

*Transcript of Proceedings*

*Juliana, et al. v United States of America*

*October 4th, 2018*



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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

KELSEY CASCADIA ROSE JULIANA, )  
et al., )  
Plaintiffs, )  
v. ) No. 6:15-CV-1517-TC  
THE UNITED STATES OF AMERICA, )  
et al., )  
Defendants. )  
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JUDGE COFFIN

October 4, 2018

Thursday

10:02 A.M.

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THURSDAY, OCTOBER 4, 2018

(In chambers)

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THE CLERK: Now is the time set for civil case No. 15-1517, Juliana, et al., versus United States of America, et al., for status conference.

THE COURT: Okay. This is Judge Coffin. I thought I was done with you guys, but I guess I'm not. Judge Aiken is in trial in Medford as we speak, so I -- we received a request for a telephonic status conference, so here we are. How can I help you?

MS. OLSON: Good morning, your Honor. This is Julia Olson for the plaintiffs, and I'd like to just start off by making three points.

THE COURT: You have to speak up a little bit. Okay? Go ahead.

MS. OLSON: Okay, your Honor. Yes. So I'd like to begin by making three points related to the request for a meet and confer that we received late the other night regarding the defendants' intentions to now file a

1 motion with this Court for expedited consideration  
2 of the motions pending in the District Court, and  
3 to stay the proceedings while the defendants  
4 petition the Supreme Court to issue an order  
5 dismissing the complaint again.

6 And the reason we wanted to have  
7 this call is it has been very difficult in prior  
8 meet-and-confer sessions with defendants to  
9 understand the full legal and factual bases for  
10 the motions and petitions that they make, and what  
11 we expect to learn from defendants during this  
12 conference is what is new and different about  
13 their renewed motion to stay the case and their  
14 renewed petition to the Supreme Court to dismiss  
15 the case that makes it not frivolous and makes it  
16 not harassment of plaintiffs on the eve of trial.

17 And as background to this, the  
18 parties, two weeks ago, had an in-person  
19 meet-and-confer session at the courthouse before  
20 our last status conference with you, your Honor,  
21 and during that conference, I asked if there were  
22 any other motions that were not motions in limine,  
23 any other petitions to the Supreme Court in the  
24 works, and counsel said that they had no knowledge  
25 of anything like this coming.

1                   We have spent nearly every day with  
2 counsel for defendants over the past several  
3 weeks, including some weekend days, in depositions  
4 on a very tight deposition schedule, and counsel  
5 for defendants have never told us that this was  
6 coming. And, your Honor, we understand how  
7 government works and that there are layers of  
8 approval and decision-making, but for them to  
9 disclose at this late date and not meaningfully  
10 confer with us is problematic.

11                   My second point is that the  
12 defendants requested distinguishable time to  
13 respond to plaintiffs' interrogatories. They told  
14 us they didn't have time to respond within the  
15 30-day period provided by the federal rules. They  
16 then said they needed more time to provide their  
17 exhibit list to plaintiff because they didn't have  
18 time to meet the Court's deadline on that.

19                   And in a declaration filed by Sean  
20 Duffy in support of defendants' motion to amend  
21 the pretrial order, in paragraph 8, he attests  
22 that it would not be possible to provide a  
23 complete exhibit list by October 1st because of  
24 the number of depositions in the first two weeks  
25 of October. But in contrast, by October 12th,

1 nearly all the depositions will be done and they  
2 could meet a later deadline.

3 And in response, this Court extended  
4 the deadline for -- for exchanging witness --  
5 excuse me -- exhibit lists and providing that --  
6 those exhibit lists to the Court. So the new  
7 deadline is now October 19th for submitting  
8 exhibit lists to the Court.

9 And my third point is that  
10 plaintiffs have been working very diligently, as  
11 your Honor knows, to meet the tight discovery and  
12 deposition schedule that resulted from defendants'  
13 delay in deciding to finally prepare for trial,  
14 and we have successfully met every court deadline.  
15 We have been completing over 50 depositions in  
16 about a 60-day period, and we will be ready for  
17 trial on October 29th. So we're using every hour  
18 of every day to do this.

19 And, in addition, I have a Colorado  
20 Supreme Court argument on October 16th, which  
21 further limits my time to address these  
22 potentially frivolous motions that the defendants  
23 are planning to file.

24 And so what we think -- if there is  
25 a basis for these renewed motions or a petition to

1 the Supreme Court, we would ask that the  
2 defendants be precluded from filing their motion  
3 until they've met the October 19th deadline for  
4 providing their exhibit list to the plaintiff and  
5 until they have fully responded to plaintiffs'  
6 interrogatories, and that we then be able to file  
7 our response to any motion for stay on  
8 October 24th after the pretrial conference has  
9 been held.

