

1 BENJAMIN C. MIZER
 Principal Deputy Assistant Attorney General
 JOSEPH H. HUNT
 2 Director, Federal Programs Branch
 ANTHONY J. COPPOLINO
 3 Deputy Branch Director
 JAMES J. GILLIGAN
 4 Special Litigation Counsel
 RODNEY PATTON
 5 JULIA A. BERMAN
 CAROLINE J. ANDERSON
 6 Trial Attorneys
 U.S. Department of Justice, Civil Division
 7 20 Massachusetts Avenue, NW, Rm. 7320
 Washington, D.C. 20044
 8 Phone: (202) 305-7919; Fax: (202) 616-8470

9 *Attorneys for the Government Defs. in their Official Capacities*

10
 11 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 12 **OAKLAND DIVISION**

13	FIRST UNITARIAN CHURCH OF LOS)
14	ANGELES, <i>et al.</i> ,)
15)
	Plaintiffs,)
16)
	v.)
17	NATIONAL SECURITY AGENCY, <i>et al.</i> ,)
18)
	Defendants.)

Case No. 3:13-cv-03287-JSW

**GOVERNMENT DEFENDANTS’
 OPPOSITION TO PLAINTIFFS’
 ADMINISTRATIVE MOTION TO
 REQUEST HEARING DATES FOR
 PENDING MOTIONS**

Oakland Courthouse
 Courtroom 5, 2nd Floor
 The Honorable Jeffrey S. White

19
 20 Plaintiffs’ Administrative Motion to Request Hearing Dates for Pending Motions (Pls.’
 21 Mot.’) (ECF No. 133) is their second request in six months in which they ask the Court to hear
 22 and rule upon motions that challenge the legality of the same National Security Agency
 23 intelligence-gathering program at issue in an appeal pending before the Ninth Circuit, *Smith v.*
 24 *Obama*, No. 14-35555 (9th Cir.). In their administrative motion, Plaintiffs ask the Court either
 25 “to set a hearing date on their motion for partial summary judgment and on the government’s
 26 cross-motion to dismiss,” or, in the alternative, to “schemul[e] a status conference” to “gain some
 27 clarification about an end-point to plaintiffs’ waiting.” Pls.’ Mot. at 1, 3. This Court should
 28 deny the current motion, as it did the prior motion, ECF No. 124, because there have been no

1 intervening circumstances that warrant the Court proceeding without awaiting guidance from the
2 Ninth Circuit.

3 According to their motion, “Plaintiffs make this second request in light of both the
4 passage of time and the Second Circuit’s recent decision” in *American Civil Liberties Union v.*
5 *Clapper*, 2015 WL 2097814 (2d Cir. May 7, 2015), which “found that the NSA’s telephone call
6 details records surveillance program was not authorized” by statute. Pls.’ Mot. at 1. Neither
7 circumstance, however, provides a basis for the Court to reconsider its prior denial of this
8 request. First, the intervening six months have not diluted the interests of judicial economy,
9 which favor the postponement of any decision by this Court until the Court of Appeals rules in
10 *Smith*. See Gov’t Defs.’ Response to Plaintiffs’ Admin. Motion to Request Hearing Dates for
11 Pending Motions (“Gov’t Defs.’ Resp.”) (ECF No. 123) at 1-2.

12 The question of whether the plaintiff in *Smith* and the Plaintiffs here, represented by the
13 same counsel, have standing to challenge the NSA’s bulk telephony metadata program is at issue
14 in both cases, as is whether they have properly stated a Fourth Amendment claim. Plaintiffs ask
15 this Court, however, to “press ahead with at least the issues before it that are unique” such as the
16 statutory claim and the First Amendment claim that are pled in this case, but which are not
17 present in the *Smith* appeal. Pls.’ Mot. at 2. But, as the Government Defendants previously
18 informed the Court, “[i]t is of no moment that Plaintiffs have asserted other claims along with
19 their Fourth Amendment claim that are not present in *Smith*.” Gov’t Defs.’ Resp. at 2. This is so
20 because both their statutory and their First Amendment claims would still require the Court to
21 determine whether Plaintiffs have standing to bring those claims in the first place, the threshold
22 issue to be decided by the Court of Appeals in *Smith*.

23 Second, the *ACLU* Court’s recent decision also provides no basis for this Court to “press
24 ahead” while the Ninth Circuit has yet to rule. Although the Second Circuit ruled that the NSA’s
25 bulk collection of telephony metadata exceeds the Government’s authority under Section 215 (a
26 conclusion with which the Government respectfully disagrees), it affirmed the district court’s
27 denial of the plaintiffs’ request for a preliminary injunction. *ACLU*, 2015 WL 2097814, at *1,

28 Gov’t Defs.’ Opp. to Pls.’ Admin. Mot. to Request Hearing Dates for Pending Motions, *First Unitarian et al. v. NSA*
et al., 3:13-cv-03287-JSW

1 28, 32. Thereupon it remanded the case to the district court to reconsider the propriety of
2 preliminary relief, in light of the “asserted national security interests at stake,” and consideration
3 by Congress of legislation—that would either continue or substantially modify the program—
4 necessitated by the June 1, 2015, sunset of Section 215. *Id.* at 31-33. *ACLU* thus reinforces that
5 the restraint this Court exercised in denying Plaintiffs’ first motion to set a hearing date, ECF No.
6 124, remains appropriate.

7 For the reasons set forth above, this Court should deny Plaintiffs’ Administrative Motion
8 to Request Hearing dates for Pending Motions.

9 Date: May 29, 2015

10 Respectfully Submitted,

11 BENJAMIN C. MIZER
12 Principal Deputy Assistant Attorney General

13 JOSEPH H. HUNT
14 Director, Federal Programs Branch

15 ANTHONY J. COPPOLINO
16 Deputy Branch Director

17 JAMES J. GILLIGAN
18 Special Litigation Counsel

19 /s/Rodney Patton
20 RODNEY PATTON
21 Trial Attorney

22 rodney.patton@usdoj.gov

23 JULIA BERMAN
24 CAROLINE J. ANDERSON
25 Trial Attorneys

26 U.S. Department of Justice
27 Civil Division, Federal Programs Branch
28 20 Massachusetts Avenue, NW, Rm. 7320
Washington, D.C. 20044
Phone: (202) 305-7919
Fax: (202) 616-8470

*Attorneys for the Government Defendants
Sued in their Official Capacities*

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Plaintiffs,

v.

NATIONAL SECURITY AGENCY, *et al.*,

Defendants.

Case No. 3:13-cv-03287-JSW

[PROPOSED] ORDER

Upon consideration of Plaintiffs' Administrative Motion to Request Hearing Dates for Pending Motions, ECF No. 133, and the Government Defendants' response thereto, it is hereby ordered that the motion is denied.

AND IT IS SO ORDERED.

Date: _____, 2015

JEFFREY S. WHITE
U.S. DISTRICT JUDGE