

Request for 15-day
continuance of stay
granted.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**



Alicia D. Willis,)
Plaintiff,)
)
v.)
)
Andrew Saul,)
Commissioner of Social Security,)
Defendant,)
)

Civil Action No.: 1:18-cv-00158

**Judge Cole
Magistrate Judge Litkovitz**

STATUS UPDATE

Defendant Andrew Saul, Commissioner of Social Security (Commissioner), by and through David M. DeVillers, United States Attorney for the Southern District of Ohio, and Special Assistant United States Attorney Rachel Julis, respectfully submits this Status Update:

1. This case is currently stayed pending the outcome of the consolidated Sixth Circuit appeals in *Ramsey v. Comm’r of Soc. Sec.*, No. 19-1579 (6th Cir.), *et al.*¹ On September 1, 2020, the Sixth Circuit Court of Appeals issued a decision in *Ramsey*, holding that the plaintiffs had not forfeited their Appointments Clause claims by failing to raise them during administrative proceedings. *Ramsey v. Comm’r of Soc. Sec.*, 973 F.3d 537 (6th Cir. 2020). A mandate has not yet issued in *Ramsey* or any of the other consolidated appeals, and a motion to extend the deadline to file a petition for rehearing is pending.
2. In light of the Sixth Circuit Court of Appeals’ holding, the Social Security Administration requires additional time to consult internally and with the Department of Justice

¹ The consolidated appeals also include *Fortin v. Comm’r of Soc. Sec.*, No. 19-1581 (6th Cir.); *Shoops v. Comm’r of Soc. Sec.*, No. 19-1586 (6th Cir.); *Hutchins v. Comm’r of Soc. Sec.*, No. 19-1889 (6th Cir.); *Harris v. Comm’r of Soc. Sec.*, No. 19-1977 (6th Cir.); and *Flack v. Comm’r of Soc. Sec.*, No. 19-3886 (6th Cir.).

regarding the implications of this opinion, as well as whether the Agency will pursue further review of the panel's decision. Those consultations will likely require the participation of numerous offices within the Department of Justice, including the Civil Division, particularly the Appellate Staff and the Office of the Solicitor General.

Ultimately, responsibility for determining whether, and to what extent, the Commissioner should seek rehearing in the Sixth Circuit or review by the Supreme Court rests with the Solicitor General, in consultation with all interested components of the federal government. *See* 28 C.F.R. § 0.20(b).

3. Also currently pending are petitions for certiorari in two cases from other circuits that deal with the very same forfeiture issue decided in *Ramsey: Davis v. Saul*, 963 F.3d 790 (8th Cir. 2020), *petition for cert. filed*, (U.S. July 31, 2020) (No. 20-105); and *Carr v. Commissioner, SSA*, 961 F.3d 1267 (10th Cir. 2020), *petition for cert. filed*, (U.S. July 1, 2020) (No. 19-1442). The government has acquiesced in both of those petitions, and the Supreme Court is scheduled to consider the petitions at its October 30 conference.
4. As the time to seek rehearing or petition for certiorari in *Ramsey* has not yet passed, no mandate has issued, and the Supreme Court will determine whether to hear cases raising the very same forfeiture question presented in *Ramsey*, the Commissioner requests that the stay in this matter be continued until 15 days after expiration of the time to petition for rehearing in *Ramsey*. No later than that date, the Commissioner will file an update and advise the Court whether the government is pursuing further review of the *Ramsey* decision.

WHEREFORE, Defendant, Commissioner of Social Security, respectfully requests that this Honorable Court continue the stay in this matter.

Respectfully submitted,

DAVID M. DEVILLERS
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF OHIO

/s/ Rachel Julis

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Defendant's Motion for Extension of Time to File the Electronic Certified Administrative Record and Answer to Plaintiff's Complaint with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties.

Dated: October 27, 2020

s/ Rachel Julis

Rachel Julis
Special Assistant United States Attorney
Social Security Administration