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Sued in their Official Capacities*

15
16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
OAKLAND DIVISION

18 CAROLYN JEWEL, *et al.*,

19 Plaintiffs,

20 v.

21 NATIONAL SECURITY AGENCY,
22 *et al.*,

23 Defendants.

) Case No. 4:08-cv-04373-JSW

) **GOVERNMENT DEFENDANTS'**
) **ADMINISTRATIVE MOTION FOR A**
) **STAY OF PROCEEDINGS IN LIGHT**
) **OF LAPSE OF APPROPRIATIONS**

) Hon. Jeffrey S. White
) Courtroom 5, 2nd Floor
) Oakland Courthouse

) No hearing scheduled

1 Pursuant to Local Rules 6-1(b) and 7-11, the Government Defendants respectfully request
2 a stay of proceedings, including of the scheduled February 1, 2019, motions hearing, in the
3 above-captioned case.

4 1. At the end of the day on December 21, 2018, the appropriations act that had been
5 funding the Department of Justice expired and appropriations to the Department lapsed. The
6 Department does not know when funding will be restored by Congress.

7 2. Absent an appropriation, the Department of Justice attorneys assigned as trial
8 counsel for the Government Defendants in this case are prohibited from working, even on a
9 voluntary basis, except in very limited circumstances, including “emergencies involving the
10 safety of human life or the protection of property.” 31 U.S.C. § 1342.

11 3. The Government Defendants therefore request a stay of proceedings in this case –
12 including of the upcoming February 1, 2019, hearing on the Government Defendants’ Motion for
13 Summary Judgment and Plaintiffs’ Motion to Proceed to Resolution on the Merits, see ECF No.
14 440—until Congress has restored appropriations to the Department.

15 4. If this motion for a stay is granted, the Government Defendants will notify the
16 Court as soon as Congress has appropriated funds for the Department. The Government requests
17 that, at that point, all current deadlines and events in the case be extended commensurate with the
18 duration of the lapse in appropriations.

19 5. Undersigned counsel contacted counsel for Plaintiffs to obtain Plaintiffs’ position
20 on this motion, and was advised that Plaintiffs object to the stay of proceedings requested herein.
21 Plaintiffs requested that the Government include the following statement of their position in this
22 motion:

23 Plaintiffs oppose any motion to stay proceedings at this time or to postpone the
24 February 1, 2019 hearing. This lawsuit has been subject to numerous stays, delays,
25 and requests for extensions by the government, and is now over a decade old. The
26 only matter currently on calendar is the February 1, 2019 motion hearing. It appears
27 that under the Department of Justice’s shutdown plan, if the Court denies a stay,
28 government counsel will be authorized to continuing work on the case, including
participating in the February 1, 2019 hearing: "If a court denies such a request [for a
stay] and orders a case to continue, the Government will comply with the court’s
order, which would constitute express legal authorization for the activity to
continue." U.S. Department of Justice FY 2019 Contingency Plan, at p. 3, available
at <https://www.justice.gov/jmd/page/file/1015676/download>."

1 The Government Defendants observe that the same Department contingency plan cited by
2 Plaintiffs also provides that, “Litigators will continue to approach the courts and request that
3 active cases, except for those in which postponement would compromise to a significant degree
4 the safety of human life or the protection of property, be postponed until funding is available.”

5 This motion is filed in accordance with that directive.

6 6. Therefore, although Government Defendants greatly regret any disruption caused
7 to the Court and the other litigants, the Government hereby moves for a stay of proceedings in
8 this case, including of the upcoming February 1, 2019, motions hearing, until the Department of
9 Justice trial attorneys assigned as counsel for the Government Defendants are permitted to
10 resume their usual civil litigation functions.

11 Dated: January 16, 2019

12
13 Respectfully submitted,

14 JOSEPH H. HUNT
Assistant Attorney General

15 ANTHONY J. COPPOLINO
Deputy Branch Director

16
17 /s/ James J. Gilligan
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