



U.S. Department of Justice

Civil Division

Washington, DC 20530

Via Email

September 29, 2020

Mr. Austin Evers
American Oversight
1030 15th Street NW
Suite B255
Washington, DC 20005
foia@americanoversight.org

Request No. 145-FOI-17379
ES:HDK

Dear Mr. Evers:

This letter is the response of the Civil Division, Department of Justice to your Freedom of Information Act (FOIA) request for records related to arbitration, NDAs, and communications dealing with Clifton “Cliff” Sims and the civil action *Sims v. Trump*. This Office received your request on June 5, 2020. By email dated June 12, 2020, your colleague, Ms. Katherine Anthony, narrowed the scope of the request to exclude “anyone communicating on [AAG Hunt’s] behalf, such as an assistant, chief of staff, or scheduler.”

The Civil Division located twenty-three pages responsive to your request. Thirteen pages are released to you in full and five pages are released to you in part. Five pages are withheld in full. For your information, duplicate portions were not processed and are not included in the page count. The Civil Division withheld certain information because it is protected from disclosure under the FOIA pursuant to:

- 5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by the deliberative process, attorney work-product, and attorney-client privileges; and
- 5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that we give to all our requesters. You should not take it as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison at 202-514-2319 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire

about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the Civil Division's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account on the following website: <https://foiastar.doj.gov>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Hirsh D. Kravitz", with a long, sweeping horizontal line extending to the right.

Hirsh D. Kravitz
Senior Supervisory FOIA Counsel
FOIA, Records, and E-Discovery Office

Enclosures

From: [Straus Harris, Julie \(CIV\)](#)
To: ["Mark Zaid"](#)
Cc: ["Brad Moss"](#)
Subject: RE: Sims v. Trump, 1:19-cv-345 (D.D.C.)
Date: Tuesday, November 12, 2019 10:10:00 PM
Attachments: [draft 12NOV2019.docx](#)

Mark,

A draft joint stipulation of dismissal is attached for your review. Please let me know if you have any proposed edits or, if not, if I have your permission to sign on your behalf and file this.

Thank you,

Julie

Julie Straus Harris

Trial Attorney

U.S. Department of Justice, Civil Division

Federal Programs Branch

(b) (6)

Julie.StrausHarris@usdoj.gov

From: Mark Zaid <mark@markzaid.com>

Sent: Tuesday, November 12, 2019 4:46 PM

To: Straus Harris, Julie (CIV) (b) (6)

Cc: Brad Moss <brad@markzaid.com>

Subject: Re: Sims v. Trump, 1:19-cv-345 (D.D.C.)

Yes, go ahead and prepare. Thanks.

Mark

On Tue, Nov 12, 2019 at 4:40 PM Straus Harris, Julie (CIV) <Julie.StrausHarris@usdoj.gov> wrote:

Mark,

Thank you for your message. Defendants would have no objection to the parties filing a joint stipulation of dismissal of this action with prejudice, with each side to bear its own fees and costs. I can prepare a joint stipulation for your review or, if you prefer, I'd be happy to review something that you've prepared.

Thank you,

Julie

Julie Straus Harris

Trial Attorney

U.S. Department of Justice, Civil Division

Federal Programs Branch

(b) (6)

Julie.StrausHarris@usdoj.gov

From: Mark Zaid <mark@markzaid.com>

Sent: Sunday, November 10, 2019 5:48 PM

To: Straus Harris, Julie (CIV) (b) (6)

Cc: Brad Moss <brad@markzaid.com>; Mark Zaid <mark@markzaid.com>

Subject: Sims v. Trump, 1:19-cv-345 (D.D.C.)

Julie -

If Mr. Sims was willing to voluntarily dismiss his lawsuit with prejudice, would the Govt be willing to assume its own fees/costs?

Mark

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Mark S. Zaid, Esq.

Mark S. Zaid, P.C.

1250 Connecticut Avenue, N.W.

Suite 700 ** Please note new suite number **

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Mark S. Zaid, Esq.

