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

No. C 11-2667 SI;
Related Case C 11-2173 SI

IN RE NATIONAL SECURITY LETTER

**ORDER GRANTING MOTION TO STAY
AND DENYING WITHOUT PREJUDICE
MOTION FOR JUDICIAL REVIEW AND
ENFORCEMENT OF NATIONAL
SECURITY LETTER**

Now before the Court is defendant's motion to stay proceedings in this case pending the resolution of the government's appeal in the related case of *In re NSL*, No. 3:11-cv-2173 SI, and the government's motion for judicial review and enforcement of the 2011 NSL. These matters were scheduled for a hearing on August 2, 2013. Pursuant to Civil Local Rule 7-1(b), the Court determined that these matters are appropriate for resolution without oral argument, and VACATED the hearing. Having considered the papers submitted, the Court finds that it is in the interest of judicial efficiency and economy to stay this action pending the resolution of the Ninth Circuit appeal, and accordingly GRANTS defendant's motion and DENIES WITHOUT PREJUDICE the government's motion.

DISCUSSION

Pursuant to the National Security Letter Statute, 18 U.S.C. § 2709, in [redacted] 2011 the FBI issued a National Security Letter ("NSL") to defendant,¹ an electronic communication service provider ("ECSP"), seeking "subscriber information." By certifying, under section 2709(c)(1), that disclosure of the existence of the NSL may result in "a danger to the national security of the United States,

¹ The recipient of the NSL is the petitioner in C 11-2173 SI and the defendant in C 11-2667 SI.

1 interference with a criminal, counterterrorism, or counterintelligence investigation, interference with
2 diplomatic relations, or danger to the life or physical safety of any person,” the FBI was able to prohibit
3 defendant from disclosing the existence of the NSL. Defendant filed a Petition to Set Aside the National
4 Security Letter and Nondisclosure Requirement, pursuant to 18 U.S.C. §§ 3511(a) and (b). *In re NSL*,
5 C 11-2173 SI. The government opposed the petition and filed a motion to compel compliance with the
6 NSL. The government also filed this lawsuit seeking a declaration that defendant is required to comply
7 with the 2011 NSL.

8 In an order filed March 14, 2013, the Court found unconstitutional portions of the NSL statute
9 governing nondisclosure orders issued in conjunction with NSLs. *See In re NSL*, No. 3:11-cv-2173 SI
10 (March 14, 2013) (finding 18 U.S.C. § 2709(c), 18 U.S.C. §§ 3511(b)(2), (b)(3)) facially
11 unconstitutional). The Court granted the motion to set aside the 2011 NSL, and also stayed the judgment
12 pending appeal. Defendant now seeks a stay of this case pending the resolution of the appeal in *In re*
13 *NSL*, No. 3:11-cv-2173 SI. Defendant argues that a stay will promote efficient use of judicial resources,
14 prevent unnecessary briefing, and minimize the burden on the parties. The government opposes a stay
15 and seeks to enforce the 2011 NSL.

16 The Court’s power to stay proceedings is “incidental to the power inherent in every court to
17 control the disposition of the causes on its docket with economy of time and effort for itself, for counsel,
18 and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). The Court concludes that
19 it is appropriate to stay this case in light of the fact that the parallel case of *In re NSL*, No. 3:11-cv-2173
20 SI involving the same 2011 NSL is now pending before the Ninth Circuit. In that appeal, the Ninth
21 Circuit will review this Court’s order setting aside the 2011 NSL and determine whether the challenged
22 nondisclosure provisions are, in fact, facially unconstitutional. Given this unusual procedural posture,
23 the Court finds that a stay is in the interest of judicial economy and efficiency. The Court further finds
24 that the government will not be harmed by a stay because the government can obtain the information
25 it seeks in the 2011 NSL through other judicially-supervised means, such as by seeking a court order
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1 pursuant to 18 U.S.C. §§ 2703(d), 2705.²

2 Accordingly, the Court GRANTS defendant's motion and STAYS this case until the resolution
3 of the appeal in *In re NSL*, No. 3:11-cv-2173 SI, and DENIES WITHOUT PREJUDICE the
4 government's motion for judicial review and enforcement of the 2011 NSL. Docket Nos. 26 & 29.


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6 **IT IS SO ORDERED.**

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8 Dated: August 7, 2013

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SUSAN ILLSTON
United States District Judge

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² The Court notes that in another case involving a different recipient of NSLs, the government obtained the information sought by an NSL by filing an application pursuant to 18 U.S.C. § 2703(d) in the United States District Court for the Eastern District of Virginia.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

IN RE: NSL LETTER,

Case Number: C-11-2667

Plaintiff,

CERTIFICATE OF SERVICE

v.

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 7, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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August 7, 2013

Richard W. Wieking, Clerk
By: 