

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

ACCURACY IN MEDIA, INC. <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 14-1589 (EGS)
DEPARTMENT OF DEFENSE <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANT’S MOTION TO STAY PENDING RESOLUTION
OF ITS MOTION FOR DESIGNATION OF COORDINATING JUDGE**

Defendant United States Department of State (the “Department”) hereby moves to stay those portions of this case addressing the documents provided to the Department by former Secretary Clinton and certain other former employees pending resolution of the Department’s motion to designate a coordinating judge for more than 30 cases and, should the motion be granted, pending the determination of the coordinating judge and, should the motion be granted, pending the determination of the coordinating judge. The reasons for this request are as follows:

1. Each of the cases proposed for coordination implicates the search and production of responsive, non-exempt documents that were provided to the Department by former Secretary of State Hillary Clinton and certain other former employees. *See* Def.’s Notice re Mot. for Designation of Coordinating Judge, Sept. 3, 2015, ECF No. 34; *In Re: U.S. Dep’t Of State FOIA Litigation re Emails of Certain Former Officials*, Misc. No. 15-1188 (D.D.C. Sept. 2, 2015) (“Coordination Motion”).

2. In the Coordination Motion, the Department requests that the Court exercise its inherent authority to designate, pursuant to LCvR 40.5(e) and 40.6(a), a coordinating judge for resolution and management of common issues of law, fact, and procedure across numerous FOIA suits, including this one. These cases, more than 30 in all, have been filed with this Court against the Department and implicate the search and production of responsive, non-exempt documents that were provided to the Department by former Secretary of State Hillary Clinton and certain other former employees. Such common issues include the scheduling of searches of the recently provided documents, potential requests for information and discovery, and potential requests for orders relating to preservation. In each case, the transferring judge would retain the case for all other purposes, including searches for responsive records other than the recently provided documents. Once designated, the coordinating judge would determine how best to prioritize demands for searches of the recently provided documents in the different cases; the schedules established by the transferring judges for records other than the recently provided documents would remain undisturbed and under the jurisdiction of those transferring judges. Once searches of the recently provided documents are completed, the case would be sent back to the judge to whom the case is assigned, for summary judgment or other necessary proceedings, as appropriate.

3. “[A] District Court has broad discretion to stay proceedings.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 879 n.6 (1998) (quoting *Landis*, 299 U.S. at 254-55). Granting a stay in these circumstances is not an abuse of discretion so long as the length of

the stay is not immoderate and the stay does not endure for an indefinite period of time absent a pressing need. *See Landis*, 299 U.S. at 255-56.

4. The Court should exercise that power here to stay consideration of any request by plaintiffs concerning the search and review of the Clinton emails or emails of certain other former officials. In the event that plaintiffs argue that the Department must search the Clinton emails and the emails of certain other former officials, or seeks discovery into any aspect of those emails, these are the types of issue that has arisen in many other cases. *See* Coordination Mot. at 4, 5. Because such issues have arisen in many, and will arise in more, cases that the Department seeks to have coordinated, it makes sense to stay such a search and production until the Coordination Motion is resolved and the procedure for arguing and adjudicating such issues across multiple cases has been determined. *See, e.g., Namociv v. Cooper Tire & Rubber Co.*, 225 F. Supp. 2d 582, 585 (D. Md. 2001) (staying proceedings pending a decision to consolidate cases because it is “necessary to ensure that, in the event consolidation of all cases for pre-trial is ordered, there is consistent treatment of the numerous lawsuits and that judicial resources are not wasted”).

5. A brief stay pending resolution of the Coordination Motion would not prejudice plaintiffs, especially given the need for efficient, consistent resolution of common issues across dozens of cases. *See Landis*, 299 U.S. at 256 (A plaintiff “may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted.”). The monthly public release of emails provided to State by former Secretary Clinton would continue during this brief stay, and the Department is committed to completing the production of the documents produced by former Secretary Clinton by the end of January 2016. If the coordination motion to stay is granted, the coordinating judge

can determine how best to proceed; if the motion is not granted, this Court can adjust the schedule to account for the brief interruption. In neither event will the delay be extensive or prejudicial. *See Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979) (a stay is appropriate where “it appears likely the other proceedings will be concluded within a reasonable time in relation to the urgency of the claims presented to the court”).

6. Pursuant to Local Rule 7(m), counsel for the Department of Justice contacted counsel for plaintiffs about this motion on September 1, 2015. Plaintiffs indicated that they do not oppose this motion.

Dated: September 3, 2015

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Branch Director,
Federal Programs Branch

/s/ Megan A. Crowley
MEGAN A. CROWLEY
N.Y. Bar No. 4930376
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW, Room 7148
Washington, D.C. 20001
Email: megan.a.crowley@usdoj.gov
Telephone: (202) 305-0754
Fax: (202) 616-8470

Attorneys for Defendants