

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

STATE OF TEXAS §
Plaintiff, §
v. § CIVIL ACTION No. 6:26-CV-00001
ALEJANDRO MAYORKAS, et al., §
Defendants. §

**PLAINTIFF'S OPPOSED MOTION TO STRIKE DEFENDANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT OR UNOPPOSED
MOTION TO EXTEND WORD LIMIT**

Plaintiff, the State of Texas, respectfully asks that this Court, due to Defendants' noncompliance with the agreed upon word limitations, strike in whole or part Defendants' cross-motion and response, ECF No. 47, extend the word limitation in Texas' response by 3,340 words, ECF No. 23, or deduct 3,340 words from the word limitations in Defendants' reply, *id.*

BACKGROUND

This Court mandates that parties must “[l]imit any motion or response to 5,000 words (approximately twenty-five pages). Limit any reply to 2,000 words (approximately ten pages).” Court Procedures, Judge Drew B. Tipton, Rule 16(c). Attorneys are required to [p]rovide a certificate of word count following the signature block.” *Id.* “The Court *rarely* extends word limits.” *Id.* (emphasis added).

Cognizant of this rule, the parties conferred and agreed on a proposed scheduling order limiting motions to dismiss, and their responses, to 6,500 words, and dispositive motions, and their responses, to 9,000 words, with Defendants' reply limited to 4,500 words. See ECF No. 19 (Joint Case Management Plan and Proposed Scheduling Order).

On April 24, 2023, this Court entered the agreed scheduling order, ECF No. 23, with the aforementioned word limitations at the conclusion of the initial scheduling conference, ECF No. 13.

Both parties complied with the agreed upon 6,500-word limit during the motions to dismiss phase.¹ *See* ECF Nos. 22, 25.

The scheduling order was subsequently amended to extend the briefing deadlines, without any reference or request to changing the agreed upon word limitations. See ECF Nos. 33–34, 37–38, 42, 46.

Texas timely filed a dispositive motion on September 8, 2023, *with* a Certificate of Word Count attesting that their motion contained 8,015 words. ECF No. 40 at 29.

On October 20, 2023, Defendants filed their response and a cross-dispositive motion *without* a Certificate of Word Count. ECF No. 47 at 44.

This week, Texas exported Defendants' pleading to Microsoft Word and determined that the motion contains 12,340 words, thereby exceeding the word limitation by a *whopping* 3,340 words (a percentage increase of 37.11%). ECF No. 47 at 32–44.

Defendants did not seek leave from this Court to exceed the word limitations (even after being notified of this deficiency).²

Due to Defendants' noncompliance with the agreed upon word limitations, strike in whole or part Defendants' cross-motion and response, ECF No. 47, extend the word limitation in Texas'

¹ Defendants' Motion to Dismiss contained a Certificate of Word Count attesting that the motion contained 4,996 words, ECF No. 22 at 20, and while Texas' Response contained 3,763 words.

² Texas would have opposed such a request because, by that point, it had already filed its dispositive motion complying with the agreed upon 9,000-word limitation.

response by 3,340 words, ECF No. 23, or deduct 3,340 words from the word limitations in Defendants' reply, *id.*

MOTION TO STRIKE

It is well-established in the Fifth Circuit that district courts have the inherent power to manage their own proceedings and control the conduct of those who appear before them, including striking pleadings in their entirety that exceed the mandated word or page limit. *See, e.g., Rodgers v. La. Bd. of Nursing*, 665 F. App'x 326, 328–29 (5th Cir. 2016) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–44 (1991) (citations omitted)); *Gezu v. Charter Commc'ns*, 17 F.4th 547, 555 (5th Cir. 2021)(citing *Cambridge Toxicology Group, Inc. v. Exnicios*, 495 F.3d 169, 178 (5th Cir. 2007) (“This court reviews a motion to strike for abuse of discretion.”)).

District courts routinely strike pleadings that exceed the page or word limits. *See, e.g., Espinoza v. San Benito Consol. Indep. Sch. Dist.*, No. 1:14-CV-115, 2016 WL 10744704, at *2 (S.D. Tex. Sept. 13, 2016); *Tempur-Pedic N. Am., LLC v. Mattress Firm, Inc.*, No. CV H-17-1068, 2018 WL 3613148, at *1 (S.D. Tex. July 25, 2018).

Texas is materially prejudiced by Defendants' failure to comply with the agreed upon word limitations. “[A] regime imposing page limits on a motion and response by its very nature presumes prejudice where, as here, Defendant has gained the benefit of sprawling beyond the page limit that constrained Plaintiffs when they composed their response.” *Espinoza*, 2016 WL 10744704, at *2. Prefiling drafts of Texas' dispositive motion exceed 12,500 words and it made substantial and painful cuts to its dispositive motion to comply with the agreed word limitations. ECF No. 40. Defendants, conversely, had an extra 3,340 words to put forth arguments in their cross-motion that was not afforded to Texas. ECF No. 47 at 32–44. Texas must respond to twelve-

pages of additional arguments and authorities while constrained by the agreed upon word limitations. ECF No. 23. Thus, Texas is doubly prejudiced by its compliance with the word limitations—both in the filing of their dispositive motion and in their response. *See also* CERTIFICATE OF CONFERENCE (indicating that Defendants have no intention of complying with the 4,500-word limitation for their reply).