10 And that's plaintiffs' position at  
11 this time. And we would like to hear from  
12 defendants about what the new bases are for their  
13 motion and their petition to the Supreme Court  
14 that has not already been decided by this Court,  
15 by the Ninth Circuit Court of Appeals, and by the  
16 U.S. Supreme Court.

17 THE COURT: All right.

18 MR. DUFFY: This is Sean Duffy for  
19 the defendants. I will add that Frank Singer has  
20 also joined us just so the Court and everyone is  
21 aware.

22 THE COURT: Very well.

23 MR. DUFFY: With respect to our  
24 motion, we attempted to meet and confer with the  
25 plaintiff. It was the purpose of the email two



1 days ago so that the parties could discuss the  
2 basis for our motion and plaintiffs could let us  
3 know whether they would oppose our motion.

4 In a nutshell, the basis for our  
5 motion is that we intend on seeking further  
6 appellate review. Our dispositive motion has not  
7 been resolved in the interim since we last went to  
8 the Supreme Court. I would note that the Supreme  
9 Court did say that our motion was premature,  
10 dismissed it without prejudice, and also noted  
11 that the justiciability of the claims presents  
12 substantial grounds for difference of opinion.

13 That language mirrors the standard  
14 for interlocutory review. That's what's changed  
15 and that's what we conferred about.

16 THE COURT: I'm sorry. What has  
17 changed? I -- let me -- excuse me for  
18 interrupting, but exactly what has changed? That  
19 the dispositive motions -- that the dispositive  
20 motions have not been ruled on? Is that -- is  
21 that your position that that's what's changed?

22 MR. DUFFY: Our motion is no longer  
23 premature. That is what's changed. The -- we --  
24 we had a conference, I believe it was on  
25 August 27th, and I asked the Court when we would

1 get a ruling on the dispositive motions, and the  
2 response we were given was, "a few weeks," and  
3 that the Court would attempt to meet the 60 days  
4 following the period under which it was taken  
5 under advisement and that has been past.

6 THE COURT: Okay. So that's -- it's  
7 your -- that's what's changed in your view?

8 MR. DUFFY: Correct.

9 THE COURT: All right. You want to  
10 address the other points that Ms. Olson made?

11 MR. DUFFY: Yes. This is the first  
12 that Ms. Olson -- as I said, she didn't confer  
13 with me, but instead came to court, and for the  
14 first time now has said that we should be  
15 precluded from filing a motion until October 19th.  
16 I believe the federal rules allow us to file  
17 motions. There's nothing that -- in those rules  
18 that precludes us from filing a motion for several  
19 weeks. It just strikes me as a -- as an effort to  
20 delay us filing that.

21 And I will add that one of the  
22 reasons we're filing this motion before we planned  
23 to is we believe it's a prerequisite for us  
24 seeking further appellate review. So, in other  
25 words, we -- we have to file it.

1 THE COURT: All right. And --

2 MS. OLSON: Your Honor, this is  
3 Julia Olson.

4 THE COURT: Has he addressed all  
5 three of your points or is there a third one?

6 MS. OLSON: Your Honor, I don't  
7 think counsel for defendants have addressed why  
8 this doesn't constitute harassment of plaintiffs  
9 and is not frivolous.

10 MR. DUFFY: Because it's not  
11 harassment and it's not frivolous. That's why.

12 THE COURT: All right. Well, I --  
13 don't interrupt each other, though. So go ahead,  
14 Ms. Olson. Did you finish your point?

15 MS. OLSON: So counsel -- counsel,  
16 Sean Duffy, represented to this Court in its  
17 motion to extend the deadline for pretrial  
18 requisites such as exchanging and filing exhibit  
19 lists, and the reason counsel gave is that they  
20 were too busy with the deposition schedule. They  
21 needed additional time because they couldn't get  
22 it done by the Court-ordered deadline.

23 But they are taking time to draft  
24 motions to stay the case when this Court and the  
25 appellate courts have said this case can go to

1 trial. And the fact that Judge Aiken has not  
2 ruled yet on dispositive motions, which raise very  
3 substantial issues on a very large factually  
4 disputed record, is not a basis for seeking to  
5 stay the trial again.

6 And I do not understand why this  
7 isn't an attempt to put more paperwork on  
8 plaintiffs' plate while we are in the midst of  
9 trying to meet very important deadlines that the  
10 Court has set.

