

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC PRIVACY INFORMATION  
CENTER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendants.

Civil Action No. 1:18-cv-02711 (DLF)

**DEFENDANTS' MOTION FOR A STAY IN LIGHT OF THE LAPSE OF  
APPROPRIATIONS OR, IN THE ALTERNATIVE,  
AN EXTENSION OF TIME TO FILE A RESPONSE TO PLAINTIFF'S MOTION  
FOR A PRELIMINARY INJUNCTION AND TO RESPOND TO THE COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), Defendants United States Department of Commerce and United States Census Bureau (collectively "Defendants") respectfully request a stay of proceedings in this case in light of the lapse in appropriations for the Departments of Justice and Commerce. In the alternative, Defendants respectfully request a modest seven-day extension of time, up to and including February 1, 2019, in which to submit their response to Plaintiff's Motion for a Preliminary Injunction, ECF No. 8. Defendants also respectfully request that the deadline for Defendants to respond to the Complaint be extended until 30 days after the Court resolves Plaintiff's Motion for a Preliminary Injunction. In support of this motion, Defendants state the following:

1. On November 20, 2018, Plaintiff filed the Complaint in this matter. *See* ECF No. 1. Plaintiff served the United States Attorney for the District of Columbia on November 26, 2018. *See* Return of Service, ECF No. 4. Accordingly, the deadline for Defendants to respond to the Complaint is currently January 25, 2019. *See* Fed. R. Civ. P. 12(a)(2).

2. On January 18, 2019, Plaintiff moved for a preliminary injunction. *See* Pl.’s Mot. for a Prelim. Inj., ECF No. 8. The Court subsequently ordered Defendants to submit their response to the preliminary injunction motion on or before January 25, 2019, and scheduled the motion for hearing on February 8, 2019. *See* Minute Order (Jan. 18, 2019). As noted above, Defendants’ response to Plaintiff’s Complaint also is due on or before January 25.

3. At the end of the day on December 21, 2018, the appropriations act that had been funding the Departments of Justice and Commerce expired and appropriations lapsed. Neither Department knows when funding will be restored by Congress.

4. Absent an appropriation, Department of Justice attorneys and employees of the Department of Commerce are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

5. Undersigned counsel therefore requests a stay of proceedings until such time as Congress has restored appropriations to the Departments of Justice and Commerce. If the Court declines to enter an indefinite stay, undersigned counsel respectfully requests that the Court stay proceedings for the length of time it deems appropriate.

6. Alternatively, if the Court declines to stay proceedings for any length of time, undersigned counsel respectfully requests that the Court extend the deadline to respond to

Plaintiff's Motion for a Preliminary Injunction by seven-days, up to and including February 1, 2019. Good cause exists for such a request.

7. Following the Court's January 18, 2019, Minute Order, the Department of Justice had to recall the undersigned attorneys from furlough-status to work on this matter. Employees of the Department of Commerce that are familiar with the Census Bureau's IT systems and the agency's Privacy Impact Assessments also had to be recalled from furloughed status. This process was made more difficult by the Martin Luther King, Jr. holiday.

8. Given the complications created by the lapse in appropriations and the Martin Luther King, Jr. holiday, Defendants respectfully request a seven-day extension of time, up to and including February 1, 2019, to submit their response to Plaintiff's motion for a preliminary injunction. This extension of time will not alter the status quo or otherwise prejudice Plaintiff. As Plaintiff notes in its memorandum in support of its motion for a preliminary injunction, the Census Bureau will not begin "printing, addressing, and mailing of Internet invitations, reminder cards or letters, and paper questionnaire packages" for the 2020 census until June 2019. *See* Pl.'s Mot. for a Prelim. Inj. at 28. Therefore, even with the proposed extension, there is adequate time to resolve Plaintiff's motion prior to any potential injury.

9. Undersigned counsel also request that the Court extend the deadline to respond to the Complaint until 30-days from the date the Court resolves Plaintiff's motion for preliminary injunction. Resolution of the legal issues presented in Plaintiff's motion will likely have a significant, if not dispositive, impact on this case. Extending the time for Defendants to submit their response to the Complaint until 30-days after the Court's resolution of Plaintiff's motion would maximize the efficient use of resources for both the parties and the Court, especially during the lapse of appropriations.

10. Undersigned counsel has conferred with Plaintiff's counsel, who conveyed that Plaintiff does not consent to a stay, does not consent to an extension of time to respond to the motion for preliminary injunction, and does not consent to the proposed extension of time in which to respond to the Complaint. Plaintiff's counsel did note, however, that, provided that the Court does not postpone consideration of Plaintiff's preliminary injunction motion, Plaintiff would consent to an extension of the deadline to respond to the Complaint to seven days after the Court rules on the motion.

Dated: January 22, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division

BRETT A. SHUMATE  
Deputy Assistant Attorney General

JOHN R. GRIFFITHS  
Director, Federal Programs Branch

CARLOTTA P. WELLS  
Assistant Director, Federal Programs Branch

/s/ Kristina A. Wolfe  
KRISTINA A. WOLFE  
JOSEPH E. BORSON  
United States Department of Justice  
Civil Division, Federal Programs Branch  
P.S. Box 883  
Washington, DC 20044  
Phone: (202) 353-4519  
Email: [Kristina.Wolfe@usdoj.gov](mailto:Kristina.Wolfe@usdoj.gov)

*Counsel for Defendants*