IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FATMA MAROUF, *et al.*, Plaintiffs, v. XAVIER BECERRA, in his official capacity as Secretary of the United States Department of Health and Human Services, *et al.*, Defendants.	Case No. 18-cv-378 (APM)

FEDERAL DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY SUMMARY JUDGMENT DEADLINES

The Court should grant Federal Defendants' motion to stay the summary judgment briefing deadlines set forth in ECF No. 94, in light of imminent changes to the relationship between Federal Defendants and USCCB. As discussed in the motion, those changes will involve the creation of an arrangement whereby all prospective long-term foster parents of unaccompanied refugee minors in the Dallas-Fort Worth area of Texas will be directed to a central intake grantee that has no objection to working with same sex couples. That change, currently underway, will materially alter the legal issues for consideration at summary judgment. Accordingly, proceeding to brief the issues before those changes are put into place would be wasteful of the parties' and the Court's resources. Plaintiffs' opposition fails to show otherwise. Federal Defendants file this reply to briefly respond to four points raised in Plaintiffs' opposition.

First, Plaintiffs' contention that their claims may not be mooted by the anticipated changes to the URM program misses the mark. *See* Opp'n at 2–3, ECF No. 97. Federal Defendants do not seek a stay on the basis that they will prevail on a motion to dismiss for mootness due to the

anticipated changes to the program.[1] Instead, Federal Defendants' position is that various *arguments* the parties might present at summary judgment would be mooted or materially altered by these changes, creating waste for the parties and the Court in briefing and adjudicating a challenge to the current program. Plaintiffs fail to meaningfully dispute Federal Defendants' position. Indeed, Plaintiffs argue that the anticipated arrangement involving USCCB, LIRS, and USCRI will be unlawful for reasons different than those applicable to the previous relationship. *See* Opp'n at 2–3. Federal Defendants disagree and believe that the anticipated reform is consistent with the Constitution. But in any event, Plaintiffs' arguments show that they too believe the issues for consideration will be *different* upon the establishment of the anticipated consortium. And it is for that reason that summary judgment briefing should be stayed until this proposal has been implemented—not because of some prejudgment about the merits of Federal Defendants' actions or the continued currency of Plaintiffs' claims.

Second, Plaintiffs argue that "Federal Defendants have not asserted—much less shown—that the dispositive motions deadlines cannot reasonably be met despite their diligence." *See* Opp'n at 3. This argument is inapposite. To begin, this argument is not responsive to Federal Defendants' request rooted in the Court's inherent authority to control proceedings pursuant to *Landis v. North American Co.*, 299 U.S. 248 (1936). The Court may grant the motion to stay on that basis alone. Even as to the good cause standard, Plaintiffs assert an inflexible set of elements that are an ill fit for that flexible standard. *Cf. Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 249 F. Supp. 3d 516, 520 (D.D.C. 2017) (under Rule 26(c), the "good cause standard is a flexible one that requires an individualized balancing of the many interests that may be present

[1] The Government reserves the right to seek dispositive relief on any basis appropriate under the facts and the law, including mootness if warranted.

in a particular case" (quoting *United States v. Microsoft Corp.*, 165 F.3d 952, 960 (D.C. Cir. 1999)). Plaintiffs point to a diligence requirement articulated in *Capitol Sprinkler Inspection, Inc. v. Guest Services, Inc.*, 630 F.3d 217 (D.C. Cir. 2011), but the court's discussion there arose in the context of a motion for extension of time as to an untimely expert disclosure. By contrast, here, Federal Defendants' stay request is not sought because of any interests related to the parties' ability to file briefs by a particular date; rather, it is sought because of the shifting nature of the issues in this case and the interests of judicial economy. Thus, just as a court may "find[] good cause to stay" a matter "pending resolution of independent proceedings which bear upon the case" because doing so is "efficient for its own docket and the fairest course for the parties," *Allina Health Servs. v. Sebelius*, 756 F. Supp. 2d 61, 71 (D.D.C. 2010), so too here: the Court should find good cause to stay this matter pending programmatic changes bearing on the issues pending in this litigation.

Third, Plaintiffs fail to show prejudice warranting denial of the stay motion. Plaintiffs root their argument in the contention that Federal Defendants "seek an indefinite stay." Opp'n at 4. This is incorrect. Federal Defendants' motion is premised on the understanding that the anticipated consortium will be established by the end of this year. The motion accordingly calls for the filing of a joint status report in just under two months, by January 14, 2022, to consider whether continuation of the stay is necessary or appropriate. Mot. at 1, ECF No. 95. Federal Defendants do not seek a limitless stay or to delay these proceedings. Nor would the contemplated stay unduly delay the just and speedy determination of Plaintiffs' claims. Federal Defendants' requested stay is brief and will bear substantially on the issues raised by those claims. *Cf. Landis*, 299 U.S. at 256 ("Especially in cases of extraordinary public moment, the individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted."). Moreover, Plaintiffs' preferred approach would be

unlikely to accelerate the resolution of their claims, as the parties would likely need to submit supplemental briefing regarding the effect of the consortium's implementation. The timeframe for resolution is unlikely to be materially different under either approach; Federal Defendants' approach would simply conserve the Court's and the parties' resources.

Finally, Federal Defendants briefly address Plaintiffs' alternative request for further discovery. Federal Defendants are mindful of their discovery obligations under Rule 26(e) and intend to supplement their discovery responses as appropriate in light of the changing factual circumstances discussed in the motion to stay. But entry of a stay should not be made contingent on further discovery. Such discovery issues should be separately addressed as necessary and following the meet-and-confer process. To date, Plaintiffs have not initiated that process.

For the foregoing reasons, the Court should grant the Federal Defendants' motion to stay.

Dated: November 19, 2021

Respectfully submitted,

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