

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MAYOR AND CITY COUNCIL OF)	
BALTIMORE,)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 18-cv-3636 (ELH)
)	
DONALD J. TRUMP, President, et al.)	
)	
Defendants)	

MOTION FOR A STAY IN LIGHT OF LAPSE OF APPROPRIATIONS

Defendants Donald J. Trump, President; U.S. Department of State; and Michael R. Pompeo, Secretary of State, hereby move for a stay of the entire case in the above-captioned case, based on the Court’s inherent powers and Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure.

1. At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The Department does not know when funding will be restored by Congress.

2. Absent an appropriation, Department of Justice attorneys are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

3. Undersigned counsel for the Department of Justice therefore requests a stay of the entire case until Congress has restored appropriations to the Department.

4. If this motion for a stay is granted, undersigned counsel will notify the Court as soon as Congress has appropriated funds for the Department. The Government requests that, at that point, all current deadlines for the parties, including the deadline for the defendants’

response to the complaint,¹ be extended commensurate with the duration of the lapse in appropriations.

5. The Government conferred with counsel for the plaintiff about this motion. Plaintiff indicated that it opposes the request for stay and extension of time.

Therefore, although we greatly regret any disruption caused to the Court and the plaintiff, the Government hereby moves for a stay of the entire case in this case until Department of Justice attorneys are permitted to resume their usual civil litigation functions.

Date: January 16, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

¹ A docket entry of December 11, 2018, lists a due date of February 1, 2019, for the defendants' response to the complaint, but that date is incorrect.

Under Rule 12(a)(2), the defendants' response to the complaint is due 60 days after service on the U.S. Attorney. Service on the U.S. Attorney must be completed in accordance with Rule 4(i)(1)(A). On December 10, 2018, the plaintiff filed a Notice of Filing Proof of Service, ECF No. 10, including a declaration indicating that a copy of the summons and complaint was delivered to the U.S. Attorney by certified mail on December 3, 2018. Decl. of Sonora M. Taffa ¶¶ 2–3, ECF No. 10.

The mailing described in the declaration did not satisfy the requirements of Rule 4(i)(1)(A), however. The rule specifies that a summons and complaint sent by registered or certified mail must be addressed to "the civil-process clerk at the United States attorney's office" to ensure proper handling. Fed. R. Civ. P. 4(i)(1)(A)(ii); *see also* Fed. R. Civ. P. 4(i) advisory committee's note to 1993 amendment. The mailing described in the declaration appears to have been addressed to the U.S. Attorney rather than the civil-process clerk. *See, e.g., Lewis v. Runyon*, No. 94-17049, 1995 WL 499440, at *3 (9th Cir. Aug. 22, 1995) (holding that a mailing addressed to the U.S. Attorney did not satisfy Rule 4(i)(1)(A) and did not start the 60-day period for the defendant's response to the complaint).

On December 19, 2018, the Government advised the plaintiff as a courtesy that service on the U.S. Attorney was not yet complete, and so the time for the defendants to respond to the complaint had not yet begun to run. The plaintiff indicated that it disagreed with the Government's interpretation of Rule 4(i)(1)(A) but nevertheless would make a second mailing curing the deficiency identified by the Government.

Assuming the plaintiff's second mailing complied with Rule 4(i)(1)(A), the defendants' response to the complaint is due 60 days from the date the second mailing was received. (Because of the lapse in appropriations, the Government has not yet confirmed whether the plaintiff completed its second mailing or otherwise properly completed service on the U.S. Attorney. The plaintiff also has not filed proof of service.)

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