11 THE COURT: Okay. Mr. Duffy, any  
12 further comments?

13 MR. DUFFY: A couple of things.  
14 With respect to the exhibit list, not that we need  
15 to relitigate this issue, but the reason we sought  
16 the extension was in part that plaintiffs, again,  
17 as they're doing today, did not confer with us  
18 about that issue, but merely brought it up in  
19 front of the Court, and that's all explained in my  
20 declaration and the papers and Judge Aiken has  
21 already ruled on that.

22 But that was -- that was one of the  
23 reasons. I mean, I agreed to that list with my  
24 colleagues not present in the room on the wrong  
25 assumption that plaintiff had conferred with us,

1 but instead they didn't. They just dropped that  
2 on us.

3 As to the motion itself, you've seen  
4 motions for stay in this case. You've ruled on  
5 them. This is not going to be a very complicated  
6 motion and it's not going to be a lot of  
7 paperwork.

8 Miss Olson is correct that the  
9 parties have been working very hard. We've been  
10 attending all of those depositions as well, but  
11 this strikes me as -- I'll say this. I've done --  
12 I've done four depositions in the past six days.  
13 That was a lot of work. Drafting a motion for a  
14 stay is -- it's not a lot of work, and it will not  
15 be a lot of work for them to respond to.

16 THE COURT: Okay. Well --

17 MS. OLSON: Your Honor.

18 THE COURT: Yes. Go ahead.

19 MS. OLSON: Your Honor, this is  
20 Julia Olson. Defendants are asking for expedited  
21 consideration. They're treating this motion as an  
22 emergency motion for a stay and there is no  
23 emergency situation.

24 And, in fact, if anything has  
25 changed, it's the fact that the parties have

1 nearly completed discovery, have expended  
2 considerable time and resources in preparing for  
3 trial, and it would be enormously prejudicial at  
4 this late date to require plaintiffs to respond to  
5 an emergency motion for a stay when we have other  
6 critical deadlines pending in this case.

7 THE COURT: Okay. Well, the motion  
8 to stay, if I understand everybody correctly, is  
9 going to be filed with Judge Aiken, and she is the  
10 one that will rule on it.

11 In terms of a response to the motion  
12 to stay, it's kind of hard for me to express my  
13 thoughts on that before I've seen the motion to  
14 stay, but as Mr. Duffy has pointed out, this  
15 Court, you know, has dealt with prior motions to  
16 stay; and it doesn't seem to me, looking at the  
17 landscape here, that very much has changed since  
18 the last motion to stay was filed, i.e., according  
19 to Mr. Duffy himself, that it's already been  
20 addressed by the Court and the only "change" is  
21 that the Court hasn't ruled on the dispositive  
22 motions that have been filed.

23 But those motions, if I'm correct,  
24 had been filed at the time of the last motion to  
25 stay because they were basis in part of the motion

1 to stay. So I don't know that that changes the  
2 landscape very -- in a material way since the last  
3 motion to stay was addressed.

4 Having said all that, I suppose if I  
5 were in the plaintiffs' shoes, I don't know that  
6 it would take much resources to essentially point  
7 out that this motion to stay, when it's filed, is  
8 not materially different from the last one that  
9 was already considered and ruled on by the Court.

10 MS. OLSON: Your Honor, this is --

11 THE COURT: Yes. Go ahead.

12 MS. OLSON: This is Julia Olson.  
13 So, first, I want to respond to counsel that the  
14 purpose of this status conference was for us to  
15 have a meet-and-confer session that was  
16 supervised. So we did want to meet and confer on  
17 this motion.

18 And if the defendants'  
19 representation today is that the only new  
20 information that will be in their motion for stay  
21 is that Judge Aiken has not yet ruled on their  
22 dispositive motion, and everything else will be  
23 completely redundant as what they have filed in  
24 the past, both in terms of legal authority, the  
25 arguments, and bases they make, and the factual

1 bases they make, then we can easily respond to  
2 that motion for stay.

3 But if there's any new legal  
4 argument, any additional legal bases, any  
5 additional factual bases, then I would expect them  
6 to tell us right now during this meet-and-confer  
7 session.

8 THE COURT: Mr. Duffy.

9 MR. DUFFY: Well, your Honor, this  
10 is Sean Duffy. I can assure Ms. Olson that this  
11 motion will not be redundant, in part because it's  
12 responding to an order that we received from the  
13 Supreme Court on July 30th, which I've already  
14 covered.

15 Just to be clear, however, we're not  
16 asking for permission to seek relief on appeal.  
17 We don't believe that we need permission to do  
18 that. We're simply letting the Court know that  
19 we're going to move for a stay in part because  
20 Supreme Court Rule 232 requires us to do so.

21 THE COURT: All right. Does that  
22 help everyone understand the context of what the  
23 Government is intending to do?

