

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAROLYN JEWEL, ET AL.,

Plaintiffs,

No. C 08-04373 JSW

v.

NATIONAL SECURITY AGENCY, ET AL.,

Defendants.

**ORDER RE ADMINISTRATIVE  
MOTION FOR A STAY IN LIGHT  
OF LAPSE OF APPROPRIATIONS**

Now before the Court is the administrative motion filed by Government Defendants for a stay in the proceedings in light of the lapse of appropriations.

The Antideficiency Act provides that “[a]n officer or employee of the United States Government . . . may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

The Department of Justice has issued a contingency plan setting forth the Department’s planned operations during a lapse in appropriations which “assumes that the Judicial branch will continue to operate through the furlough.” U.S. Dep’t of Justice, FY 2019 Contingency Plan (Jan. 10, 2019) at 3. The Plan also provides that “[c]ivil litigation will be curtailed or

1 postponed to the extent that this can be done without compromising to a significant degree the  
2 safety of human life or the protection of property.” *Id.* For civil litigation, the Department has  
3 been instructed to request that active cases be postponed until funding is available. If, however,  
4 “a court denies such a request and orders a case to continue, the Government will comply with  
5 the court’s order, which would constitute express legal authorization for the activity to  
6 continue.” *Id.*

7 The courts have been “urged to be sympathetic to requests for continuances or other  
8 motions necessitated by phase-down activities in the executive branch.” *Guide to Judicial*  
9 *Policy*, Vol. 13, Ch. 2, § 220.30.15.

10 Having found no indication that the safety of human life or the protection of property  
11 militates against being sympathetic to the Department’s request, but considering the multitude  
12 of delays in this matter and the Ninth Circuit’s admonition to comprehensively and  
13 expeditiously address the threshold legal issues in this matter, the Court GRANTS a temporary  
14 short stay of the hearing. The hearing shall be continued to March 29, 2019 at 9:00 a.m. The  
15 Court will not entertain any further request for a stay based upon the grounds of lapse of  
16 appropriations.

17  
18 **IT IS SO ORDERED.**

19 Dated: January 22, 2019

  
\_\_\_\_\_  
JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE