UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA MACON DIVISION

AIR FURCE OFFICER, AIR FURCE NCO,	
AIR FORCE SPECIAL AGENT, and	
AIR FORCE ENGINEER, on behalf of)
themselves and all others similarly situated,	,)
•) Case No. 5:22-cv-00009-TES
Plaintiffs,)
v.	
LLOYD J. AUSTIN, III, in his)
official capacity as Secretary of Defense;)
FRANK KENDALL, III, in his)
official capacity as Secretary of the Air Force; and)
ROBERT I. MILLER, in his)
official capacity as Surgeon General of the)
Air Force,)
Defendants.	

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PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION TO STAY COUNTS I AND II

Defendants agree the civilian claims should be stayed "because the impact of [Feds for Med. Freedom] on the civilian claims in this case is uncertain." [Doc. 122 at 1]. The same reasoning applies to the military claims: the impact of Doster on the military claims in this case is uncertain. The Court should therefore stay both the civilian and military claims under Counts I and II.

Defendants seek to impose an arbitrary and unreasonable 14-day limitation on Plaintiffs' right to opt out of the *Doster* class. [122 at 2]. Defendants ignore Plaintiffs' point that that this would defy the terms of the July 27, 2022 *Doster* order and interfere with Plaintiffs' rights as class members. [See Doc. 121 at 2]. Plaintiffs will ultimately benefit—or not benefit—from a final judgment in one or more cases. But it is altogether premature to force Plaintiffs to decide "now" whether to opt out of the preliminary, non-final relief entered in *Doster* as Defendants propose [Doc. 122 at 2], before

any other class members have to decide and before any appeal is resolved. The Court at this time should stay Counts I and II.

Plaintiffs do not concede that, if the government ultimately prevails in *Doster* on the merits, principles of *res judicata* may prevent Plaintiffs pursuing their claims in this case, as Defendants contend [Doc. 122 at 2]. But assuming *arguendo* that Defendants were correct, then they have no reason to object to stay of the military claims, because Plaintiffs' claims would then be precluded.

As to Count III, Plaintiffs' APA claim, *Trump v. New York*, 141 S.Ct. 530 (2020), cited by Defendants [Doc. 122 at 3], is inapposite. *Trump* involved a question of standing, which is jurisdictional; there is no question of standing here. The question before this Court is whether, in the interests of judicial economy, the APA claim should be stayed pending the outcome of *Doster*. It is prudential, not jurisdictional.

The appropriate standard for evaluating a motion to stay pending resolution of another case is set forth in *Ortega Trujillo v. Conover & Co. Comm., Inc.*, 221 F.3d 1262, 1264 (11th Cir. 2000). In exercising its discretion, a district court should consider principles of abstention as well as the scope of the stay and its duration. *Id.* "The court should not exercise its power to stay proceedings lightly." *Sturgis Motorcycle Rally, Inc. v. Mortimer*, No. 2:14-CV-00175-WCO, 2015 WL 11439078, at *6 (N.D. Ga. June 11, 2015) (citing *Home Ins. Co. v. Coastal Lumber Co.*, 575 F. Supp. 1081, 1083 (N.D. Ga. 1983)). The *Sturgis Motorcycle* court held that "[w]hile a stay *could* lead to reduced discovery for *part* of defendants' case, such a contingent harm is not sufficiently compelling to authorize a stay." *Id.* (emphasis in original). The same reasoning applies here.

It is true that a stay of the APA claim would not harm Plaintiffs while the current *Doster* injunction remains in place. But that also militates in favor of not extending the stay to the APA claim, a claim that is not at issue in *Doster*. If the *Doster* injunction is reversed on appeal, Plaintiffs would be left entirely unprotected and all parties would be in a period of uncertainty until the APA

claim is resolved; the time required to conduct limited discovery, fully brief a motion for summary judgment (or cross-motions for summary judgment), and obtain a ruling on the APA claim would place Plaintiffs at significant risk. By contrast, allowing the parties to seek a resolution of the APA claim during the pendency of the *Doster* appeal would avoid that uncertainty and risk, even though a stay "could lead to reduced discovery" for Defendants. But as *Sturgis Motorcycle* held, "such a contingent harm is not sufficiently compelling to authorize a stay." 2015 WL 11439078, at *6.

Accordingly, the Court should issue a partial stay: the Court should stay Counts I and II but not Count III.

Dated: August 5, 2022

Respectfully submitted,

/s/ Adam S. Hochschild

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