

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

BILL NELSON, in his official capacity
as Administrator of NASA, et al.,

Defendants.

No. 8:21-cv-2524-SDM-TGW

JOINT MOTION TO MAINTAIN STAY

The parties jointly request that the Court continue to stay further proceedings in this matter pending a request by either party to lift the stay.

On December 22, 2021, the Court granted in part Florida's motion for a preliminary injunction on Florida's claim that Executive Order 14042 exceeded the President's statutory authority under the Federal Procurement and Administrative Services Act (FPASA). *See* ECF No. 37. The Court retained under advisement the balance of Florida's motion, which raises additional challenges to EO 14042 and its implementation. *See id.* at 35, 37–38. On December 30, 2021, the Court issued an order enjoining the Federal Government “from enforcing within Florida any contract clause requiring compliance with the COVID Safety Protocols for Federal Contractors described in Executive Order 14042 *** or from denying Florida a government contract based on Florida's refusal to agree to such a contract clause.” ECF No. 40.

On January 12, 2022, the Federal Government appealed the Court's Opinion and Order, *see* ECF No. 41, and the parties jointly moved to stay this case pending

resolution of the appeal, *see* ECF No. 42. On January 19, the Court granted the motion and stayed the case. *See* ECF No. 44. The Federal Government has since voluntarily dismissed its appeal. *See* ECF No. 46. Nevertheless, the parties agree that this case should remain stayed.

On October 14, 2022, the Federal Government announced possible changes to EO 14042's implementation. Specifically, the Safer Federal Workforce Taskforce announced that it intends to begin a process to update its guidance regarding COVID-19 safety protocols for covered contractor and subcontractor workplace locations. If the Task Force issues updated protocols, the OMB Director may issue a determination as to whether compliance with the updated protocols would promote economy and efficiency in Federal contracting. If the OMB Director in fact determines that compliance would promote economy and efficiency, she may publish her determination in the Federal Register. At that point, OMB may provide additional guidance to agencies on the timing and considerations for provision of written notice from agencies to contractors regarding enforcement of contract clauses implementing EO 14042. Until then, the Federal Government has said that it will not enforce contract clauses implementing EO 14042. *See* <https://www.saferfederalworkforce.gov/contractors/>.

In order to litigate its challenges to EO 14042 and its implementing guidance to final judgment, Florida may need to amend its complaint to account for any new economy-and-efficiency determination by the OMB Director. As a result, and given that the current preliminary injunction prevents the Federal Government from enforcing such a determination in Florida, the parties jointly request that the Court continue to

stay further proceedings in this case. Once the OMB Director decides whether to issue a new economy and efficiency determination, the parties will confer regarding next steps in this case.

DATED: November 9, 2022

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Respectfully submitted,

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CERTIFICATE OF SERVICE

On November 9, 2022, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Middle District of Florida, using the electronic case filing system of the Court. I hereby certify that I have served all parties electronically or another way authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin Wynosky

KEVIN WYNOSKY

Trial Attorney

U.S. Department of Justice