

1 JOSEPH H. HUNT
2 Assistant Attorney General
3 Civil Division

4 BRETT A. SHUMATE
5 Deputy Assistant Attorney General

6 BRINTON LUCAS
7 Counsel to the Assistant Attorney General

8 JOHN R. GRIFFITHS
9 Branch Director

10 ANTHONY J. COPPOLINO
11 Deputy Director

12 ANDREW E. CARMICHAEL
13 ROBERT M. NORWAY
14 MATTHEW SKURNIK
15 United States Department of Justice
16 Civil Division, Federal Programs Branch
17 1100 L Street, N.W.
18 Washington, D.C. 20530
19 Telephone: (202) 353-0889
20 Email: robert.m.norway@usdoj.gov

21 *Counsel for Defendants*

22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**

24 AIDEN STOCKMAN; NICOLAS
25 TALBOTT; TAMASYN REEVES;
26 JAQUICE TATE; JOHN DOES 1-2;
27 JANE DOE; and EQUALITY
28 CALIFORNIA,

Plaintiffs,

v.

CASE NO. 5:17-CV-01799-JGB-KK
DEFENDANTS' EX PARTE
APPLICATION TO CONTINUE
JANUARY 7, 2019 HEARING IN
LIGHT OF LAPSE OF
APPROPRIATIONS:
DECLARATION OF ROBERT

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

DONALD J. TRUMP, et al.

Defendants.

NORWAY

[Local Rule 7-19]

Judge: Hon. Jesus G. Bernal

STATE OF CALIFORNIA,
Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

1 Defendants hereby apply *ex parte* for an order continuing the oral argument
2 noticed for January 7, 2019, in the above-captioned case due to the lapse of
3 appropriations.

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

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

12 3. Counsel assigned to represent the Defendants in this case is prohibited
13 from working on this case due to the lack of appropriations.

14 4. Undersigned counsel for the Department of Justice therefore requests a
15 continuation of the oral argument noticed for January 7, 2019, on Defendants’ Motion
16 To Stay The Preliminary Injunction Pending Appeal, Dkt. 130, until Congress has
17 restored appropriations to the Department. Defendants are, in the alternative, willing
18 to waive argument on the motion. Briefing on Defendants’ motion is complete.

19 5. If this application is granted, undersigned counsel will notify the Court as
20 soon as Congress has appropriated funds for the Department.

21 6. Pursuant to Local Rule 7-19.1, notice of this *ex parte* application was given
22 to Sharon O’Grady and Mark Beckington, counsel for Plaintiff-Intervenor, and Amy
23 Quartarolo and Adam Sieff, counsel for Plaintiffs, by email on December 26, 2018. A
24 copy of this *ex parte* application was provided to counsel on December 28, 2018.

25 7. On December 26, 2018, opposing counsel authorized counsel for the
26 Government to state that Plaintiffs and Plaintiff-Intervenor have no objection to our
27 request to continue the hearing to a later date in January 2019, but do not agree to waive
28

1 oral argument on the motion. At the request of counsel for Plaintiff-Intervenor, the
2 parties' email correspondence is attached to this application as exhibit A.

3 Therefore, although Defendants greatly regret any disruption caused to the Court
4 and the other litigants, Defendants hereby request a brief continuance of the oral
5 argument noticed for January 7, 2019, on Defendants' Motion To Stay The Preliminary
6 Injunction Pending Appeal, Dkt. 130, in this case due to the lapse in appropriations,
7 from January 7, 2019, to January 28, 2019, or until Department attorneys are permitted
8 to resume their usual civil litigation functions.

9 Dated: December 28, 2018

Respectfully submitted,

10 JOSEPH H. HUNT
11 Assistant Attorney General
12 Civil Division

13 BRETT A. SHUMATE
14 Deputy Assistant Attorney General

15 BRINTON LUCAS
16 Counsel to the Assistant Attorney General

17 JOHN R. GRIFFITHS
18 Branch Director

19 ANTHONY J. COPPOLINO
20 Deputy Director

21 /s/ Robert M. Norway
22 ANDREW E. CARMICHAEL
23 ROBERT M. NORWAY
24 United States Department of Justice
25 Civil Division, Federal Programs Branch
26 1100 L Street, N.W.
27 Washington, D.C. 20530
28 Telephone: (202) 353-0889
Email: robert.m.norway@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2018, I electronically filed the foregoing Defendants' *Ex Parte* Application To Continue January 7, 2019 Hearing In Light Of Lapse Of Appropriations using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: December 28, 2018

/s/ Robert M. Norway
ANDREW E. CARMICHAEL
ROBERT M. NORWAY
MATTHEW SKURNIK
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20530
Telephone: (202) 353-0889
Email: robert.m.norway@usdoj.gov

Counsel for Defendants

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

EXHIBIT A

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

Norway, Robert M. (CIV)

From: Mark Beckington <Mark.Beckington@doj.ca.gov>
Sent: Wednesday, December 26, 2018 3:44 PM
To: Norway, Robert M. (CIV)
Cc: Sharon OGrady; Amy.Quartarolo@lw.com; Adam.Sieff@lw.com; Carmichael, Andrew E. (CIV); Enlow, Courtney D. (CIV); Cheung, Ashley (CIV); Skurnik, Matthew (CIV)
Subject: RE: Stockman v. Trump

Rob,

Your email to Sharon O'Grady has been forwarded to me for a response. Sharon is out of the office through the start of the New Year. Until Sharon returns, please direct any emails on the case to my attention with a copy to Sharon.

