

**Office of Adjudication
Federal Aviation Administration
Washington, D.C.**

In the Matter of)	
)	
Notice of Finding of Material Contribution)	Hearing Docket No. D13-19-01
)	
of Elvin Ortiz)	

DECISION ON REQUEST FOR STAY

This matter arises from a Motion to Stay the proceedings (“Motion”) filed with the Federal Aviation Administration’s (“FAA”) Hearing Officer. The FAA opposes the Motion. *Administrator’s Opposition to Stay*, dated January 23, 2020 (“*Opposition*”). On February 4, 2020, Ortiz filed a Reply to the Opposition (“Reply”). For the reasons discussed herein, the Motion is DENIED.

On June 13, 2019, the FAA through its Enforcement Division issued a Notice of Findings of Material Contribution (“Notice”) to Elvin Ortiz alleging that his conduct materially contributed to the revocation of the Air Agency Certificate for Arlet Aviation LLC (“Arlet”). On October 14, 2019, Ortiz filed a Request for Hearing and Answer with the FAA Hearing Docket. A hearing officer was appointed and a scheduling order issued. *Hearing Order*, dated October 28, 2019, *Scheduling Order*, dated November 21, 2019.

On December 12, 2019, the United States Attorney indicted Elvin Ortiz on nineteen counts in the United States District Court for the District of Puerto Rico, *United States v. Ortiz-Landron*, 19-784 (ADC). *Reply* at 1, Attachment 1. Ortiz pled not guilty at his arraignment and the matter is pending trial. *Id.* Consequently, Ortiz filed the Motion to stay because, he asserts, the instant action, which has the

“same nucleus of operative facts,” implicates his Fifth Amendment right against self-incrimination. *Id.*

A stay of proceedings is an “extraordinary remedy.” *Chao v. Fleming*, 498 F. Supp. 2d 1034, 1037 (W.D. Mich. 2007). It is warranted only in circumstances required by justice. *Id.* In other words, where a “pressing need for delay” exists that will not harm the other party or the public interest. *Ohio Env’tl. Council v. U.S. Dist. Court*, 565 F.2d 393, 396 (6th Cir. 1997). Courts, generally, employ a six part test to determine whether to grant a stay under this standard. They are:

- (1) The overlap of issues in the civil and criminal proceedings;
- (2) The status of the civil case;
- (3) The defendant’s interests;
- (4) The plaintiff’s interests;
- (5) The court’s interests; and
- (6) The public interest.

Chao, 498 F. Supp. 2d at 1037). The party requesting the stay has the burden to demonstrate the factors weigh in favor of a stay. *Ohio Env’tl. Council*, 565 F.2d at 396.

The First Three Factors

Ortiz asserts that the conduct alleged in the criminal indictment overlaps with that at issue in this material contribution case. *Reply* at 1. The FAA concedes this point. *Opposition* at 1. It argues, instead, that the issues in the two cases are attenuated. *Id.* at 2. The FAA already revoked Arlet’s certificate, and the only issue is whether Ortiz’s actions materially contributed to the revocation. *Id.* A review of the Notice and indictment show that both arise from the same underlying facts. *Compare Notice of Finding of Material Contribution*, Case Number 2019AGC10072

with United States v. Ortiz-Landron, 19-784 (ADC). It is not clear, however, that the issues raised in the criminal indictment overlap with the FAA's allegation that he materially contributed to the revocation of Arlet's certificate.

The case status criteria is satisfied. The matter will proceed with discovery and a hearing on the record absent a stay or proceedings.

Under the third factor, Ortiz argues that the lack of a stay implicates his Fifth Amendment right against self-incrimination. *Reply* at 1. This alone, however, is not dispositive. *United States v. Conn*, 2016 U.S. Dist. LEXIS 122514 at 22-23, *see also FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 627 (6th Cir. 2014) (A stay of proceedings is not automatic). In *Conn*, the court recognized the difficult decision a defendant faces in parallel proceedings. *Id.* The court observed, "If the defendants take the Fifth, they will be unavailable to testify in the civil proceeding. If they testify, they risk self-incrimination." *Id.* In that case, the court further noted that this is "a choice defendants must often make, even in the absence of an extra civil proceeding." *Id.* at 22.

An argument in favor of a stay is more persuasive in cases, as in the instant case, "where the defendant has already been indicted." *Chao*, 498 F. Supp. 2d at 1037. Nonetheless, the party requesting a stay must show substantial prejudice. *Conn*, 2016 U.S. Dist. LEXIS 122514 at 22 ("[Defendant] does not allege any significant prejudice beyond the typical choice whether to invoke his Fifth Amendment rights."). Here, Ortiz does not explain how he will be prejudiced other than the general assertion of his Fifth Amendment rights. *See generally Reply*.

The Remaining Factors

Ortiz argues that a stay will not prejudice the FAA because he is no longer running an "authorized repair station" or working as a mechanic. *Reply* at 6. His

licenses have also been “surrendered.” *Id.* Ortiz invokes, but does not elaborate on, the “extreme prejudice” if he has to balance the interests of his Fifth Amendment rights. *Id.*

Ortiz does point to FAA Order 2150.3C’s (the “Order”) provision on parallel criminal and administrative actions in support. *Reply* at 2-3 citing *FAA Order 2150.3C (FAA Compliance and Enforcement Program)*, Section 38-B at page 8-52. The FAA argues that this shows the distinct responsibilities between the U.S. Attorney and the FAA Enforcement Division. *Opposition* at 2. The U.S. Attorney prosecutes alleged criminal behavior, and the other with the enforcement of FAA regulations. *Id.*

The Order does not require a stay of an FAA enforcement action when there is a concurrent criminal prosecution. *FAA Order 2150.3C* at 8-52. It merely provides for instances when the FAA is “requested in writing by the DOT OIG, a U.S. attorney’s office, or other federal law enforcement agency” to hold the matter in abeyance. *Id.* In this case, the record does not show that the U.S. Attorney has made such a request, and that a stay order will not prejudice the government. Ortiz concedes the fifth element, that the administrative forum has an interest in moving the cases along. *Reply* at 6. Finally, the public interest disfavors a stay of proceedings. It is axiomatic that “public confidence in the FAA and its enforcement policies is an essential element of aviation safety.” *FAA v. Elfrink*, Order EA-3693; Docket SE-10033 (1992) at 13-14. They “benefit the public interest by fostering trust and confidence.” *Id.* Accordingly, a weighing of the factors favors denying a stay of the material contribution case.

Conclusion

The hearing officer finds that Elivin Ortiz has not met his burden to demonstrate the factors weigh in favor of a stay. *Ohio Env'tl. Council*, 565 F.2d at 396. Accordingly, the Motion is denied.



C. Scott Maravilla
Hearing Officer
FAA Office of Adjudication

May 20, 2020