24 MR. GREGORY: Your Honor, this is  
25 Philip Gregory. Sorry to interject, but Mr. --



1 but we have yet to get the confirmation that the  
2 grounds for the motion and the legal basis for the  
3 motion will be any different except for Judge  
4 Aiken's order and the Supreme Court's decision  
5 than the prior motion.

6 The concern is, as Ms. Olson said,  
7 the defendants are seeking expedited review in  
8 this Court and would require expedited briefing by  
9 the plaintiffs, and we believe that given the  
10 current schedule and the representations  
11 defendants have made as to why they cannot meet  
12 preexisting deadlines because of the onerous  
13 burden discovery's placing on the Federal  
14 Government and the Department of Justice, we  
15 believe that if they have new grounds and they're  
16 going to have new legal bases, then the time frame  
17 for our briefing on expedited review should be  
18 extended substantially so we are not placed in the  
19 same burden the defendants were able to get  
20 themselves out of by saying they couldn't meet the  
21 exhibits deadline and the exchange of other  
22 documents.

23 THE COURT: All right. Well, I'm  
24 not going to change any deadlines that have been  
25 set by Judge Aiken. So let me make that clear.

1                   So to the extent the Government  
2 wants some change in the deadlines that have been  
3 set, that's an issue they're going to have to take  
4 up with the District Court.

5                   And until -- Mr. Duffy, when do you  
6 intend to file this motion to stay?

7                   MR. DUFFY: We intend to file this  
8 very shortly.

9                   And just to address something that  
10 Mr. Gregory brought up, I can confirm that we're  
11 not bringing in a whole bunch of new arguments.  
12 We are bringing in the Supreme Court's July 30th  
13 order, but there should not be any major  
14 surprises.

15                   THE COURT: Okay. All right. Well,  
16 from where I sit in my humble seat, it seems to me  
17 that the legal landscape here hasn't really  
18 changed since the last time the Government filed a  
19 motion to stay. What you've done in the interim  
20 is you've done discovery, taken depositions. The  
21 Court hasn't had to rule on any discovery  
22 disputes. So there's nothing there in terms of  
23 any issues.

24                   And the motions for dispositive --  
25 the dispositive motions that were filed were filed

1 before the last round of motions to stay were --  
2 were brought, and so the only difference is that  
3 the dispositive motions have yet to be ruled on.

4 And so based on --

5 MR. DUFFY: This is Sean Duffy. And  
6 I would add, from our perspective, the material  
7 difference is that that 60-day period has come and  
8 gone.

9 THE COURT: Okay. A local rule.

10 MR. DUFFY: Correct.

11 THE COURT: Okay. All right. So  
12 there I think you have the landscape, you know,  
13 that's been described for the plaintiffs.

14 And is there anything else I can  
15 assist you with?

16 MS. OLSON: Your Honor, I would then  
17 just give defendants plaintiffs' position right  
18 now, which is we oppose their motion for a stay.  
19 We oppose expedited consideration or an expedited  
20 schedule of that motion for stay, and we will  
21 oppose their petition to the Supreme Court to  
22 dismiss this case, and we'll be ready for trial on  
23 October 29th.

24 THE COURT: I would -- as I said  
25 before, I would urge all the parties to understand

1 that that trial date of October 29th is a firm  
2 trial date and will not be changed unless changed  
3 by order of an appellate court or the Supreme  
4 Court. So we certainly intend to commence the  
5 trial October 29th.

6 And I understand everybody's working  
7 hard to get ready for that trial, and the  
8 attorneys are putting a lot of effort to prepare,  
9 and these interim attempts to obtain a stay from  
10 the appellate court can interrupt that -- that --  
11 that diligence on the attorneys to get ready for  
12 trial, and I would just urge everybody to keep on  
13 track for trial.

14 Anything else?

15 MS. OLSON: Thank you, your Honor.

16 THE COURT: Okay. Thank you much.

17 MR. DUFFY: Thank you, your Honor.

18 THE COURT: You bet.

19 (The proceedings recessed at 10:24 a.m.)  
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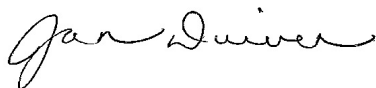
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C E R T I F I C A T E

STATE OF OREGON            )  
                                  )  
County of Lane             )

I, JAN R. DUIVEN, Certified Shorthand Reporter for the State of Oregon, in and for the County of Lane, do hereby certify that the foregoing pages 1 of 19, comprise a complete, true, and correct transcript, to the best of my ability, of the proceedings held in the above-entitled matter on THURSDAY, OCTOBER 4, 2018.

Dated at Eugene, Oregon, this 4th day of October, 2018.



JAN R. DUIVEN, CSR, FCRR, CRC  
Certified Shorthand Reporter