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

CLIFTON DAVID SIMS,

Plaintiff,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States; and
UNITED STATES OF AMERICA,

Defendants.

Case No. 1:19-cv-345 (CKK)

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the parties stipulate and agree to dismiss this action with prejudice, with each party to bear its own costs, attorney fees, and expenses.

Dated: November 13, 2019

Respectfully submitted,

/s/

Mark S. Zaid
D.C. Bar #440532
Bradley P. Moss, Esq.
D.C. Bar #975905
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JOSEPH H. HUNT
Assistant Attorney General

CHRISTOPHER R. HALL
Assistant Director
Civil Division, Federal Programs Branch

/s/ Julie Straus Harris
JULIE STRAUS HARRIS (DC Bar # 1021928)
Trial Attorney
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1100 L Street NW, Room 11514
Washington, D.C. 20005
Tel: (202) 353-7633
Fax: (202) 616-8470
E-mail: julie.strausharris@usdoj.gov

Counsel for Defendants

From: [Mark Zaid](#)
To: [Straus Harris, Julie \(CIV\)](#)
Cc: [Brad Moss](#); [Mark Zaid](#)
Subject: Re: Sims v. Trump, 1:19-cv-345 (D.D.C.)
Date: Monday, November 25, 2019 3:41:05 PM

We're still in a holding pattern. We hope this to be resolved any day but it's out of our control.

On Mon, Nov 25, 2019, 2:56 PM Straus Harris, Julie (CIV) <Julie.StrausHarris@usdoj.gov> wrote:

Mark,

Can you please provide an update on your filing of the parties' joint stipulation of dismissal? As you know, the parties will have a joint status report due to the Court on December 11, and it would be best to give the Court an opportunity to enter the dismissal prior to that date.

Thank you,

Julie

Julie Straus Harris

Trial Attorney

U.S. Department of Justice, Civil Division

Federal Programs Branch

(b) (6)

Julie.StrausHarris@usdoj.gov

From: Mark Zaid <mark@markzaid.com>
Sent: Friday, November 15, 2019 11:31 AM
To: Straus Harris, Julie (CIV) (b) (6)
Subject: Re: Sims v. Trump, 1:19-cv-345 (D.D.C.)

Yes. Calling now

On Fri, Nov 15, 2019, 11:01 AM Straus Harris, Julie (CIV) <Julie.StrausHarris@usdoj.gov> wrote:

Mark,

Should I expect a call from you this morning?

Thanks,

Julie

From: Mark Zaid <mark@markzaid.com>
Sent: Thursday, November 14, 2019 2:28 PM
To: Straus Harris, Julie (CIV) (b) (6)

Subject: Re: Sims v. Trump, 1:19-cv-345 (D.D.C.)

I'll try to call later this afternoon. Otherwise tomorrow morning.

On Thu, Nov 14, 2019, 11:14 AM Straus Harris, Julie (CIV) <Julie.StrausHarris@usdoj.gov> wrote:

Mark, do you have a few minutes for a brief phone call? I am at 202-353-7633, or let me know the best time and number to reach you. Thanks.

From: Mark Zaid <mark@markzaid.com>

Sent: Thursday, November 14, 2019 12:03 AM

To: Straus Harris, Julie (CIV (b) (6))

Cc: Brad Moss <brad@markzaid.com>; Mark Zaid <mark@markzaid.com>

Subject: Re: Sims v. Trump, 1:19-cv-345 (D.D.C.)

This will be fine, but do not file yet. I will take care of that shortly (I'll redate it when appropriate). Still need to finish some items. Thanks.

Mark

Duplicates

Begin forwarded message:

From: "Straus Harris, Julie (CIV)" (b) (6)
Date: August 8, 2019 at 7:24:55 PM EDT
To: "Burnham, James M. (CIV)" (b) (6)
Cc: "Hall, Christopher (CIV)" (b) (6)
Subject: FW: Activity in Case 1:19-cv-00345-CKK SIMS v. TRUMP et al Response to Order of the Court

Attached is the response as filed this evening in this case. I'll pass along the court's order when it comes in.

Thanks,
Julie

Julie Straus Harris
Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
(b) (6)
Julie.StrausHarris@usdoj.gov

From: DCD_ECFNotice@dcd.uscourts.gov <DCD_ECFNotice@dcd.uscourts.gov>
Sent: Thursday, August 08, 2019 7:23 PM
To: DCD_ECFNotice@dcd.uscourts.gov
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U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered by Straus Harris, Julie on 8/8/2019 at 7:22 PM and filed on 8/8/2019

Case Name: SIMS v. TRUMP et al
Case Number: 1:19-cv-00345-CKK
Filer: DONALD J. TRUMP
UNITED STATES OF AMERICA
Document Number: 17

Docket Text:

RESPONSE TO ORDER OF THE COURT re [15] Order filed by DONALD J. TRUMP, UNITED STATES OF AMERICA. (Straus Harris, Julie)

1:19-cv-00345-CKK Notice has been electronically mailed to:

Bradley Prescott Moss brad@markzaid.com

Julie Straus Harris julie.strausharris@usdoj.gov

Mark Steven Zaid Mark@MarkZaid.com, ZaidMS@aol.com

1:19-cv-00345-CKK Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:suppressed

Electronic document Stamp:

[STAMP dcecfStamp_ID=973800458 [Date=8/8/2019] [FileNumber=6145675-0]
[5250197087599a10eaf9a62c91cb0d0bed8ce47770d286a74671655f4f33141ffe66d
a1416b9f1e230c154ad3e60e4165edde8faf72061197701a837d39573a9]]

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

CLIFTON DAVID SIMS,

Plaintiff,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States; and
UNITED STATES OF AMERICA,

Defendants.

Case No. 1:19-cv-345 (CKK)

DEFENDANT’S RESPONSE TO JULY 31, 2019 ORDER

By Order dated July 31, 2019, the Court “proposes that this case, as well as Defendant’s Motion to Dismiss, be stayed pending a D.C. Circuit decision in *Lovitky* [*v. Trump*, No. 19-1454, 2019 WL 3068344 (D.D.C. July 12, 2019), *appeal docketed*, No. 19-5199 (D.C. Cir. July 16, 2019)] or *Blumenthal* [*v. Trump*, 382 F. Supp. 3d 77 (D.D.C. 2019), *remanded by In re Trump*, No. 19-5196, 2019 WL 3285234 (D.C. Cir. July 19, 2019)],” as the Court believes that in deciding one or both of the cited cases, “the D.C. Circuit may soon provide some clarity on th[e] issue” of “whether or not declaratory or injunctive relief can be granted against the President.” Order 1 (July 31, 2019), ECF No. 15. Under the Court’s proposal, “the Court would order the case stayed for 60 days or until the D.C. Circuit has issued a decision, whichever comes first[, and i]f necessary, the stay could be extended at the end of the 60 days.” *Id.* at 2.

Defendants have no objection to the Court’s proposed stay of this case, including resolution of Defendant’s Motion to Dismiss, ECF No. 8, pending a D.C. Circuit decision in *Lovitky* or *Blumenthal*. Staying this case pending appellate resolution of either *Lovitky* or *Blumenthal* would not prejudice Defendants, nor has Plaintiff asserted that it would prejudice him. *See* Pl.’s Resp. to

Court's Order Dated July 31, 2019, ECF No. 16. Defendants further submit, however, that rather than stay this proceeding for sixty days, it might best conserve judicial resources to stay this proceeding pending a D.C. Circuit decision in either *Lovitky* or *Blumenthal*, whenever such a decision comes. Neither case likely will be decided—or even fully briefed and argued—within sixty days. And the losing party in either case might seek additional appellate review of the D.C. Circuit's decision, thereby further delaying any potential forthcoming guidance from the appellate court on that question. Thus, judicial efficiency might best be served by dispensing with the contemplated initial 60-day stay in favor of an indefinite stay pending a final resolution of *Lovitky* or *Blumenthal*.

Dated: August 9, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

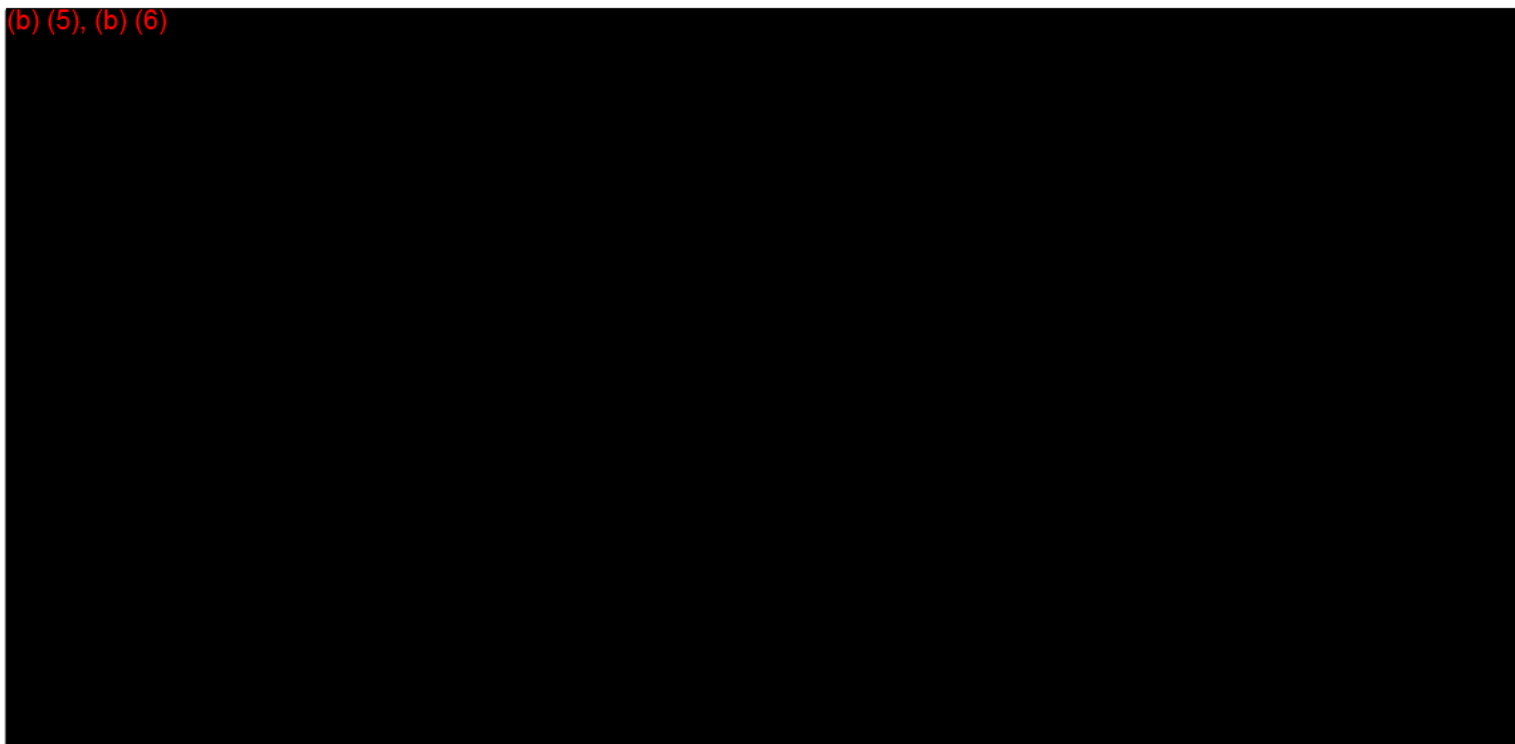
JAMES M. BURNHAM
Deputy Assistant Attorney General

CHRISTOPHER R. HALL
Assistant Director
Civil Division, Federal Programs Branch

/s/ Julie Straus Harris
JULIE STRAUS HARRIS (DC Bar # 1021928)
Trial Attorney
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Counsel for Defendants

(b) (5), (b) (6)



From: "Straus Harris, Julie (CIV)" (b) (6)
Date: August 8, 2019 at 8:43:48 PM EDT
To: "Burnham, James M. (CIV)" (b) (6)
Cc: "Hall, Christopher (CIV)" (b) (6)
Subject: FW: Activity in Case 1:19-cv-00345-CKK SIMS v. TRUMP et al Reply to Document

Julie Straus Harris
Trial Attorney
U.S. Department of Justice, Civil Division
Federal Programs Branch
(b) (6)
Julie.StrausHarris@usdoj.gov

From: DCD_ECFNotice@dcd.uscourts.gov <DCD_ECFNotice@dcd.uscourts.gov>
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District of Columbia

Notice of Electronic Filing

The following transaction was entered by Zaid, Mark on 8/8/2019 at 8:24 PM and filed on 8/8/2019

Case Name: SIMS v. TRUMP et al

Case Number: 1:19-cv-00345-CKK

Filer: CLIFTON DAVID SIMS

Document Number: 18

Docket Text:

REPLY to Defendants' Response to July 31, 2019 Order filed by CLIFTON DAVID SIMS. (Zaid, Mark)

1:19-cv-00345-CKK Notice has been electronically mailed to:

Bradley Prescott Moss brad@markzaid.com

Julie Straus Harris julie.strausharris@usdoj.gov

Mark Steven Zaid Mark@MarkZaid.com, ZaidMS@aol.com

1:19-cv-00345-CKK Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:suppressed

Electronic document Stamp:

[STAMP dcecfStamp_ID=973800458 [Date=8/8/2019] [FileNumber=6145694-0]
[37b54a9eedf1b5b07b5923de12e0054cf936f5d0d3cfc72693df8c7cca0ebf3329366
a7801ba8cc5a8536a383d35e0b767ec475c7366992b776e59f560a3b7ca]]

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

CLIFTON DAVID SIMS

Plaintiff,

v.

DONALD J. TRUMP et. al.

Defendants

* * * * *

Civil Action No. 19-cv-00345 (CKK)

**PLAINTIFF’S RESPONSE TO
DEFENDANT’S RESPONSE TO JULY 31, 2019 COURT ORDER**

By Order dated July 31, 2019, the parties were requested to respond to the Court’s proposal “that this case, as well as Defendant’s Motion to Dismiss, be stayed pending a D.C. Circuit decision in Lovitky or Blumenthal. Under this proposal, the Court would order the case stayed for 60 days or until the D.C. Circuit has issued a decision, whichever comes first. If necessary, the stay could be extended at the end of the 60 days.” Order at 2.

On August 7, 2019, the Plaintiff indicated he has no opposition to the Court’s proposed course of action.

On August 8, 2019, the Defendants responded that “rather than stay this proceeding for sixty days, it might best conserve judicial resources to stay this proceeding pending a D.C. Circuit decision in either Lovitky or Blumenthal, whenever such a decision comes.” Defendant’s Response to July 31, 2019 Court Order at 2 (filed August 8, 2019). Thus, the Defendants propose an “indefinite stay.” Id.

The Plaintiff strongly opposes the Defendants’ suggestion. It has long been well settled by courts throughout the United States that expedited attention should be given to cases involving First Amendment interests. See e.g., Action for Children’s Television v. FCC, 59 F.3d 1249, 1259 (D.C. Cir. 1995)(finding that “possibility that the agency’s actions might similarly run afoul of the first amendment demands prompt judicial

scrutiny”) cert. denied, 116 S.Ct. 773 (1996); Bernard v. Gulf Oil Co., 619 F.2d 459, 470 (5th Cir. 1980), aff’d, 452 U.S. 89 (1981)(“Fragile First Amendments rights are often lost or prejudiced by delay....Court have therefore been commendably willing to expedite proceedings involving First Amendment right.”); National Student Ass’n v. Hershey, 412 F.2d 1103, 1115 (D.C. Cir. 1969)(recognizing “urgency of prompt protection for frail First Amendment interests”); Potwora v. Dillon, 386 F.2d 7, 76 (2d Cir. 1967)(hearing case on expedited basis “[i]n light of plaintiffs’ representation that the order deprived them of important First Amendment rights”).¹

