

1 CHAD A. READLER
Acting Assistant Attorney General
2 Civil Division

3 ALANA W. ROBINSON
Acting United States Attorney

4 ELIZABETH J. SHAPIRO
5 Deputy Director, Federal Programs Branch

6 MATTHEW J. BERNIS (DC 998094)
7 CHETAN A. PATIL (NY 4780599)
Trial Attorney
8 United States Department of Justice
Civil Division, Federal Programs Branch
9 20 Massachusetts Ave., NW
Washington, DC 20530
10 Tel.: (202) 305-4968; Fax: (202) 616-8470
Email: chetan.patil@usdoj.gov

11 *Attorneys for Defendants U.S. Department of*
Homeland Security and U.S. Customs and
12 *Border Protection*

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 AMERICAN CIVIL LIBERTIES UNION
16 OF SAN DIEGO AND IMPERIAL
17 COUNTIES,

18 Plaintiff,

19 v.

20 U.S. DEPARTMENT OF HOMELAND
21 SECURITY and U.S. CUSTOMS AND
22 BORDER PROTECTION,

23 Defendants.

Case No.: 3:17-cv-00733-L-JLB

**NOTICE OF SUPPLEMENTAL
AUTHORITY**

Judge: Hon. M. James Lorenz

Courtroom: 5B

Date: June 26, 2017

Time:

24
25 Defendants the U.S. Department of Homeland Security and U.S. Customs and
26 Border Protection hereby provide notice that on June 30, 2017, the United States
27 District Court for the Northern District of Georgia granted Defendants' motion for
28 a temporary stay of proceedings in one of the thirteen actions that Defendants have

1 asked the Judicial Panel on Multidistrict Litigation to centralize. *See ACLU of*
2 *Georgia, Inc., et al. v. U.S. Dep't of Homeland Sec., et al.*, No. 1:17-cv-1309-RWS
3 (N.D. Ga. June 30, 2017) (ECF No. 23). A copy of the Order is attached as Exhibit
4 1. At this time, seven courts have issued a stay of proceedings, and four courts
5 have denied Defendants' motion for a stay.

6
7 Dated: July 3, 2017

Respectfully submitted,

8 CHAD A. READLER
9 Acting Assistant Attorney General

10 ALANA W. ROBINSON
11 Acting United States Attorney

12 ELIZABETH J. SHAPIRO
13 Deputy Director, Federal Programs Branch

14 /s/ Chetan A. Patil
15 MATTHEW J. BERNS
16 CHETAN A. PATIL
17 Trial Attorneys
18 United States Department of Justice
19 Civil Division, Federal Programs Branch
20 20 Massachusetts Ave., NW
21 Washington, DC 20530
22 Tel.: (202) 305-4968; Fax: (202) 616-8470
23 Email: chetan.patil@usdoj.gov

24 *Attorneys for Defendants U.S. Department*
25 *of Homeland Security and U.S. Customs and*
26 *Border Protection*

1 CHAD A. READLER
Acting Assistant Attorney General
2 Civil Division

3 ALANA W. ROBINSON
Acting United States Attorney

4 ELIZABETH J. SHAPIRO
5 Deputy Director, Federal Programs Branch

6 MATTHEW J. BERNS (DC 998094)
7 CHETAN A. PATIL (NY 4780599)
Trial Attorney
8 United States Department of Justice
Civil Division, Federal Programs Branch
9 20 Massachusetts Ave., NW
Washington, DC 20530
10 Tel.: (202) 305-4968; Fax: (202) 616-8470
Email: chetan.patil@usdoj.gov

11 *Attorneys for Defendants U.S. Department of*
Homeland Security and U.S. Customs and
12 *Border Protection*

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 AMERICAN CIVIL LIBERTIES UNION
16 OF SAN DIEGO AND IMPERIAL
17 COUNTIES,

18 Plaintiff,

19 v.

20 U.S. DEPARTMENT OF HOMELAND
21 SECURITY and U.S. CUSTOMS AND
22 BORDER PROTECTION,

23 Defendants.
24

Case No.: 3:17-cv-00733-L-JLB

**EXHIBIT TO DEFENDANTS’
NOTICE OF SUPPLEMENTAL
AUTHORITY**

Exhibit No.	Description	Page Numbers
1	Order re Defendants’ Motion to Stay Proceedings Pending Decision on Motion to Transfer, <i>ACLU of Georgia, Inc., et al. v. U.S. Dep’t of Homeland Sec., et al.</i> , No. 1:17-cv-1309-RWS (N.D. Ga. June 30, 2017)	Ex. 1-001-006

Dated: July 3, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ALANA W. ROBINSON
Acting United States Attorney

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Chetan A. Patil
MATTHEW J. BERNS
CHETAN A. PATIL
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, DC 20530
Tel.: (202) 305-4968; Fax: (202) 616-8470
Email: chetan.patil@usdoj.gov

*Attorneys for Defendants U.S. Department
of Homeland Security and U.S. Customs and
Border Protection*

Exhibit 1

Order re Defendants' Motion to Stay
Proceedings Pending Decision on Motion to
Transfer, *ACLU of Georgia, Inc., et al. v. U.S.
Dep't of Homeland Sec., et al.*, No. 1:17-cv-
1309-RWS (N.D. Ga. June 30, 2017)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

AMERICAN CIVIL LIBERTIES	:	
UNION OF GEORGIA, INC.,	:	
AMERICAN CIVIL LIBERTIES	:	
UNION OF NORTH CAROLINA,	:	
INC., AMERICAN CIVIL	:	CIVIL ACTION NO.
LIBERTIES UNION OF SOUTH	:	1:17-CV-1309-RWS
CAROLINA, INC., and	:	
AMERICAN CIVIL LIBERTIES	:	
UNION OF WEST VIRGINIA,	:	
INC.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
U.S. DEPARTMENT OF	:	
HOMELAND SECURITY and	:	
U.S. CUSTOMS AND BORDER	:	
PROTECTION,	:	
	:	
Defendants.	:	

ORDER

This case comes before the Court on Defendants’ Motion to Stay Proceedings Pending Decision on Motion to Transfer [9] and Consent Motion by Defendants for Extension of Time to Respond to Complaint [22]. After considering the record, the Court enters the following order.

Background

On February 2, 2017, Plaintiffs sent Defendants a Freedom of Information Act (“FOIA”) request, seeking records concerning local implementation of President Trump’s January 27, 2017 Executive Order titled “Protecting the Nation From Foreign Terrorist Entry Into the United States” and any related judicial or executive order. (Compl., Dkt. [1] ¶¶ 1-2.) On April 12, 2017, Plaintiffs filed this action under FOIA, alleging that Defendants violated FOIA by: failing to timely determine whether they would comply with Plaintiffs’ request (Count One); failing to make the requested records available (Count Two); and failing to timely determine whether they would expedite the processing of Plaintiffs’ request (Count Three).

This case is one of thirteen similar actions pending in thirteen different district courts. Each of those actions involves identical or similar FOIA requests directed by the American Civil Liberties Union (“ACLU”) to U.S. Customs and Border Protection field offices across the country. On May 8, 2017, Defendants filed a motion with the Judicial Panel on Multidistrict Litigation (“JPML”) seeking to consolidate this case with the other twelve related cases that the ACLU has filed. The JPML has scheduled a hearing on Defendants’ motion for July 27,

2017. (Defs.’ Reply Br. in Supp. of Mot. to Stay Proceedings Pending Decision on Mot. to Transfer (“Defs.’ Reply Br.”), Dkt. [16] at 6.)

On May 12, 2017, Defendants filed their Motion to Stay Proceedings [9], asking the Court to stay this case pending a decision by the JPML on whether to consolidate this case with the other twelve. Plaintiffs oppose the stay, arguing that it will result in unfair and undue delay. On June 30, 2017, Defendants filed a Consent Motion by Defendants for Extension of Time to Respond to Complaint [22], which would extend the time for filing Defendants’ responsive pleading to July 15, 2017.

Discussion

I. Legal Standard

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). The decision whether to grant or deny a stay is left to the discretion of the court. Id. “When considering a motion to stay, the district court should consider three factors: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the

judicial resources that would be saved by avoiding duplicative litigation if the cases are in fact consolidated.” Fowler v. Hamilton Med. Ctr., Inc., 2008 WL 11336192, at *2 (N.D. Ga. May 7, 2008) (quoting Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).

II. Analysis

Having considered the above factors, the Court finds that entering a stay is appropriate at this time. To begin, entering a stay will not prejudice Plaintiffs because it will not further delay the release of responsive records. Defendants represent that a stay of short duration “would have no effect on the timing of Defendants’ release of responsive records” for two reasons. (Defs.’ Reply Br., Dkt. [16] at 2). First, “Defendants’ processing of the ACLU affiliates’ FOIA requests is ongoing and will continue with or without a stay.” (Id. at 5 n.1.) Second, Defendants “have granted Plaintiffs’ request for expedited treatment and have placed the coordinated requests of all the ACLU affiliates in the expedited processing queue, ahead of all non-expedited requests and later expedited requests.” (Id. at 7.) These representations assuage the ACLU’s—and the Court’s—concerns about delaying the release of responsive records. As long as Defendants keep to their representations, a stay will not run afoul of Plaintiffs’

rights under FOIA. And should Plaintiffs later encounter new reasons for concern about delay, the Court can always consider whether the circumstances warrant lifting the stay. As an additional note, Plaintiffs' consent to extending Defendants' time to file an answer indicates that Plaintiffs are willing to delay the proceedings at least to some extent and that they will not be prejudiced by a slight delay.

Turning to the second and third factors, absent a stay, Defendants and the Court will be forced to undertake work in this case that may ultimately prove unnecessary. While the burden of having to "simultaneously answer complaints, appear in status conferences, confer with opposing counsel, and submit joint status reports in thirteen actions" may not be overwhelming, it is nonetheless worth avoiding given the likelihood that the JPML will issue a decision in a matter of weeks. (Defs.' Reply Br., Dkt. [16] at 9.) Thus, from an efficiency standpoint, entering a stay appears to be the best course. Because all three factors weigh in favor of entering a stay, Defendants' motion is **GRANTED**.

Conclusion

For the foregoing reasons, Defendants' Motion to Stay Proceedings Pending Decision on Motion to Transfer [9] is **GRANTED**. This case is hereby **STAYED** pending a decision from the JPML on whether to consolidate this case with the

other twelve related cases. Defendants' Consent Motion by Defendants for Extension of Time to Respond to Complaint [22] is **DENIED as moot**.

SO ORDERED, this 30th day of June, 2017.



RICHARD W. STORY
United States District Judge