

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NICOLAS TALBOTT <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:25-cv-00240-ACR
)	
UNITED STATES OF AMERICA <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

PLAINTIFFS’ MOTION FOR SCHEDULING CONFERENCE

Pursuant to Federal Rule of Civil Procedure 26(f), Local Civil Rule 16.3, and Section 4 of this Court’s Standing Order in Civil Cases, Plaintiffs respectfully request that the Court set an initial scheduling conference, order the parties to meet and confer to discuss the matters set forth in Local Civil Rule 16.3(c), and order the parties to jointly file a report addressing those matters. Defendants, through counsel, have stated that they will oppose this motion. In support of this motion, Plaintiffs state the following:

1. Plaintiffs commenced this action over a year ago, on January 28, 2025. Compl., ECF No. 1. Plaintiffs filed amended complaints on February 4, 2025 (Am. Compl., ECF No. 15), February 24, 2025 (2d Am. Compl., ECF No. 60), March 4, 2025 (3d Am. Compl., ECF No. 69), and March 24, 2025 (4th Am. Compl., ECF No. 94).

2. On March 18, 2025, this Court granted Plaintiffs’ Renewed Application for Preliminary Injunction (the “Preliminary Injunction”). Mem. Op., ECF No. 89. On March 26, 2025, the Court denied Defendants’ motion to dissolve, or stay pending appeal, the Preliminary Injunction. Mem. Op., ECF No. 100.

3. On appeal, the D.C. Circuit granted an administrative stay of the Preliminary Injunction on March 27, 2025. Order, No. 25-5087, ECF No. 2108170 (D.C. Cir. Mar. 27, 2025) (the

“Administrative Stay”). On December 9, 2025, the D.C. Circuit granted a stay of the Preliminary Injunction pending appeal and dissolved the Administrative Stay. Order, No. 25-5087, ECF No. 2149475 (D.C. Cir. Dec. 9, 2025) (the “Stay Pending Appeal”). Neither the Administrative Stay nor the Stay Pending Appeal stayed proceedings in the District Court. The D.C. Circuit held oral argument on Defendants’ appeal of this Court’s preliminary injunction on January 22, 2026, and a decision on that appeal is pending.

4. Because an interlocutory appeal of a preliminary injunction does not divest the district court of jurisdiction, *see Garner v. United States*, No. 24-5252, 2026 U.S. App. LEXIS 650, at *2 (D.C. Cir. Jan. 8, 2026) (citing *Ex parte Nat’l Enameling & Stamping Co.*, 201 U.S. 156, 161-62 (1906); *Soc’y for Animal Rts., Inc. v. Schlesinger*, 512 F.2d 915, 918 (D.C. Cir. 1975)), discovery may commence while an appeal of a preliminary injunction is pending, *see, e.g., Banks v. Booth*, No. 20-cv-849, 2021 U.S. Dist. LEXIS 79394, at *3-4 (D.D.C. Apr. 26, 2021) (denying defendant’s motion to stay proceedings during appeal of preliminary injunction and directing the parties to proceed with discovery).

5. Defendants filed an Answer to Plaintiffs’ Fourth Amended Complaint on August 1, 2025. Answer, ECF No. 111.

6. Under this Court’s Standing Order in Civil Cases,

[a]fter an answer is filed, for those cases covered by Federal Rule of Civil Procedure 26(f) and Local Civil Rule 16.3, the Court will set an Initial Scheduling Conference and order the parties to meet and confer to discuss the matters set forth in Local Civil Rule 16.3(c), and to jointly file a report addressing them. Following the Initial Scheduling Conference, the Court will issue a Scheduling Order governing further proceedings in the case.

Standing Order in Civil Cases ¶ 4.

7. Consistent with this Court’s standard practices, Plaintiffs now request that the Court set an Initial Scheduling Conference, order the parties to confer and jointly file a report, and issue a scheduling order governing further proceedings in this case. Regardless of the outcome of the pending

appeal of the preliminary injunction, Plaintiffs are entitled, and intend, to conduct discovery and litigate this case on the merits through final judgment in this Court.

8. Defendants have begun issuing notices to Plaintiffs of impending separation actions. For example, on January 6, 2026, plaintiff Gordon Herrero received notification of an Initiation of Elimination, which he is currently challenging. On February 20, 2026, Plaintiff Amiah Sale received a notification to appear before an Administrative Separation Board to be held on March 24, 2026. In light of these and other developments, to avoid prejudice to Plaintiffs, and to minimize further delay in the resolution of this case, Plaintiffs respectfully submit that a scheduling conference is appropriate at this juncture. Plaintiffs are prepared to discuss appropriate timelines, considering the pendency of the appeal and other considerations, with Defendants in the parties' discovery planning conference and with the Court in the requested scheduling conference.

For the foregoing reasons, Plaintiffs respectfully request that the Court set an initial scheduling conference for no later than 45 days from the date of this motion and order the parties to convene a discovery planning conference and submit a report to the Court prior to the scheduling conference.

DATED: March 4, 2026

Respectfully submitted,

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