

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN THE MATTER OF:
CIVIL PROCEEDINGS INVOLVING THE
UNITED STATES DURING FEDERAL
LAPSE IN APPROPRIATIONS

18-MC-00004-55
18-MC-00035-02

TEMPORARY ADMINISTRATIVE ORDER
RELATING TO CIVIL CASES INVOLVING THE UNITED STATES

Before the Court, and upon the Motion of the 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 for the District of New Mexico.

1. At midnight on December 21, 2018, 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 United States Attorneys assigned to the Civil Division of the United States 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 December 21, 2018, with rare exception, non-supervisory Assistant United States Attorneys assigned to the Civil Division of the United

States 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 United States Attorneys may be called back from furlough status, but only on a critical need basis to protect life or property.

3. The 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 United States Attorney has requested that the Court extend all current deadlines commensurate with the duration of the lapse in appropriations.

4. 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 United States 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 January 16, 2019, 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 United States Attorneys in the Criminal Division of the United States 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.

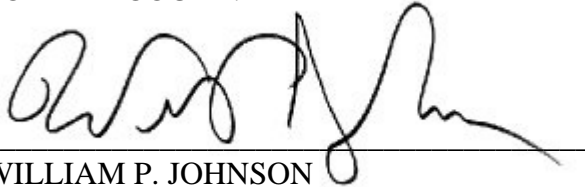
Further, any party may seek with the presiding judge an exception to this Order on the basis of an exigency or as the presiding judge deems appropriate.

10. The 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 27th day of December, 2018.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'William P. Johnson', written over a horizontal line.

WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

Notices[1:18-mc-00004 Administrative Orders](#)**U.S. District Court****District of New Mexico - Version 6.2.1****Notice of Electronic Filing**

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Docket Text:

TEMPORARY ADMINISTRATIVE ORDER RELATING TO CIVIL CASES INVOLVING THE UNITED STATES: In the Matter of Civil Proceedings Involving the United States During Federal Lapse in Appropriations. (kmk)

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