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

A.I.I.L., et al.,

Plaintiffs,

v.

Jefferson Beauregard Sessions, III, et al.,

Defendants.

No. CV-19-00481-TUC-JCH
ORDER

This case stems from the alleged forced separation of undocumented parents from their minor children in Arizona and other places along the United States-Mexico border by the United States Federal Government. Plaintiffs bring claims against the United States (“United States Defendants”) under the Federal Tort Claims Act (“FTCA”) pursuant to 28 U.S.C. §§ 1346(b)(1) and 2675. Plaintiffs also bring claims against fifteen individually named Defendants (“Individual Defendants”)—each sued in a personal, not official capacity—under the Fourth and Fifth Amendments to the United States Constitution, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and 42 U.S.C. §§ 1985 and 1986 pursuant to 28 U.S.C. §§ 1331 and 1343(a).

Pending before the Court is Plaintiffs’ Motion to Hold Action in Abeyance (“Motion”) (Doc. 63) for a period of sixty (60) days. Plaintiffs seek a stay of the entire action to facilitate further settlement discussions in hopes of resolving their FTCA claims against the United States Defendant. (*See* Doc. 63 at 1-2.) Individual Defendants filed a

1 Response (Doc. 64) and object to a stay of the individual-capacity claims. Plaintiffs filed
2 a Reply (Doc. 65). The Court will grant Plaintiffs’ Motion for the following reasons.

3 **I. Background**

4 Plaintiffs—bringing this action on their own behalf and as a class action on behalf
5 of all other similarly situated class members—are undocumented adults and their
6 respective six children who allege that the U.S. government forcibly separated parents from
7 their minor children and held them in immigration detention facilities.

8 On September 30, 2020, Plaintiffs filed their First Amended Complaint (“FAC”)
9 (Doc. 41) asserting eleven causes of action. In Counts I – VIII, Plaintiffs assert claims
10 against Individual Defendants in their individual capacities for: violations of their fifth
11 amendment right to family integrity (Count I); violations of their fifth amendment
12 substantive due process right to receive adequate medical care while in custody (Count II);
13 violations of their fifth amendment substantive due process right to be free from punitive
14 treatment (Count III); violations of their fifth amendment right to procedural due process
15 (Count IV); violations of their fifth amendment right to equal protection under the law
16 (Count V); and violations of their fourth amendment right against unreasonable seizures
17 (Count VI). Plaintiffs have also asserted statutory claims for conspiracy to interfere with
18 Civil Rights, in violation of 42 U.S.C. § 1985(3) (Count VII); and refusal or neglect to
19 prevent or aid in a conspiracy to interfere with Civil Rights, in violation of 42 U.S.C. §
20 1986 (Count VIII). In Counts IX—XI, Plaintiffs assert claims against the United States
21 Defendant under the FTCA for: intentional infliction of emotional distress (Count IX);
22 negligence (Count X); and loss of consortium (Count XI).

23 At present, two matters are fully briefed and awaiting resolution: (1) the Individual
24 Defendants’ Motion to Dismiss for Lack of Jurisdiction/Failure to State a Claim filed
25 pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) (*See* Doc. 52); and (2)
26 the United States Defendant’s Motion to Dismiss for Lack of Jurisdiction and for Improper
27 Venue filed pursuant to Federal Rules of Civil Procedure 12(b)(1) (*See* Doc. 53).

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1 **II. Legal Standard**

2 “[T]he power to stay proceedings is incidental to the power inherent in every court
3 to control the disposition of the causes on its docket with economy of time and effort for
4 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).
5 Nonetheless, “while it is the prerogative of the district court to manage its workload, case
6 management standing alone is not necessarily a sufficient ground to stay proceedings.”
7 *Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.
8 2007). When determining whether to issue a stay, courts must weigh “competing
9 interests,” which include: (1) the possible damage which may result from the granting of a
10 stay; (2) the hardship or inequity which a party may suffer in being required to go forward;
11 and, (3) the orderly course of justice measured in terms of the simplifying or complicating
12 of issues, proof, and questions of law which could be expected to result from a stay.
13 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (internal citations omitted).

14 **III. Analysis**

15 **A. Prejudice to the Non-Moving Party**

16 The crux of Individual Defendants’ opposition is that they will suffer prejudice if
17 the case is delayed—especially if Plaintiffs seek further abeyance for some unknown
18 period—due to settlement discussions unrelated to the claims against them. (*See* Doc. 64.)
19 Individual Defendants further contend that while settlement with the United States
20 Defendant may result in preclusion of the individual-capacity claims, it is not a valid basis
21 for delaying proceedings. Moreover, Individual Defendants assert that the individual-
22 capacity claims against them are subject to dismissal on independent legal grounds
23 unrelated to the claims against the United States Defendant. (*Id.* at 2.) Individual
24 Defendants ask the Court to deny the Motion as to the individual-capacity claims and
25 proceed to resolve the Individual Defendants’ motion to dismiss. (*Id.* at 2.)

26 Here, Plaintiff’s Motion is for a stay of 60-days. While the Court appreciates the
27 Individual Defendants’ concern regarding indefinite delay, that matter is not before the
28 Court. Individual Defendants’ argument that they are entitled to dismissal on independent

1 legal grounds, and that delay in resolving their motion to dismiss amounts to prejudice, is
2 undercut by the prospect of a settlement that might preclude individual-capacity claims.
3 At this stage of the proceedings, and before discovery has begun, a 60-day stay of the entire
4 action will not significantly prejudice the Individual Defendants. The Court will view any
5 future stay requests with skepticism absent, for example, a showing that Plaintiffs and the
6 United States Defendants are making meaningful progress towards settlement.

7 **B. Possible Hardship or Inequity to Plaintiffs if a Stay is Not Imposed**

8 Plaintiffs assert the following in support of their Motion:

9 ... settlement with the United States on the FTCA claims may
10 increase the prospect of resolving the claims against the
11 Individual Defendants. In particular, Plaintiffs expect that the
12 United States would insist that any settlement involve
13 dismissal of the claims against the Individual Defendants, as
14 has been the Justice Department’s normal course in cases
involving both FTCA and *Bivens* claims against individual
defendants.

15 (Doc 63 at 2) (italicization in original). Plaintiffs further contend that a stay would allow
16 Plaintiffs “to more fully focus their attention on these settlement efforts ... to dismiss the
17 FTCA claims ... and all proceedings and case deadlines for the FTCA claims.” (*Id.*)

18 Staying the entire action allows Plaintiff to concentrate efforts on deadlines
19 regarding their FTCA claims while possibly avoiding unnecessary litigation costs for
20 discovery and other motions as to the individual-capacity claims. Furthermore, Individual
21 Defendants concede that “[t]here are no deadlines to the individual-capacity claims that
22 need to be stayed.” (Doc. 64 at 2.) Given this context, the Court finds that the risk of harm
23 weighs in favor of Plaintiffs.

24 **C. Orderly Course of Justice**

25 Plaintiff’s note that settlement with the United States has previously resolved cases
26 involving both FTCA and *Bivens* claims. (Doc. 63 at 2.)

27 Here, a 60-day stay will promote judicial efficiency. Partial settlement has the
28 potential to narrow the issues involved in the case, including the scope of discovery and

1 the scope of Plaintiffs' class-certification request. Furthermore, there are questions of law
2 raised in the Individual Defendants' Motion to Dismiss regarding the availability of *Bivens*
3 remedies related to the three counts against the United States under the FTCA. Staying the
4 case at this juncture will avoid exhausting judicial resources to decide substantive motions
5 that may prove to have been unnecessary if settlement, with preclusion of individual-
6 capacity claims as a condition, is reached.

7 **IV. Conclusion**

8 **IT IS ORDERED GRANTING** Plaintiffs' Motion to Hold Action in Abeyance
9 (Doc. 63). **IT IS FURTHER ORDERED STAYING** this matter, including all remaining
10 deadlines and hearings, for a period of **SIXTY (60) DAYS** from the date of this order.

11 Dated this 1st day of June, 2021.

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15 Honorable John C. Hinderaker
16 United States District Judge
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