

1 The Anti-deficiency Act, 31 U.S.C. §1341, as construed by the Attorney
2 General, provides that in the absence of appropriated funds no obligation can be
3 incurred except for the protection of life and property, the orderly suspension of
4 operations, or as otherwise authorized by law. This means that absent an
5 appropriation, Department of Justice attorneys and employees of the Federal
6 Defendant's agencies are prohibited from working, even on a volunteer basis, "except
7 for emergencies involving the safety of human life or the protection of property." 31
8 U.S.C. §1342. Accordingly, each U.S. Attorney has been instructed to designate those
9 attorneys and support staff whose work is necessary to sustain legal operations
10 essential to the safety of human life and the protection of property. The Department
11 of Justice has issued guidance which gives priority to continuing work on criminal
12 cases. Consequently, only a very few employees in the Civil Division of the United
13 States Attorney's Office for the District of Nevada will be authorized to work during a
14 lapse in appropriations – the rest will be furloughed.

15 The agency attorneys assigned to handle Social Security appeals, who
16 participate in all aspects of the preparation and filing of pleadings in Social Security
17 appeals cases, have also been furloughed for the duration of the lapse in
18 appropriations. The need for the relief of a stay is urgent because of the following
19 impending deadline(s):

<u>Item</u>	<u>Due Date</u>
Defendant's reponse to motion to remand	October 9, 2013

22 Therefore, the undersigned counsel requests a stay of this matter until Congress
23 has restored appropriations and the assigned attorneys are permitted to resume work
24 on this case.

25 Denial of a stay in this matter would be prejudicial to the interests of the United
26 States. Appeals such as this one require familiarity with the administrative record and
27 with the procedures applicable to Social Security disability benefits determinations.
28 The Government does not have civil attorneys available to become conversant with

1 this entire case in the short time available to complete the filing required next week,
2 nor could an attorney adequately present the position of the United States on that
3 matter due to the lack of familiarity with the case and its issues. Plaintiff will not be
4 prejudiced by the proposed delay because the delay is not anticipated to significantly
5 alter the course of resolution of this matter.

6 If this motion for a stay is granted, undersigned counsel will notify the Court as
7 soon as Congress has appropriated funds. It is requested that, at that time, all current
8 deadlines for the parties be extended commensurate with the duration of the lapse in
9 appropriations. A form of order is attached.

10 Dated this 4th day of October, 2013.

11 DANIEL G. BOGDEN
12 United States Attorney

13 */s/ Roger W. Wenthe*
14 ROGER W. WENTHE
15 Assistant United States Attorney
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1 **PROOF OF SERVICE**

2 I, Roger W. Wenthe, certify that the following individual was served with a
3 copy of the foregoing document, on the date shown, by the below identified method of
4 service:

5 CM/ECF:

6 Leonard H Stone
7 Shook & Stone Chtd.
8 710 S. Fourth St.
9 Las Vegas , NV 89101

10 Marc V Kalagian
11 Rohlfing & Kalagian, LLP
12 211 E. Ocean Blvd. Suite 420
13 Long Beach , CA 90802

14 Dated: October 4, 2013

15 /s/ Roger W. Wenthe
16 **ROGER W. WENTHE**
17 Assistant United States Attorney

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 MARIA C. TORRES,)
4 Plaintiff,) Case No.: 2:13-cv-82-GMN-PAL
5 v.)
6 CAROLYN COLVIN, Acting)
Commissioner of Social Security,)
7 Defendant.)

8
9 **ORDER FOR STAY OF PROCEEDINGS DURING LAPSE IN**
10 **APPROPRIATIONS**

11 1. The Court has been advised that at midnight on September 30, 2013, the
12 continuing resolution that was funding the Department of Justice expired and the
13 appropriation of funds to the Department lapsed. The same is true for most Executive
14 Branch agencies, including the federal agencies involved in litigation in this District.

15 2. Absent an appropriation, Department of Justice attorneys and employees
16 of the federal agencies are prohibited from working, even on a volunteer basis,
17 “except for emergencies involving the safety of human life or the protection of
18 property.” 31 U.S.C. § 1342. Civil cases are not deemed to be within this exemption.

19 3. The Court has been informed that the lapse in appropriations therefore
20 prevents Department of Justice attorneys and their federal agency counterparts from
21 appearing at hearings and depositions and performing work necessary to meet case
22 deadlines, including those imposed by statute, the Federal Rules of Civil Procedure,
23 the Civil Local Rules of this District, and by case management orders issued in
24 individual cases. This situation will cause prejudice to the interests of the United
25 States and the federal agencies, officers, and employees involved in civil litigation in
26 this District.

1 WHEREFORE, the Court finds that good cause exists to stay proceedings in the
2 cases identified in the attached list until Congress has restored appropriations.

3 IT IS THEREFORE ORDERED that all time limits and deadlines in this case
4 are extended for a period of time equal to the duration of the lapse in appropriations to
5 the Department of Justice and the Federal Defendant and depositions and court
6 hearings are vacated. Further, this stay does not apply to applications for emergency
7 relief.

8 This Order shall apply nunc pro tunc to October 1, 2013.

9 DATED: October 8, 2013


United States Magistrate Judge