

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 8:21-cv-2738-KKM-AEP

US FREEDOM FLYERS, et al,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al

Defendants.

**PLAINTIFF COUNSEL'S RESPONSE TO ENDORSED ORDER
RE: WHETHER ACTION SHOULD BE STAYED [DE 16]**

On January 14, 2022, the Court entered an endorsed order directing the undersigned to “inform the Court whether this action should be stayed pending the Eleventh Circuit’s ruling” on the government’s appeal of a nationwide injunction in *Georgia v. President of the United States*, Case No. 21-14269-F (11th Cir.) [DE 16]. The undersigned has carefully considered the issues pending in the *Georgia* case, its procedural history, and the fact that the Eleventh Circuit’s ruling on the merits will be binding on this Court.

The undersigned believes that Eleventh Circuit is highly likely to affirm the district court’s ruling in *Georgia*, especially given the Supreme Court’s recent decision in *Nat’l Federation of Independent Business, et al v. Dept. of Labor*, Case Nos. 21A244 and 21A247, 595 U.S. ___, 2022 U.S. LEXIS 496 (January 13, 2022). If the

Occupational Safety & Health Administration lacks the power to require vaccination of employees against COVID-19, then it is difficult to imagine under what circumstances the Office of Management and Budget might have such a power. On the other hand, the Eleventh Circuit might affirm the district court on the merits while it narrows the scope of the injunction, such that it is no longer nationwide.

Nevertheless, the undersigned does not dispute that a stay of this case pending the outcome in *Georgia* might serve the interests of judicial economy, and that the decision of whether to enter a stay is within the Court's discretion. The undersigned asks that, should a stay be entered, the Parties be directed to attend a status conference as soon as possible, once the Eleventh Circuit has ruled.

Filed this 20th day of January, 2022.

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