

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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

Plaintiffs,

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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 Order<sup>1</sup> 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

<sup>1</sup> 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  
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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.

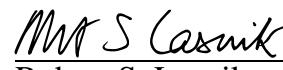
14 Plaintiff has alleged multiple violations of FOIA, namely that defendants failed to  
15 comply with the 20-day deadline, failed to make the requested records available, and failed to  
16 timely resolve the request for expedited processing. If this matter is not stayed, defendants will  
17 be required 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 Robert S. Lasnik  
25 United States District Judge  
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