

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CASE NO.: 23SC188947  
 )  
 DONALD JOHN TRUMP, et al., )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

**Motion to Sever Defendant Meadows and to Stay Proceedings  
Pending a Final Federal Decision on Removal**

COMES NOW, Mark R. Meadows, by and through undersigned counsel, and respectfully moves this Court (i) to stay proceedings against Mr. Meadows pending a final determination (including through appeal, if an appeal is taken) on his Notice of Removal in *Georgia v. Meadows*, No. 1:23-cv-03621-SCJ (N.D. Ga.); and (ii) to sever the State's case against him from the other defendants pursuant to O.C.G.A. § 17-8-4(a).

**FACTUAL BACKGROUND**

On Monday, August 14, 2023, the State obtained an indictment against Mr. Meadows and 18 other defendants. Mr. Meadows is charged in Count 1 (Georgia RICO Act, O.C.G.A. § 16-14-4(c)) and Count 28 (Solicitation of Violation of Oath by Public Officer, O.C.G.A. §§ 16-4-7 & 16-10-1). Within less than 24 hours, on Tuesday, August 15, Mr. Meadows filed a Notice of Removal in the U.S. District Court for the Northern District of Georgia, *see Georgia v. Meadows*, No. 1:23-cv-03621-SCJ (N.D. Ga.), to remove the State's prosecution to federal court under the Federal Officer

Removal Statute, *see* 28 U.S.C. §§ 1442(a)(1), 1455. On Wednesday, August 16, the U.S. District Court for the Northern District of Georgia entered an order holding that Mr. Meadows had pleaded a facially valid basis for removal and scheduled an evidentiary hearing for Monday, August 28.

On Monday, August 28, the U.S. District Court for the Northern District of Georgia held an evidentiary hearing on Mr. Meadows's Notice of Removal. The Court took under advisement a decision on whether to permit removal and so notify this Court, which would have the effect of staying further proceedings in this Court. *See* 28 U.S.C. § 1455(b)(5). The court may rule at any moment that the State's prosecution of Mr. Meadows must proceed in federal court; if the court rules against removal, Mr. Meadows has the statutory right to appeal that determination to the U.S. Court of Appeals for the Eleventh Circuit. *See id.* § 1447(d). Mr. Meadows is not the only Defendant who has filed a Notice of Removal, however he is the only who has had an evidentiary hearing § 1455(b)(5), and he has asserted grounds removal unique to himself. Other defendants in this action, David Shafer and Jeffrey Clark, have filed a notice of removal in federal court and have recently filed motions to sever or stay proceedings.

### **ARGUMENT & CITATION TO AUTHORITY**

This Court has discretion to stay further proceedings against Mr. Meadows "as the ends of justice may require," O.C.G.A. § 17-8-22, and to sever the State's prosecution of Mr. Meadows, *see* O.C.G.A. § 17-8-4(a). The Court should exercise that discretion to stay further proceedings against him pending a final determination

(including through appeal, if an appeal is taken) on his Notice of Removal in *Georgia v. Meadows*, No. 1:23-cv-03621-SCJ (N.D. Ga.), and to sever the State’s prosecution of Mr. Meadows from its case against the remaining defendants.<sup>1</sup>

**First**, the federal rights Mr. Meadows has asserted under the Supremacy Clause of the Federal Constitution and the Federal Officer Removal Statute will be irreparably impaired if this state prosecution continues while his Notice of Removal remains pending.

The Supremacy Clause of the Federal Constitution protects federal officials not only from being convicted and sentenced in state court but also from being “arrested and brought to trial in a State court,” *Tennessee v. Davis*, 100 U.S. 257, 263 (1880) (emphasis added), when the charged conduct relates to their official duties. *See New York v. Tanella*, 374 F.3d 141, 147 (2nd Cir. 2004). The Federal Officer Removal Statute effectuates this protection by authorizing the removal to federal court of a “criminal prosecution that is commenced in a State court . . . against . . . any officer (or any person acting under that officer) of the United States . . . for or relating to any act under color of such office.” 28 U.S.C. § 1442(a). Former officials like Mr. Meadows are protected. The relevant question is whether the defendant was a federal official *at the time of the conduct charged*, not at the time of prosecution or removal. *See State*

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<sup>1</sup> Alternatively, this Court could exercise its discretion to extend the deadline for all pretrial motions, demurs, special pleas, and similar until a time after the court rules on the notice to remand in *Georgia v. Meadows*, No. 1:23-cv-03621-SCJ (N.D. Ga.). While a full stay of proceedings would best serve the interests of justice, at a minimum, an extension of the deadline for these pre-trial matters would be warranted. *See Holmes v. State*, 284 Ga. 330, 333 (Ga. 2008).

