

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

In the Matter of:)	
)	
Saul Ortega)	AA-EC-2017-44
Former Chief Financial Officer, Director, President, Chief Executive Officer, and Chairman of the Board)	
)	
David Rogers, Jr.)	AA-EC-2017-45
Former Chairman of the Board)	
)	
First National Bank)	
Edinburg, Texas)	

**ORDER REGARDING RESPONDENTS’ MOTION TO STAY OR EXTEND
EXCEPTIONS DEADLINE**

On November 17, 2022 Respondents Saul Ortega and David Rogers, Jr. (“Respondents”) submitted a *Motion to Stay or Extend Exceptions Deadline* (“*Motion*”), requesting that the Acting Comptroller indefinitely stay the proceedings or, alternatively, extend by ninety days the deadline for the parties to file with the Acting Comptroller their exceptions to the administrative law judge’s recommended decision. Enforcement Counsel timely opposed the *Motion* in *Enforcement Counsel’s Opposition to Respondent’s Motion to Stay or Extend Exceptions Deadline* (“*Opposition*”), submitted on December 2, 2022. Having considered Respondents’ *Motion* and Enforcement Counsel’s *Opposition*, I deny the Respondents’ request for a stay. However, I find that good cause exists for the granting of an extension of time to submit exceptions to the recommended decision. The Acting Comptroller notes that the period to petition the U.S. Supreme Court for a writ of *certiorari* to review the judgment entered in *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022), expires in January of 2023. While *Jarkesy* is not controlling here given that it construes a different administrative enforcement scheme, the case

has become a point of focus for Respondents and so knowing whether a petition for *certiorari* will be filed may assist both the parties in their briefing of the exceptions and the Acting Comptroller's review of the record. Similarly, the Comptroller notes that on December 2, 2022, the FDIC filed an interlocutory appeal of the District Court's entry of a preliminary injunction in *Burgess v. FDIC*, 2022 WL 17173893 (N.D. Tex. 2022). Again, Respondents have raised the issue and I find that there is some prospect that the briefing of exceptions in this case (and the Acting Comptroller's review of the record) may benefit from a clarification or resolution of the issues in the *Burgess* litigation.¹

Respondents' request that this matter be stayed is **DENIED**. Respondents' alternative request that the December 16, 2022 deadline for filing of exceptions be extended by ninety days is **GRANTED**. Accordingly, the parties shall file written exceptions pursuant to the requirements set forth in 12 C.F.R. § 19.39 by March 16, 2023.

It is **SO ORDERED**.

Michael J.
Hsu

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Michael J. Hsu
Date: 2022.12.07
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Michael J. Hsu
Acting Comptroller of the Currency

¹ The Comptroller is sympathetic to arguments by Enforcement Counsel that granting a request that results in additional delay in reaching a final agency decision in this case is unwarranted. However, the Comptroller's decision to grant an enlargement of time is also influenced by the unique fact that if an appeal were ultimately to be sought in conjunction with a final Comptroller's decision there is the possibility that it would be lodged with the Fifth Circuit.