

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF CALIFORNIA et al.,

Plaintiffs-Appellees,

v.

ALEX M. AZAR II, in his official capacity as
Secretary of the U.S. Department of Health
and Human Services, et al.,

Defendants-Appellants,

and

THE LITTLE SISTERS OF THE POOR,
JEANNE JUGAN RESIDENCE,

Intervenor-Defendant-Appellant,

and

MARCH FOR LIFE EDUCATION AND
DEFENSE FUND,

Intervenor-Defendant-Appellant.

Nos. 18-15144, 18-15166,
and 18-15255

**MOTION FOR A STAY OF DEADLINE
TO FILE ANY PETITION FOR REHEARING
IN LIGHT OF LAPSE IN APPROPRIATIONS**

The federal defendants respectfully move for a stay of the deadline to file a petition for panel rehearing or for rehearing en banc in this case.

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 same is true for several other Executive agencies, including the Treasury Department, one of the defendants in this case. The Department of Justice does not know when funding will be restored by Congress.

2. Absent an appropriation, Department of Justice attorneys and employees of the Treasury Department 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. The government therefore requests that the deadline to file any petition for rehearing be stayed until Congress has restored appropriations to the Department of Justice and that, once appropriations have been restored, the current deadline be extended commensurate with the duration of the lapse in appropriations.

4. We have consulted with counsel for the plaintiff States, as well as counsel for intervenors. Intervenors’ counsel stated that they consent to this motion as long as the deadline for seeking rehearing is extended for them as well. Plaintiffs’ counsel does not consent to any extension of the rehearing deadline.

CONCLUSION

Although we greatly regret any disruption caused to the Court and the other litigants, the government respectfully requests that the deadline for filing any petition for rehearing be stayed in this case until Department of Justice attorneys are permitted to resume their usual civil-litigation functions.

Respectfully submitted,

SHARON SWINGLE

LOWELL V. STURGILL JR.

/s/ Karen Schoen

KAREN SCHOEN

Attorneys, Appellate Staff

Civil Division, Room 7533

U.S. Department of Justice

950 Pennsylvania Avenue N.W.

Washington, D.C. 20530

(202) 514-3159

karen.a.schoen@usdoj.gov

JANUARY 2019

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this motion complies with the requirements of Rule 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font, and that it complies with the type-volume limitation of Rule 27(d)(2)(A), because it contains 298 words, according to the count of Microsoft Word.

/s/ Karen Schoen

Karen Schoen

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2019, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Karen Schoen

Karen Schoen