

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN THE MATTER OF:) Misc. No. ~~13-MC-04-30~~
CIVIL PROCEEDINGS INVOLVING THE)
UNITED STATES DURING FEDERAL) 13-MC-40-02
LAPSE IN APPROPRIATIONS)

**TEMPORARY ADMINISTRATIVE ORDER RELATING
TO CIVIL CASES INVOLVING THE UNITED STATES**

Before the Court, and upon the Motion of the Acting United States Attorney for the District of New Mexico, is the matter of a lapse in appropriations currently impacting the Department of Justice and the United States Attorney's Office in the District of New Mexico.

1. At midnight on September 30, 2013, funding for the Department of Justice expired and appropriations to the Department lapsed. Many other Executive agencies are also experiencing a lapse in appropriations.

2. Absent funding, Assistant U.S. Attorneys assigned to the Civil Division of the U.S. Attorney's Office may not lawfully provide uncompensated services on behalf of the Government.

An officer or employee of the United States Government . . . may not accept voluntary services . . . exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property . . . [T]he term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

31 U.S.C. § 1342. As a result, on October 1, 2013, with rare exception, non-supervisory Assistant U.S. Attorneys assigned to the Civil Division of the U.S. Attorney's Office will be in furlough status. Furlough means the placing of an employee in a temporary status without duties because of lack of work or funds or other non-disciplinary reasons. 5 U.S.C. § 7511(a)(5). If the funding

situation does not change, some Assistant U.S. Attorneys may be called back from furlough status, but only on a critical need basis to protect life or property.

3. The Acting United States Attorney has sought a stay of all civil cases within the District of New Mexico wherein the United States or an agency, corporation, officer or employee of the United States is a party until Congress restores appropriations to the Department of Justice. This includes those cases involving federally funded facilities (and their officers, employees, and contractors) that the U.S. Department of Health and Human Services Secretary has deemed to be employees of the U.S. Public Health Service pursuant to the Federally Supported Health Centers Assistance Act (“FSHCAA”), 42 U.S.C. § 233(g)–(n), as amended by the Federally Supported Health Centers Assistance Act of 1995, Pub. L. No. 104–73, 109 Stat. 777 (1995). These entities are shielded under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671–2680 from liability while acting within the scope of their duties, with the United States assuming liability for any negligent acts they may commit. 42 U.S.C. § 233(g)(1). Further, the Acting United States Attorney has requested that the Court extend all current deadlines commensurate with the duration of the lapse in appropriations.

4. The Chief Judge has conferred with Acting United States Attorney Steven C. Yarbrough regarding this matter. Mr. Yarbrough has assured the Court that his office has undertaken efforts to contact opposing counsel to seek extensions on civil cases and apprise them of the potential government shutdown and its consequences. However, based on the time constraints and number of cases involved, consulting all parties to all litigation in which the United States, or an agency, corporation, officer or employee of the United States is a party, is impracticable. Likewise, requesting individual extensions of time or stays in cases, at a time when U.S. Attorney's Office personnel may not lawfully work, is impracticable.

5. To preserve the status quo until restoration of funding, except as otherwise noted in this Order, all civil cases within the District of New Mexico wherein the United States or an agency, corporation, officer or employee, deemed or otherwise, of the United States is a party are temporarily stayed. All deadlines, due dates or cut-off dates are extended for a period of time commensurate with the duration of the lapse in appropriations, but in no case beyond October 15, 2013, absent further Order of the Court.

6. This Order shall not affect civil forfeiture cases or proceedings relating to the collection of outstanding judgment debts because those matters are handled by Assistant U.S. Attorneys in the Criminal Division of the U.S. Attorney's Office.

7. This Order does not alter, vacate or stay any obligation of individuals to pay amounts previously lawfully determined to be owed to the United States or to an agency or office of the United States.

8. This Order does not prohibit, in any manner, the ability of parties to file claims or commence actions against the United States. However, the cases or matters commenced while there is a lapse in appropriations will be immediately stayed, as set forth above in paragraph five. All deadlines, response dates, due dates or cut-off dates in such cases will be extended for a period of time commensurate with the time schedule set forth in paragraph five.

9. This Order does not apply to motions for temporary restraining orders and injunctive relief. This Order also does not apply to cases pending in the United States Bankruptcy Court for the District of New Mexico. This Order does, however, apply to all bankruptcy cases where the reference has been withdrawn.

Further, any party may seek with the presiding judge an exception to this Order on the basis of an exigency or as the presiding judge deems appropriate.

10. The Acting United States Attorney shall notify the Court when appropriations are restored to the Department of Justice, and the Court shall enter additional instructions and guidance at that time.

11. This Administrative Order is subject to modification or amendment should circumstances so warrant.

IT IS SO ORDERED this 1st day of October, 2013.



M. CHRISTINA ARMIJO
CHIEF JUDGE
UNITED STATES DISTRICT COURT