Given Defendants' noncompliance and the prejudice to Texas, this Court should strike Defendants' cross-motion and response, ECF No. 47, in whole or in part, beginning with the first sentence on page 32 after "exclude[d] state, local..." because it exceeds the agreed upon 9,000-word limit.

Should the Court decline to strike ECF No. 47, in whole or part, and decline to extend the word limit in Texas' response, Texas asks that it deduct 3,340 words from the 4,500-word limitations in Defendants' reply.

MOTION TO EXTEND WORD LIMIT

This Court "rarely" extends word limitations and will only do so "well in advance of filing deadlines." Court Procedures, Judge Drew B. Tipton, Rule 16(c).

This case presents one of those rare occasions. Texas only recently discovered Defendants' noncompliance as it assumed, despite the lack of a Certificate of Word Count, that Defendants complied with the agreed upon word limitations in their cross-dispositive motion (particularly because it was Defendants who suggested the 9,000-word limit).

Defendants are unopposed to this request.

Accordingly, in the event this Court elects not to strike Defendants' cross-motion, either in whole or part, or deduct 3,340 words from Defendants' reply, then Texas asks for leave to exceed the word limitation in its response by a corresponding 3,340 words.

PRAYER

Texas asks that this Court **GRANT PLAINTIFF'S OPPOSED MOTION TO STRIKE DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT OR UNOPPOSED MOTION TO EXTEND WORD LIMIT** and strike in whole or part Defendants' cross-motion and response, ECF No. 47, extend the word limitation in Texas' response by 3,340 words, ECF No. 23, or deduct 3,340 words from the word limitations in Defendants' reply, *id.*, and for any further relief for which it may justly be entitled.

Date: November 8, 2023

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

I certify that I conferred with Defendants' counsel on November 6-7, 2023, via email and he is unopposed to the motion to extend the word limit and opposed to the motion to strike. He asked that Texas include the following enumerating their position:

"Our understanding from the initial status conference with the Court is that the Court lifted all page and word limits for briefs in this case, in recognition of the significance of the issues being presented. We filed our brief with that understanding. Accordingly, we don't believe you need to file a motion seeking to exceed the word limit at all. Should you choose to file such a motion, please indicate our position as follows:

Defendants understand the Court to have relieved the parties from word and page limits in this matter. Consistent with that understanding, Defendants do not oppose Plaintiff seeking additional words for its response brief. Defendants oppose Plaintiff's alternative request to strike Defendants' motion as unfounded."

Texas notes, in response, that Defendants' position is both inconsistent with Texas' understanding from the initial status conference and with this Court's conduct in entering the scheduling order containing the word limitations, ECF No. 23, at the *conclusion* of the initial status conference, ECF No. 13.

/s/Johnathan Stone
JOHNATHAN STONE
Attorney-in-Charge
Special Counsel
Texas State Bar No. 24071779

CERTIFICATE OF SERVICE

I certify that that on November 8, 2023, this document was filed electronically via the Court's CM/ECF system, causing electronic service upon all counsel of record.

/s/Johnathan Stone
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

STATE OF TEXAS,

Plaintiff,

v.

ALEJANDRO MAYORKAS, et al.,

Defendants.

Case No. 6:23-cv-00001

[PROPOSED] ORDER

Before the Court is the Plaintiff's Opposed Motion to Strike Defendants' Cross-Motion for Summary Judgment or Unopposed Motion to Extend Word Limit. The Court finds that Defendants did not comply with agreed upon word limits in its Scheduling Order, ECF No. 23. For good cause shown, Plaintiff's motion to Strike Defendants' Cross-Motion for Summary Judgment or Extend Word Limit is GRANTED in part and DENIED in part, as determined by the following selection:

Defendants' Cross-Motion for Summary Judgment and Response to Plaintiff's Motion for Summary Judgment is struck in its entirety for failing to comply with agreed upon word limits. Defendants do not have leave to refile.

or

Defendants' Cross-Motion for Summary Judgment and Response to Plaintiff's Motion for Summary Judgment is struck in its entirety for failing to comply with agreed upon word limits. Defendants have leave to refile in compliance with the

agreed upon word limits by November 10, 2023. The response and reply deadlines are extended by one week.

or

_____ Defendants' Cross-Motion for Summary Judgment and Response to Plaintiff's Motion for Summary Judgment is struck in part, beginning with the word "local" in the first sentence on page 32, ECF No. 47.

or

_____ Plaintiff is granted an additional 3,340 words in its response to ECF No. 47.

or

_____ The 4,500-word limit in Defendants' reply shall be reduced by 3,340 words.

IT IS SO ORDERED.

DATE: November _____, 2023

Drew B. Tipton
United States District Judge