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17
18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO-OAKLAND DIVISION

21 AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, AMERICAN
22 CIVIL LIBERTIES UNION OF HAWAI'I,
AND AMERICAN CIVIL LIBERTIES UNION
23 OF UTAH,

24 Plaintiffs,

25 v.

26 U.S. DEPARTMENT OF HOMELAND
SECURITY and U.S. CUSTOMS AND
27 BORDER PROTECTION,

28 Defendants.

Case No. 3:17-cv-01970-SBA

STATEMENT OF RECENT DECISION

1 In accordance with L.R. 7-3(d)(2), Plaintiffs American Civil Liberties Union of Northern
2 California, American Civil Liberties Union of Hawai‘i, and American Civil Liberties Union of
3 Utah (collectively, “Plaintiffs”) hereby bring to the Court’s attention a relevant judicial opinion
4 published after the date of filing of Plaintiffs’ Opposition to Defendants’ Motion to Stay (ECF No.
5 19). In particular, on June 6, 2017, the United States District Court for the Western District of
6 Washington issued an order denying the Motion to Stay Proceedings filed by Defendants
7 Department of Homeland Security and Customs and Border Protection in a FOIA case brought by
8 the American Civil Liberties of Washington. See Order Denying Motion to Stay Proceeding,
9 *ACLU of Washington v. DHS*, No. 17-cv-00562 (W.D. Wa. June 6, 2017), ECF No. 20 (attached
10 hereto as **Exhibit A**).

11
12 DATED this 7 June 2017.

13 Respectfully submitted,
14 DAVIS WRIGHT TREMAINE LLP

15 By: /s/ Thomas R. Burke
16 Thomas R. Burke
17 Attorneys for Plaintiffs
18 AMERICAN CIVIL LIBERTIES UNION OF
19 NORTHERN CALIFORNIA, AMERICAN
20 CIVIL LIBERTIES UNION OF HAWAI‘I, AND
21 AMERICAN CIVIL LIBERTIES UNION OF
22 UTAH
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DAVIS WRIGHT TREMAINE LLP

EXHIBIT A

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, *et al.*,

Defendants.

CASE NO. C17-0562RSL

ORDER DENYING MOTION TO
STAY PROCEEDING

This matter comes before the Court on “Defendants’ Motion to Stay Proceedings Pending Decision on Motion to Transfer.” Dkt. # 11. Having reviewed the memoranda submitted by the parties and the remainder of the record, the Court finds as follows:

On February 2, 2017, plaintiffs, ACLU affiliates in Washington, Montana, and North Dakota, made a request for records from the United States Customs & Border Protection (“CBP”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The request seeks information regarding the interpretation and implementation of an Executive Order¹ at international airports within the purview of the Seattle CBP Field Office. Plaintiffs requested expedited processing. When defendants failed to respond to the request for expedited

¹ The Executive Order was dated January 27, 2017, and titled “Protecting the Nation From Foreign Terrorist Entry Into the United States.”

1 processing and failed to produce responsive documents within the time allowed by statute,
2 plaintiffs filed this lawsuit.

3 At or about the same time, ACLU affiliates around the country filed twelve other
4 lawsuits attempting to force the production of documents related to the way their local CBP
5 Field Offices implemented the Executive Order. On May 8, 2017, defendants filed a motion
6 with the Judicial Panel on Multidistrict Litigation seeking transfer and consolidation of all
7 thirteen actions in the United States District Court for the District of Columbia. Defendants
8 seek to stay this litigation until the motion to transfer is resolved. Defendants assert, and
9 plaintiffs do not dispute, that the motion will likely be heard on July 27, 2017, with a decision
10 issued shortly thereafter. Defendants' response to the complaint in this matter is currently due
11 on June 29, 2017. The parties are to submit a joint status report on July 20, 2017, which will
12 trigger the issuance of a case management order.

13 Whether to stay proceedings while the Judicial Panel on Multidistrict Litigation
14 considers a motion to transfer is within the sole discretion of the transferor judge. In re Air
15 Crash Disaster at Paris, France, on Mar. 3, 1974, 376 F. Supp. 887, 888 (J.P.M.L. 1974).

16 "When considering a motion to stay, the district court should consider three factors:
17 (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party
18 if the action is not stayed; and (3) the judicial resources that would be saved by avoiding
19 duplicative litigation if the cases are in fact consolidated." Rivers v. Walt Disney Co., 980 F.
20 Supp. 1358, 1360 (C.D. Cal. 1997). See also Landis v. N. Am. Co., 299 U.S. 248, 254-55
21 (courts must weigh the competing interests which will be affected by a stay, including the
22 possible damage which may result from granting the stay, any hardship or inequity that may
23 arise if the matter moves forward, and judicial economy and efficiency).

24 The Court finds that this matter should proceed as currently scheduled. FOIA
25 represents a congressional mandate for full agency disclosure unless information falls within a
26

1 clearly delineated statutory exemption. One of its core purposes is to keep the citizenry
2 “informed about what their government is up to,” a vital hallmark of a functioning democracy.
3 U.S. Dep’t of Defense v. Fed. Labor Relations Auth., 510 U.S. 487, 495 (1994) (quoting U.S.
4 Dep’t of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 773 (1989)). The
5 February FOIA requests relate to matters of great public interest and are relevant to on-going
6 legal actions. In addition, local Field Offices may be a primary, if not the best, source for
7 information regarding how the Executive Order was interpreted and implemented, i.e., how
8 the agency performed its duties. Despite the standard 20-day response period (5 U.S.C.
9 § 552(a)(6)(A)(i)), there is no indication that defendants have initiated a search for, much less
10 produced, responsive documents or claimed any statutory exemptions. Plaintiffs’ and the
11 public’s right to know what the government is up to has already been delayed for more than
12 three months. Given the purposes for which FOIA was enacted, an open-ended stay of this
13 litigation would be prejudicial.


14 Plaintiff has alleged multiple violations of FOIA, namely that defendants failed to
15 comply with the 20-day deadline, failed to make the requested records available, and failed to
16 timely resolve the request for expedited processing. If this matter is not stayed, defendants will
17 be required to file a motion to dismiss or to answer plaintiffs’ allegations before the MDL
18 considers the motion to transfer. They will also be required to confer with counsel regarding
19 case management procedures and deadlines. Defendants argue that the thirteen pending
20 lawsuits are substantially similar, that defendants’ investigation and responses will be
21 centralized, and that requiring them to respond to each litigation is unnecessarily duplicative.
22 While there will undoubtedly be some duplication, defendants have not shown that it would
23 rise to the level of hardship or inequity. If defendants are right, the responses and case
24 management proposals throughout the country will be similar, if not identical, and will require
25 little more than a change of caption and formatting to accommodate the various districts in
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1 which these cases are pending. Case management conferences with thirteen sets of opposing
2 counsel will be time consuming, but they can be accomplished via telephone and will not
3 involve any extraordinary expense or delay.

4 The Court's interest in staying the case at this stage of the litigation is minimal. The
5 procedural and case management orders in this district are standardized, require little judicial
6 involvement, and are designed to move cases toward resolution in an efficient and expeditious
7 manner. Between now and the end of July, there is virtually no risk of inconsistent substantive
8 rulings. At most, there will be a pending motion to dismiss when the MDL decides whether to
9 grant defendants' transfer request. Whether the MDL takes the case or not, the issues raised in
10 the motion to dismiss will be ready for consideration by the assigned judicial officer.

11
12 For all of the forgoing reasons, the Court finds that the balance of relevant factors does
13 not warrant a stay. The duplication of effort of which defendants complain does not outweigh
14 plaintiffs' interest in full and timely agency disclosure regarding an issue of on-going national
15 interest. If the current, stipulated schedule remains in place, by the end of July 2017, the case
16 either will have a fully-briefed motion to dismiss ready for consideration or will be moving
17 crisply toward the filing of cross-motions for summary judgment. No judicial inefficiency or
18 waste are likely in the time frame at issue. The motion to stay proceedings (Dkt. # 11) is
19 DENIED.

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22 Dated this 5th day of June, 2017.

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24 _____
25 Robert S. Lasnik
26 United States District Judge