

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.

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Respectfully submitted,

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