We will not oppose your request to continue the hearing on the government's motion to stay the injunction, but any continued hearing should be scheduled on a date that is mutually convenient for all counsel. I have conferred with counsel at Latham and Watkins, and plaintiffs and intervenor are available on any other Monday in January except January 15 (Martin Luther King Day). Although your email did not address the briefing schedule, we would oppose any request to extend the time to file briefs. We understand that the government's reply brief was due December 24. Therefore, the time for briefing has closed. And, of course, the injunction must continue to remain fully in place.

As for your alternative proposal on the hearing, we cannot agree to waive oral argument. Unless the court chooses to deny the motion without a hearing, the plaintiffs and intervenor would want to appear and present argument.

Finally, we are opposed to your proposal to stay discovery. For one thing, there is no pending discovery and therefore no need to stay discovery. Further, a stay on discovery would impact other pretrial and trial deadlines, and the government should not seek a stay without first meeting and conferring with all parties to discuss the case schedule.

If you are still in the process of preparing your moving papers, I request that you include this email in the submission to the court.

Please contact me if you have any questions.

Mark Beckington
Supervising Deputy Attorney General
Government Law Section
California Department of Justice
(213) 269-6256

From: Norway, Robert M. (CIV) <Robert.M.Norway@usdoj.gov>
Sent: Wednesday, December 26, 2018 8:40 AM
To: Tamar Pachter <Tamar.Pachter@doj.ca.gov>
Cc: Sharon OGrady <Sharon.OGrady@doj.ca.gov>; Carmichael, Andrew E. (CIV) <Andrew.E.Carmichael@usdoj.gov>; Enlow, Courtney D. (CIV) <Courtney.D.Enlow@usdoj.gov>; Cheung, Ashley (CIV) <Ashley.Cheung@usdoj.gov>; Skurnik, Matthew (CIV) <Matthew.Skurnik@usdoj.gov>
Subject: FW: Stockman v. Trump

Ms. Pachter,

Sharon's out-of-office email indicated that I should contact you to address a matter while Sharon is out. As discussed in my email below, in *Stockman v. Trump*, and due to a lapse in appropriations, Defendants must move to continue the hearing on Defendants' motion to stay preliminary injunction pending appeal, currently set for January 7, 2019, and stay discovery until Congress has restored appropriations to the Department. We will also ask, in the alternative, for the Court to waive oral argument on the motion. Please let me know as soon as practicable California's position on Defendants' requested relief.

Best,
Rob Norway

From: Norway, Robert M. (CIV)
Sent: Wednesday, December 26, 2018 11:29 AM
To: 'Sharon.OGrady@doj.ca.gov' <Sharon.OGrady@doj.ca.gov>; Amy.Quartarolo@lw.com
Cc: Carmichael, Andrew E. (CIV) <ancarmic@CIV.USDOJ.GOV>; Enlow, Courtney D. (CIV) <cenlow@CIV.USDOJ.GOV>; Cheung, Ashley (CIV) <ascheung@CIV.USDOJ.GOV>; Skurnik, Matthew (CIV) <maskurni@CIV.USDOJ.GOV>; 'adam.sieff@lw.com' <adam.sieff@lw.com>
Subject: Stockman v.

Amy and Sharon,

At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. Absent an appropriation, Department of Justice attorneys, 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. Because of this, we intend to file a motion to continue the hearing on Defendants' motion to stay preliminary injunction pending appeal, currently set for January 7, 2019, and stay discovery until Congress has restored appropriations to the Department. We will also ask, in the alternative, for the Court to waive oral argument on the motion.

I am authorized to work for a limited time today to prepare and file our proposed motion, and would appreciate it if you would indicate whether plaintiffs and plaintiffs-intervenor's oppose our proposed relief as soon as practicable.

Best,
Robert M. Norway
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
Tel: 202-353-0889 | robert.m.norway@usdoj.gov

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

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

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AIDEN STOCKMAN; NICOLAS
TALBOTT; TAMASYN REEVES;
JAQUICE TATE; JOHN DOES 1-2;
JANE DOE; and EQUALITY
CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

STATE OF CALIFORNIA,

Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

CASE NO. 5:17-CV-01799-JGB-KK

**[PROPOSED] ORDER ON
DEFENDANTS' *EX PARTE*
APPLICATION TO CONTINUE
JANUARY 7, 2019 HEARING IN
LIGHT OF LAPSE OF
APPROPRIATIONS**

1 The Court, having reviewed and considered Defendants' *Ex Parte* Application
2 To Continue January 7, 2019 Hearing In Light Of Lapse Of Appropriations, and good
3 cause appearing therefor, hereby ORDERS that due to the lapse in appropriations to
4 the Department of Justice, the hearing on Defendants' Motion To Stay The
5 Preliminary Injunction Pending Appeal, Dkt. 130, noticed for January 7, 2019, is
6 continued until January 28, 2019, at 9:00 a.m.
7
8
9

10 Dated: _____

11 Honorable Jesus G. Bernal
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28