*of Maryland v. Soper*, 270 U.S. 9, 34–35 (1926); *Camero v. Kostos*, 253 F. Supp. 331, 335 (D.N.J. 1966). Protection of former federal officials protects *current* federal officials from being chilled in the exercise of their federal duties. *See, e.g., Denson v. United States*, 574 F.3d 1318, 1349 (11th Cir. 2009).

Mr. Meadows has acted as quickly as possible to assert his right to removal under federal law. The federal court has also acted promptly, having already determined that summary remand was unjustified on Wednesday, August 16, and having held an evidentiary hearing on Monday, August 28. *See* 28 U.S.C. § 1455(b)(4)–(5). All that remains is for the federal court to “make such disposition of the prosecution as justice shall require,” including by permitting removal and notifying this Court if the Court holds that removal is proper. *Id.* § 1455(b)(5). The court has taken that determination under advisement and its decision is pending. In the meantime, other defendants have invoked their right to a speedy trial under O.C.G.A. § 17-7-170(a). And the State has asked to try *all* defendants, including Mr. Meadows, starting October 23, 2023—***just 48 days from now***. Mr. Meadows has no interest in depriving other defendants of their rights under state law, but those defendants’ elections also should not prejudice Mr. Meadows’s rights under federal law.

The State’s continued prosecution of Mr. Meadows while his federal Notice of Removal remains pending inflicts the very burden of state-court litigation that he is diligently seeking to avoid and has a right to be free from under the Supremacy

Clause and the Federal Officer Removal Statute. The ends of justice therefore warrant a stay of proceedings as to Mr. Meadows.

**Second**, apart from Mr. Meadows’s rights under federal law, severance is warranted to minimize the risk of undue prejudice to other defendants and the State.

The Federal Officer Removal Statute by default removes to federal court the entire case, not just the charges against Mr. Meadows—whether or not other defendants wish to remove or have a legal basis to do so. *See Georgia v. Heinze*, 637 F. Supp. 3d 1316, 1325 n.8 (N.D. Ga. 2022) (“It is well settled that if one claim cognizable under Section 1442 is present, the entire action is removed, regardless of the relationship between the Section 1442 claim and the non-removable claims.”) (quoting *Nadler v. Mann*, 951 F.2d 301, 306 n.9 (11th Cir. 1992)). Mr. Meadows, of course, had no control over how the case was presented to the grand jury and seeks removal only on his own behalf. And once the case is removed, the State may be able to ask the federal court to sever and remand claims against non-removing defendants. *See, e.g., Joyner v. A.C. & R. Insulation Co.*, No. CIV. CCB-12-2294, 2013 WL 877125, at \*9-10 (D. Md. Mar. 7, 2013); *Spencer v. New Orleans Levee Bd.*, 737 F.2d 435, 438 (5th Cir. 1984). But once the federal court rules that removal is permitted and so notifies this court, this Court will not be able to proceed further, *see* 28 U.S.C. § 1455(b)(5)—including to sever claims against non-removing defendants.

For now, however, this Court may still exercise its discretion to sever the case against Mr. Meadows and thereby minimize the risk that Mr. Meadows’s success in removing his case to federal court will unduly prejudice other defendants or the State.

Moreover, the lack of a stay of these proceedings would prejudice Mr. Meadows ability to defend himself before this Court in the event that the federal courts subsequently remand the federal removal action back to this court. Maintaining an expedited federal proceeding while also preparing a full and vigorous defense in state court, under a potentially expedited timeframe, would substantially harm Mr. Meadows constitutional rights. *E.g. Avellaneda v. State*, 261 Ga. App. 83, 87 (2003) (“A trial court should sever the trials of co-defendants whenever it is necessary to achieve a fair determination of the guilt or innocence of a defendant.”) A stay or severance of Mr. Meadows is therefore warranted.

WHEREFORE, for the foregoing reasons, Mr. Meadows respectfully asks this Court to stay proceedings against Mr. Meadows pending a final determination (including through appeal, if an appeal is taken) on his Notice of Removal in *Georgia v. Meadows*, No. 1:23-cv-03621-SCJ (N.D. Ga.), and to sever the State’s case against him from the other defendants pursuant to O.C.G.A. § 17-8-4(a).

Respectfully submitted on this 6<sup>th</sup> day of September, 2023.

**GRIFFIN DURHAM TANNER &  
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By: /s/ James D. Durham

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**CERTIFICATE OF SERVICE**

I hereby certify I electronically filed the foregoing document with the Clerk of Court using Odyssey Efile Georgia electronic filing system that will send notification of such filing to all parties.

This 6<sup>th</sup> day of September, 2023.

**GRIFFIN DURHAM TANNER &  
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