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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Olga Clarissa Ortega,
Petitioner,
vs.
Hillary Rodham Clinton, Secretary of
State of the United States,
Respondent.

No. CV-11-0140-PHX-LOA

ORDER

The Court has reviewed Petitioner’s November 18, 2011 Disclosure of Expert Witness and Motion to Extend Time to File Written Report, doc. 44, and Respondent’s Response to Petitioner’s Motion to Extend Time Limits, doc. 45, which does not oppose Petitioner’s Motion.

The Court’s May 16, 2011 Rule 16 scheduling order sets firm deadlines for, among others, Petitioner’s disclosure of expert testimony and reports by November 18, 2011, all discovery be completed by Monday, May 4, 2012, and dispositive motions be filed by June 22, 2012. (Doc. 33)

Petitioner’s Motion indicates that “[b]eginning in early [to] mid-October, undersigned counsel . . . began interviewing potential witnesses who could qualify as experts under the Federal Rules.” (Doc. 44 at 1-2) He “submits that good cause exists to extend the dates for submission of the reports required by Fed. R. Evid. 26(a)(2)(B).” (*Id.* at 2) Counsel acknowledges he “is aware of the Court’s admonition in its Order of

1 August 10, 2011, regarding the lack of diligence shown thus far and the unlikely need for
2 extensions of the scheduling order. However, counsel submits that an extension in this
3 matter will not prejudice the Respondent and that counsel has shown diligence in
4 obtaining the services of an expert witness.” (*Id.*) Petitioner’s counsel represents he has
5 interviewed eight potential experts to testify in this case and has settled on using Anna
6 Ochoa O’Leary, Ph.D., Assistant Professor of Practice Dept. of Mexican American
7 Studies, at the University of Arizona. Dr. O’Leary will purportedly testify regarding “her
8 knowledge of the behavior of migrants whose children are born in the United States and
9 yet are raised in Mexico [and] that it is [a] common practice for children born in the U.S.
10 to also have been issued birth certificates or registrations in Mexico.” (*Id.* at 1)

11 Federal Rule of Civil Procedure 16(b)’s “good cause” standard primarily considers
12 the diligence of the party seeking the amendment. *Johnson v. Mammoth Recreations, Inc.*,
13 975 F.2d 604, 607-08 (9th Cir. 1992). A district court may modify the pretrial schedule
14 “if it cannot reasonably be met despite diligence of the party seeking the extension.” *Id.* at
15 608; Fed.R.Civ.P. 16 advisory committee’s notes (1983 amendment). “Good cause”
16 means the Rule 16 scheduling deadlines cannot be met despite the party’s exercise of
17 diligence to do so, citing Miller & Kane, *Federal Practice and Procedure* § 1522.1 at 231
18 (2d ed. 1990). *Id.* “In these days of heavy case loads, trial courts . . . set schedules and
19 establish deadlines to foster the efficient treatment and resolution of cases.”
20 *Hostnut.Com, Inc. v. Go Daddy Software, Inc.*, 2006 WL 1042335, * 1 (D.Ariz. April 19,
21 2006) (quoting *Wong v. Regents of the Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005)
22 (internal quotation marks omitted); *also see*, *Williams v. City of Mesa*, 2010 WL
23 2803880 (D.Ariz. July 15, 2010) (denying stipulated extension of Rule 16 deadlines
24 because diligence to complete discovery had not been demonstrated).

25 While she has timely disclosed her expert’s identity, Petitioner requests additional
26 time to submit Dr. O’Leary report and opinions as required by Rule 26(a)(2)(B) and the
27 Court’s May 16, 2011 Rule 16 scheduling order. Because Petitioner’s counsel has
28 demonstrated due diligence in searching and locating an expert witness; the requested

1 extension for disclosure of Dr. O'Leary report will not alter the scheduling order's
2 deadlines for completing discovery and filing dispositive motions nor prejudice
3 Respondent's compliance with the scheduling order; and Respondent has filed a
4 dispositive motion on December 9, 2011, doc. 46.; the Court will grant Petitioner's
5 Motion.

6 Good cause appearing,

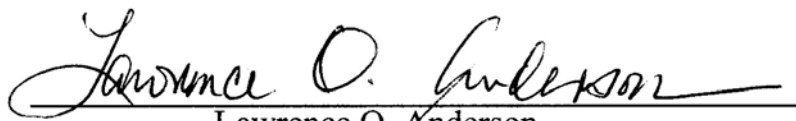
7 **IT IS ORDERED** that Petitioner's Motion to Extend Time to File Written Report,
8 doc. 44, is **GRANTED**. Petitioner's disclosure of all expert opinions and report under
9 Rule 26(a)(2)(B), Fed.R.Civ.P., as to Anna Ochoa O'Leary, Ph.D. only, shall be made no
10 later than **Friday, January 6, 2012**.

11 **IT IS FURTHER ORDERED** that Respondent's disclosure of expert opinions
12 and reports required by Rule 26(a)(2)(B) and Rule 26(a)(2)(C), Fed.R.Civ.P., shall be
13 made by **Friday, February 3, 2012**.

14 **IT IS FURTHER ORDERED** that true rebuttal expert opinions and reports
15 solely to contradict or rebut evidence as required under Rule 26(a)(2)(A),(C), Fed.R.
16 Civ.P. shall be made by **Friday, February 24, 2012**.

17 **IT IS FURTHER ORDERED affirming** all other orders and deadlines set forth
18 in the Court's May 16, 2011 Scheduling Order. (Doc. 33)

19 Dated this 12th day of December, 2011.

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22 Lawrence O. Anderson
23 United States Magistrate Judge
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