Indeed, the Supreme Court has held that there exists a “constitutional need to avoid ‘undue delay result[ing] in the unconstitutional suppression of protected speech.’” City of Littleton v. Z. J. Gifts D-4, L.L.C., 541 U.S. 774, 782 (2004), quoting FW/PBS, Inc. v. Dallas, 493 U.S. 215, 228 (1990). See also Freedman v. State of Maryland, 380 U.S. 51, 59-60 (1965)(providing mechanism for prompt review is necessary to avoid offending constitutional protections); Collin v. Smith, 578 F.2d 1197, 1209 (7th Cir. 1978)(“We have endeavored to expedite decision, because to delay the exercise of First Amendment rights in itself burdens them and may risk their destruction.”); Quarter Action Group v. Hickel, 421 F.2d 1111, 1116 (D.C. Cir. 1969)(noting “any delay in the exercise of First Amendment rights constitutes an irreparable injury to those seeking such exercise”) (citation omitted).

While the Plaintiff agrees with the Court’s logic to temporarily stay this case to see if the D.C. Circuit timely clarifies the state of the law on a relevant issue and reassess as time progresses, imposing a blanket indefinite suspension is inappropriate and infringes

¹ See also Auvil v. CBS “60 Minutes”, 800 F. Supp. 928, 937 (E.D. Wash. 1992)(“The public interest is best served by expeditious disposition of cases raising First Amendment issues.”); Collin v. Smith, 447 F. Supp. 676, 680 (N.D. Ill. 1978)(ordering “trial on an expedited schedule in view of the compelling national interest in prompt resolution of cases implicating First Amendment freedoms”); American Camping Ass’n v. Whalen, 465 F. Supp. 327, 330 (S.D.N.Y. 1978)(finding a “prompt trial on the merits is required” with First Amendment rights at stake).

upon the Plaintiff's protected First Amendment rights, especially since there may come a point where the Plaintiff wishes to proceed under the current circumstances, or propose an Amended Complaint that could avoid the present conflict.

Therefore, Plaintiff respectfully requests the Court implement the proposal it suggested and reject the Defendants' alternative.

Date: August 8, 2019

Respectfully submitted,

/s/

Mark S. Zaid, Esq.
D.C. Bar #440532
Bradley P. Moss, Esq.
D.C. Bar #975905
Mark S. Zaid, P.C.
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Washington, D.C. 20036
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Mark@MarkZaid.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLIFTON DAVID SMITH

Plasma,

4.

Civil Action No. 19-cv-00345 (CKC)

DONALD J. TRUMP *et al.*

Defendants

PLAINTIFF'S RESPONSE TO COURT ORDER DATED JULY 31, 2019

The Plaintiff, by and through his undersigned counsel, hereby respectfully responds to the Court's Order dated July 31, 2019, and indicates he has no opposition to the proposed course of action set forth therein.

Date: August 7, 2019

Respectfully submitted,

Mark S. Zaid, Esq.
D.C. Bar #449532
Bradley P. Moss, Esq.
D.C. Bar #975805
Mark S. Zaid, P.C.
1250 Connecticut Avenue, N.W.
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Answers for Reading

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

CLIFTON DAVID SIMS,

Plaintiff

v.

