiff supports its motion for default with a declaration that states "Defendants have not served or filed an Answer, requested an extension of time, or otherwise pleaded or defended against the remaining claims in the Amended Complaint." Blumenthal Decl. ¶ 8. The attorney who signed the declaration was on the email in which the undersigned requested Plaintiff's position with respect to a motion for an extension of time. Presumably, Plaintiff's counsel has also seen Defendants' July 17, 2026, memorandum in opposition to Plaintiff's motion for a preliminary injunction in which Defendants defended against the remaining claims in the Amended Complaint.

ARGUMENT

I. An Extension of Time Is Warranted

According to Fed. R. Civ. P. 6 (b)(1)(B), a party may request additional time after the expiration of a specified time, if the party failed to act because of excusable neglect. It is within the Court's discretion to determine excusable neglect. In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*. 507 U.S. 380 (1993), the Supreme Court has set forth a four-factor test to determine whether excusable neglect exists, namely: (1) danger of prejudice to opposing party; (2) length of delay and potential impact on judicial proceedings; (3) the reason for delay; and (4) whether the movant acted in good faith. *Id.* at 395. *See also In re Vitamins Antitrust Class Actions*, 327 F.3d 1207 (D.C. Cir 2003); *Yesudian v. Howard University*, 270 F.3d 969 (D.C. Cir. 2001).

Here, Plaintiff has suffered no prejudice because the parties have been litigating Plaintiff's claims in detail since April; the length of the delay is minimal because the litigation is paused while the Court rules on Plaintiff's motion for a preliminary injunction. As a practical matter, Plaintiff does not need to see the answer to learn Defendants' position with respect to its factual and legal contentions.

Due to an administrative oversight, undersigned counsel forgot to docket the deadline for an answer. Specifically, the undersigned focused on the 48-hour deadlines for the joint status reports and failed to docket the responsive date following the Court's decision on Defendants' motion to dismiss. While regrettable, this error was the product of an inadvertent oversight. Moreover, the Court's orders seemed to contemplate that the parties agree to a schedule with respect to all deadlines, including the answer. *See* Order at 2, ECF No. 26; July 4, 2026, Min. Order (" proposing a schedule to govern further proceedings"). Accordingly, the failure to file was inadvertent and there is no evidence of bad faith. The undersigned apologizes for the oversight. The requested extension will not prejudice either party.

II. A Default Here Would Be Inappropriate

Although Defendants inadvertently missed the deadline to respond to the Complaint, Plaintiff's motion for a default is a clear waste of the Court's and the parties' time. Plaintiff seeks a default because, allegedly, "Defendants have not served or filed an Answer, requested an extension of time, or otherwise pleaded or defended against the remaining claims in the Amended Complaint." Bluementhal Decl. ¶ 8. If true, that is true only technically. Defendants have requested Plaintiff's consent to an extension of time, which response was necessary before filing this motion. And Defendants defended against the remaining claims on July 17, 2026. Def.'s Opp'n, ECF No. 38.

Notably, while Defendants sought Plaintiff's position with respect to a motion for an extension of time pursuant to Local Rule 7(m), Plaintiff did not seek Defendants' position with respect to its motion for a default.

Even if the Court were inclined to grant a default, Defendants would then immediately move to set it aside. When determining whether to set aside a default, the Court considers "whether (1) the default was willful, (2) a set-aside would prejudice plaintiff, and (3) the alleged defense was meritorious[.]" *Gilmore v. Palestinian Interim Self-Gov't Auth.*, 843 F.3d 958, 966 (D.C. Cir. 2016) (quoting *Keegel v. Key W. & Caribbean Trading*, 627 F.2d 372, 373 (D.C. Cir. 1980) (internal quotation mark omitted)).

Here, the failure to file Defendants' responsive pleading was based on an inadvertent administrative oversight with respect to this case, a set-aside would not prejudice Plaintiff because Plaintiff could not obtain a default judgment (for the reasons discussed below), and Defendants' defenses are meritorious for the reasons stated in their motion to dismiss and in their opposition to Plaintiff's motion for preliminary injunction.

And then, even if the Court did consider the entry of default, it would be inappropriate to enter a default judgment for two reasons. *First*, default judgments are disfavored "by modern courts, perhaps because it seems inherently unfair to use the court's power to enter and enforce judgments as a penalty for delays in filing." *Jackson v. Beech*, 636 F.2d 831, 835, 836 (D.C. Cir. 1980); *see also Strong-Fisher v. LaHood*, 611 F. Supp. 2d 49, 50 (D.D.C. 2009) ("A default judgment must be a sanction of last resort to be used only when less onerous methods will be ineffective or obviously futile. Thus, while a trial court has discretion whether to set aside an entry of default, there is a strong policy favoring the adjudication of a case on its merits." (cleaned up; quoting *Webb v. District of Columbia*, 146 F.3d 964, 971 (D.C. Cir. 1998))).

Thus, a default judgment is appropriate when a defendant is "a totally unresponsive party and its default plainly willful, reflected by its failure to respond to the summons and complaint, the entry of default, or the motion for default judgment." *Edwards*, 2022 WL 839636, at *1 (quoting *Flynn v. JMP Restoration Corp.*, Civ. A. No. 10-0102 (ESH), 2010 WL 1687950, at *1 (D.D.C. Apr. 23, 2010)) (internal quotation marks omitted). Here, Defendants have litigated this case extensively for three months. One could hardly characterize Defendants' conduct in the litigation thus far as a "totally unresponsive party."

Second, Rule 55(e) states, "No judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court." Plaintiff's motion does not even attempt to establish that he should prevail on the merits. *See Chung v. Chao*, 518 F. Supp. 2d 270, 273 (D.D.C. 2007) (rejecting requests for default judgment because "Plaintiff has filed no affidavits or any other evidence with her requests for default judgment, nor do any of her requests identify any evidence in the record demonstrating that she has a right to relief"); *O.J.R. v. Ashcroft*, 216 F.R.D. 150, 152 (D.D.C. 2003) (rejecting request for a default judgment because "[t]he plaintiff fails to acknowledge or attempt to satisfy [Rule] 55(e), which prohibits courts from entering default judgments against the

United States or officers or agencies thereof unless the claimant, by evidence satisfactory to the court, establishes a right to relief").

Because the Court would likely set aside the default and decline to enter a default judgment and because Defendants have shown their willingness to litigate the merits, the Court should decline to enter the default.

Wherefore Defendants respectfully request that an extension of time be granted, *nunc pro tunc*, until July 23, 2026. A proposed order and the answer is attached.

Dated: July 23, 2026

Respectfully submitted,

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By: /s/ Brian J. Levy

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