

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

L. KEVIN ARNOLD, et al.

Plaintiffs

No.: 19-59-PEC

v.

Judge Patricia E. Campbell-Smith

THE UNITED STATES

Defendant.

**PLAINTIFFS' RESPONSE TO DEFENDANT'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY**

Plaintiffs, by and through their undersigned counsel, hereby timely respond to the Defendant's Motion for Leave to File Supplemental Authority and Notice of Supplemental Authority (ECF 42), and respectfully request that the Court deny Defendant's Motion in its entirety. In support, thereof, Plaintiffs state as follows:

Defendant has moved for leave to file as supplemental authority, a decision by the U.S. District Court for the District of Columbia which, the government alleges, "addresses the Plaintiffs' claims in light of the Anti-Deficiency Act, including the recent amendment to the Anti-Deficiency Act, which guaranteed payment 'for furloughed and excepted employees at the earliest date after the lapse in appropriations ended.'" (ECF 42). Specifically, Defendant believes that the District Court's joint decision in *NTEU v. United States*, No. 19-CV-50, and *Hardy v. Trump*, 19-cv-51, 2020 U.S. Dist. LEXIS 45353 (D.D.C.) (March 16, 2020) ("*NTEU*") has bearing on the instant matter. Plaintiffs respectfully disagree.

As discussed throughout Plaintiffs' prior filings, the instant matter concerns the government's failure to comply with the Fair Labor Standards Act ("FLSA") during the 2018-

2019 government shutdown (the “Shutdown”). *NTEU* on the other hand alleged constitutional and Administrative Procedures Act violations. The amended pleadings in those cases did not raise the FLSA and the court’s Decision does address, or otherwise analyze a claim for liability or damages under FLSA, the Anti-Deficiency Act, or under any other authority. Rather, the decision discusses the framework and analysis of a claim for mootness.

As such, it is irrelevant to the issue raised in the Defendant’s Motion to Dismiss in this matter, namely, whether the Anti-Deficiency Act excused the government’s violation of the FLSA during the Shutdown. There is no new or other authority supporting the Defendant’s argument and, both the instant Motion and the Motion to Dismiss should be denied.

Respectfully submitted,

/s/ JACOB Y. STATMAN
Jacob Y. Statman, Esq.
Snider & Associates, LLC
600 Reisterstown Road; 7th Floor
Baltimore, Maryland 21208
Phone: (410) 653-9060
Fax: (410) 653-9061
Email: jstatman@sniderlaw.com

Counsel of Record for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2020, a copy of the foregoing was filed via the CM/ECF filing system.

/s/ JACOB Y. STATMAN

Jacob Y. Statman, Esq.
Snider & Associates, LLC
600 Reisterstown Road; 7th Floor
Baltimore, Maryland 21208
Phone: (410) 653-9060
Fax: (410) 653-9061
Email: jstatman@sniderlaw.com

Counsel of Record for Plaintiffs