DONALD J. TRUMP, *et al.*,

Defendants

Civil Action No. 19-345 (CKK)

ORDER

(July 31, 2019)

The Court has is in receipt of Defendants' [8] Motion to Dismiss. The Court has read and considered the briefing on whether or not to dismiss Plaintiff's lawsuit. Defendants' arguments for dismissal can be divided into three categories: (1) the effect of the arbitration clause in Plaintiff's non-disclosure agreement, (2) whether or not the Court has subject matter jurisdiction, and (3) whether or not the Court should use its discretion to refuse to grant declaratory relief. *See* Defs.' Mot., ECF No 8-1. As a preliminary matter, the Court begins by considering whether or not it has jurisdiction to hear Plaintiff's Complaint. *See Cytori Therapeutics, Inc. v. Food & Drug Admin.*, 715 F.3d 922, 925 (D.C. Cir. 2013) (describing jurisdiction as a "preliminary matter").

In reviewing the parties' arguments concerning subject matter jurisdiction, the Court is most concerned about its ability to grant declaratory or injunctive relief against the President of the United States. As this Court recently explained, there is "lingering uncertainty" in decisions from both the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") as to whether or not declaratory or injunctive relief can be granted against the President. *Lovitky v. Trump*, No. 19-1454, 2019 WL 3068344, at *8-10 (D.D.C. July 12, 2019). However, it appears to the Court that the D.C. Circuit may soon provide some clarity on this issue.

In *Lovitky*, this Court recently stated that it "should not grant mandamus, injunctive, or declaratory relief against a sitting President to require performance of a ministerial duty." 2019 WL 3068344, at *10. Because this Court could not grant relief against a sitting President and because the plaintiff had not pursued relief against any lower officials, the Court found that the plaintiff's injury was not redressable and that he lacked standing. As such, the Court dismissed the lawsuit. *Id.* The plaintiff in *Lovitky* has appealed the Court's ruling. *See Lovitky v. Trump*, 19-5199 (D.C. Cir). On July 19, 2019, the plaintiff filed a consent motion for an expedited briefing schedule.

Additionally, another district court judge in this circuit has recently addressed this same issue and reached a different conclusion. In *Blumenthal v. Trump*, 373 F. Supp. 3d 191 (D.D.C. 2019), District Court Judge Emmet Sullivan denied the President’s motion to dismiss, concluding that, because compliance with the Emoluments Clause is a ministerial duty, injunctive relief could be granted against the President. 373 F. Supp. 3d at 211-12. Following, Judge Sullivan’s decision, the President moved for an interlocutory appeal of the issue pursuant to 28 U.S.C. § 1292(b), which Judge Sullivan initially denied. *See Blumenthal v. Trump*, 382 F. Supp. 3d 77 (D.D.C. 2019). However, the D.C. Circuit found that the denial of the motion to dismiss “squarely meet[s] the criteria for certification under Section 1292(b)” and remanded the matter to the district court for immediate reconsideration. *In re Trump*, No. 19-5196, 2019 WL 3285234 (D.C. Cir. July 19, 2019). Judge Sullivan has ordered re-briefing, which will be completed on August 12, 2019, on whether or not an interlocutory appeal should be granted. But, from the D.C. Circuit’s opinion, it seems likely that an interlocutory appeal will be granted.

The conflicting decisions in *Lovitky* and *Blumenthal* demonstrate the difficulties in deciding whether or not injunctive or declaratory relief can be granted against a sitting President. As this legal issue is currently unsettled, and as it appears likely that the issue will soon be decided by the D.C. Circuit, the Court proposes the following. The Court proposes that this case, as well as Defendant’s Motion to Dismiss, be stayed pending a D.C. Circuit decision in *Lovitky* or *Blumenthal*. Under this proposal, the Court would order the case stayed for 60 days or until the D.C. Circuit has issued a decision, whichever comes first. If necessary, the stay could be extended at the end of the 60 days. As Plaintiff has sued the President, and not any subordinate officials, the issue of whether or not declaratory or injunctive relief can be granted against the President is likely to be determinative of this Court’s jurisdiction. As such, the Court finds that it would be prudent to await guidance from the D.C. Circuit.

The Court ORDERS the parties to file Responses to the Court’s proposal by AUGUST 9, 2019. The parties should include among other things what if any prejudice there is to either party.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge