

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

AMERICAN CIVIL LIBERTIES)	
UNION OF VIRGINIA, <u>et al.</u>)	
)	
Plaintiffs,)	
)	
v.)	1:17-cv-441 (LMB/IDD)
)	
U.S. DEPARTMENT OF HOMELAND)	
SECURITY, <u>et al.</u> ,)	
)	
Defendants.)	

ORDER

Before the Court is the defendants’ Motion to Stay Proceedings Pending Decision on Motion to Transfer [Dkt. No. 24] to which plaintiffs have responded [Dkt. No. 30]. Finding that oral argument will not assist the decisional process, the motion will be granted for the following reasons.

On April 12, 2017, plaintiffs filed this civil action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking various records from the U.S. Department of Homeland Security (“DHS”) and U.S. Customs and Border Protection (“CBP”) related to Executive Order 13769. [Dkt. No. 1]. This civil action is one of 13 civil actions pending in 13 different district courts, all of which were filed by various chapters of the American Civil Liberties Union (“ACLU”) between April 10 and 12, 2017.¹

¹ ACLU of Northern California v. DHS, No. 17-cv-1970 (N.D. Cal. filed Apr. 10, 2017); ACLU of Virginia v. DHS, No. 17-cv-441 (E.D. Va. filed Apr. 12, 2017); ACLU of Georgia, Inc. v. DHS, No. 17-cv-1309 (N.D. Ga. filed Apr. 12, 2017); ACLU of Illinois v. DHS, No. 17-cv-2768 (N.D. Ill. filed Apr. 12, 2017); ACLU of Florida v. DHS, No. 17-cv-21382 (S.D. Fla. filed Apr. 12, 2017); ACLU of Maine v. CBP, No. 17-cv-132 (D. Me. filed Apr. 12, 2017); ACLU of Washington v. DHS, No. 17-cv-562 (W.D. Wash. filed Apr. 12, 2017); ACLU of Arizona v. DHS, No. 17-cv-1083 (D. Ariz. filed Apr. 12, 2017); ACLU of Southern California v. DHS, No.

Although the complaints have some minor variations, they are essentially directed at the same information.² On May 8, 2017, the defendants promptly filed a motion asking the Judicial Panel on Multidistrict Litigation (“JPML”) to consolidate all these civil actions under 28 U.S.C. § 1407 and transfer them to the United States District Court for the District of Columbia. According to the defendants, the JPML is expected to hear arguments on that motion on July 27, 2017. Defendants have moved this Court to stay all action in this lawsuit until the JPML has ruled on their motion. [Dkt. No. 24]. Plaintiffs oppose the stay arguing that it will result in unfair and undue delay. [Dkt. No. 30].

The decision whether to grant or deny a stay is left to the discretion of the court. Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). Although a court has the power to deny a stay of proceedings while the JPML is considering a transfer motion, it is not required to do so, and, as the defendants argue, the normal practice is to grant stays when such transfer motions are pending. Commonwealth of Virginia ex rel. Integra Rec LLC v. Countrywide Sec. Corp., No. 3:14-CV-706, 2015 WL 222312, at *3 (E.D. Va. Jan. 14, 2015) (“Courts frequently grant stays while awaiting a JPML decision about the inclusion of a pending case into an MDL.”). In deciding whether to grant a stay, courts consider three factors: “(1) whether judicial resources will be saved and duplicative litigation avoided if the case is consolidated in an MDL; (2) prejudice to the party opposing the stay; and[,] (3) the moving party’s hardship and inequity if the action is not stayed.” Wood v. Johnson & Johnson, No. WDQ-12-1572, 2012 WL 3240934, at *2 (D. Md. Aug. 3, 2012).

17-cv-2778 (C.D. Cal. filed Apr. 12, 2017); ACLU of Oregon v. DHS, No. 17-cv-575 (D. Or. filed Apr. 12, 2017); ACLU of San Diego & Imperial Cnties. v. DHS, No. 17-cv-733 (S.D. Cal. filed Apr. 12, 2017); ACLU Found. of Texas, Inc. v. CBP, No. 17-cv-1128 (S.D. Tex. filed Apr. 12, 2017); ACLU of Michigan v. DHS, No. 17-cv-11149 (E.D. Mich. filed Apr. 12, 2017).

² See [Dkt. No. 21-3] at 8.

This Court has considered all three factors and finds that denying a stay will not prejudice the plaintiffs whereas failure to do so will cause the defendants unnecessary and burdensomely duplicative litigation in 13 different districts and, of most significance, would waste judicial resources with duplicative legal issues and pose the risk of inconsistent decisions from different courts. This last consideration has already materialized. According to materials submitted by the parties, of the four courts which have adjudicated motions to stay similar to the pending motion, three have denied stays, see American Civil Liberties Union of Mich. v. DHS, No. 17-cv-11149 (E.D. Mich. June 22, 2017), ECF No. 28; American Civil Liberties Union of N. Cal. v. DHS, No. 4:17-cv-01970 (N.D. Cal. June 22, 2017), ECF No. 28; ACLU of Wash. v. DHS, No. 2:17-cv-00562 (W.D. Wash. June 6, 2017), ECF No. 20, and one has granted a stay, see ACLU of Maine v. CBP, No. 17-cv-00132 (D. Me. June 19, 2017), ECF No. 20. This is exactly the kind of duplicative judicial proceedings and inconsistent results the multidistrict litigation statute aims to minimize. Judicial resources are limited resources and, unless there is a compelling reason to allow duplicative litigation to go forward in multiple jurisdictions, these resources should be directed in the most efficient fashion, which militates in favor of staying this litigation pending the JPML's decision.

Lastly, although plaintiffs have argued that the motion to stay is a delaying tactic, there is no reason to assume bad faith on the defendants' part. To the contrary, as represented in their reply brief, the defendants have expedited the plaintiffs' request, therefore even if a stay is imposed, defendants will place plaintiffs' document request in the expedited FOIA processing queue and will continue to compile and review records during the stay. [Dkt. No. 32] at 4. Moreover, there is no evidence that a stay will cause delay as plaintiffs have failed to identify

any action that will occur in this Court before the JPML's decision that would hasten the release of responsive documents.

For all these reasons, defendants' Motion to Stay Proceedings Pending Decision on Motion to Transfer [Dkt. No. 24] is GRANTED, and it is hereby

ORDERED that this civil action be and is STAYED until further order of the Court.

The Clerk is directed to forward a copy of this Order to counsel of record, remove argument of defendants' motion from the June 30 docket, and remove this civil action from the active docket of the Court.

Entered this 26th day of June, 2017

Alexandria, Virginia

ls/ LMB

Leonie M. Brinkema
United States District Judge