

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Misc. No. 15-25

IN RE: LAPSE IN FUNDING FOR DEPARTMENT OF VETERANS AFFAIRS

Before ALLEN, *Chief Judge*, and PIETSCH, BARTLEY, GREENBERG, MEREDITH,
TOTH, FALVEY, LAURER, and JAQUITH, *Judges*.

ORDER

On October 20, 2025, the Secretary of Veterans of Affairs (VA) filed an ex parte motion with the Court, requesting, with limited exceptions, "a stay of proceedings in all cases before the Court in which a [VA] filing deadline is pending, or where VA is permitted to file a pleading, beginning on Wednesday, October 29, 2025."¹ In support of his motion, the Secretary asserts that VA's current funding will be exhausted on October 28, 2025, and after that date, employees of the Court of Appeals for Veterans Claims Litigation Group of the Office of General Counsel (OGC) "would generally not be deemed 'excepted employees' and would be statutorily prohibited from performing the functions essential to litigating cases pending before the Court on a voluntary basis."² The Secretary thus requests that a stay continue through "such time as the requisite funding for [OGC] is appropriated."³

The Court has determined that its judicial review of veterans benefits cases is an excepted function that continues notwithstanding a lapse in appropriations. It is noteworthy that VA has determined that appellate review of veterans benefits cases is an excepted function and directed the Board of Veterans' Appeals to continue to make decisions on veterans' cases during the lapse in appropriations.⁴ Pausing VA's deadlines in nearly every case before the Court is a significant and extreme request, and the Secretary has failed to demonstrate that such sweeping relief is appropriate at this time.⁵ Therefore, the Court will deny the Secretary's motion, and all cases will continue to be processed in accordance with the Court's Rules of Practice and Procedure, including all requirements and filing deadlines.

The Court recognizes the evolving challenges presented by the current government-wide lapse in appropriations, and accordingly, will deny the Secretary's motion without prejudice. The Secretary may refile his motion as circumstances require.

¹ Appendix at 1 (Secretary's Oct. 20, 2025, ex parte motion).

² *Id.* at 2.

³ *Id.* at 1.

⁴ See VA Contingency Planning, <https://department.va.gov/contingency-planning/>.

⁵ Appendix at 4 ("[T]he current guidance by the Department indicates that should the Court deny this motion, or otherwise require the Department to satisfy particular filing deadlines in cases pending before the Court, the Secretary will make every effort to ensure that sufficient OGC staff are available, notwithstanding any lapse of funding, to satisfy VA pleading requirements.").

Upon consideration of the foregoing, it is

ORDERED that the Secretary's October 20, 2025, motion to stay is denied without prejudice.

DATED: October 22, 2025

PER CURIAM.

Appendix

**IN THE UNITED STATES COURT
OF APPEALS FOR VETERANS CLAIMS**

JOHN DOE, et al.,

v.

DOUGLAS A. COLLINS,
Secretary of Veterans Affairs

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Vet. App. No. XX-XXXX

**SECRETARY’S *EX PARTE* MOTION FOR AN ORDER STAYING VA-
RELATED FILING DEADLINES IN CASES CURRENTLY PENDING
BEFORE THE COURT DURING A LAPSE IN FUNDING FOR THE
DEPARTMENT OF VETERANS AFFAIRS OFFICE OF GENERAL
COUNSEL**

Pursuant to U.S. Vet. App. R. (Rule) 2 and 27, Appellee respectfully moves this Court for a stay of proceedings in all cases before the Court in which a Department of Veterans Affairs (Department or VA) filing deadline is pending, or where VA is permitted to file a pleading, beginning on Wednesday, October 29, 2025, through such time as the requisite funding for the Office of General Counsel (OGC) is appropriated, and excepting from this motion only those cases in which the Court has specifically ordered proceedings to continue despite a lapse in funding. The Secretary also respectfully moves this Court to suspend Rules 5(d), 25, 27(a)(5), 35(d), 36, and 41(b)(3).

As the Court is aware, pursuant to the Antideficiency Act, as codified in 31 U.S.C. §§ 1341, 1342, 1511-1519, upon the expiration of the current funding authority and the expenditure of all “carry-over” funding, no public funds will be available to pay the expenses and salaries of VA attorneys or

support staff who are not otherwise funded or determined to be essential for the protection of life or property. It is currently estimated that the carry-over balance in the Department's General Administration Account, which funds the majority of OGC operations (including most of the attorneys and support staff in OGC's Court of Appeals for Veterans Claims Litigation Group (CALG)), will be exhausted at the close of business on Tuesday, October 28, 2025. Personnel of OGC's CALG are generally not considered to be personnel essential for the protection of life or property. Thus, during any lapse of funding, those CALG employees would generally not be deemed "excepted employees" and would be statutorily prohibited from performing the functions essential to litigating cases pending before the Court on a voluntary basis.

For that reason, the Secretary requests that the Court stay proceedings pending in all cases not otherwise subject to a specific order by the Court to continue proceeding despite a lapse in funding, and which have a VA pleading or filing due on or after October 29, 2025, or which by operation of the Court's Rules would have a VA filing deadline created during such time as VA's OGC CALG is without the requisite funding authority. This would include staying all cases in which the Court has issued a decision and which, pursuant to Rules 36 and 41, are subject to the entry of Judgment or Mandate in the absence of a motion by one of the parties for reconsideration or a panel or an en banc decision, or an appeal

to the U.S. Court of Appeals for the Federal Circuit. The Secretary requests that any such stay remain in effect until such time as the requisite funding is appropriated.

In the interest of candor, the undersigned notes that while most of CALG's staff will be directly affected by the lapse in funding, 19 attorneys are not affected by the current lapse as they are funded through an alternate source.¹ However, these attorneys are only legally permitted to work the specific cases identified in the attached list² because of the provisions authorizing their funding. The Court should also note that not only are those attorneys not necessarily assigned to the cases in the attached list, meaning that they have no familiarity with the matters, but the supervisors for those cases are themselves not funded. And the various VA stakeholders needed for regular consultation on those cases are themselves generally subjected to a lapse of appropriations as well, thus complicating VA's ability to potentially provide an accurate and complete position in each case until funding is restored.

¹ The alternate source of funding for these 19 attorneys is the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Pub. L. No. 117-168 (2022) (PACT Act). The information currently available to the undersigned suggests that the funding for these individual positions is sufficient to enable them to continue performing duties for the foreseeable future. However, the various VA stakeholders typically needed to provide consultation for cases in litigation are themselves generally without funding.

² The undersigned notes that the attached list is based on the information available in OGC systems at the time of the filing of this motion. It is possible that some of these cases may have been closed at the Court and OGC's system have not yet updated. For the same reason, it is also possible that some cases have been inadvertently misidentified or omitted despite the undersigned's best effort to provide a complete and accurate list of affected cases.

Notwithstanding the above, the undersigned notes that the current guidance by the Department indicates that should the Court deny this motion, or otherwise require the Department to satisfy particular filing deadlines in cases pending before the Court, the Secretary will make every effort to ensure that sufficient OGC staff are available, notwithstanding any lapse of funding, to satisfy VA pleading requirements.

Because this motion impacts a vast majority of the cases currently before the Court, individualized consent pursuant to Rule 27(a)(5) is not possible. Moreover, given the nature of this motion, the Secretary requests that the Court, pursuant to Rule 2, suspend the prohibitions of Rule 5(d) regarding combined motions; the requirements under Rule 25 regarding service; Rule 27(a)(5)'s requirement to state the position of the opposing party relevant to the motion; the timelines for entry of Judgment and Mandate pursuant to Rules 35(d), 36, and 41(b), and any other Court Rules reasonably interpreted as being affected by the motion to stay.

The Secretary notes that while delaying these Veterans' cases due to a lack of resources is undesirable, unfortunately, any lapse in the requisite funding, absent a specific order from the Court, would preclude the General Counsel, and specifically the bulk of the staff in CALG, from performing the official functions necessary to satisfy the Court's filing deadlines in most of the cases currently pending before the Court.

WHEREFORE, Appellee, Secretary of Veterans Affairs, respectfully moves the Court to suspend its rules to allow for this motion, and, for the duration of any lapse in funding, to stay all proceedings currently pending which have a VA pleading or filing due on or after October 29, 2025, or which by operation of the Court's rules would have a VA filing deadline created during such time as the OGC is without the requisite funding authority, except for those cases specifically ordered by the Court to continue proceeding despite a lapse in funding.

Respectfully submitted,

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ATTACHMENT

PACT Act Cases (1 of 2)

23-5493	24-6641	24-8493	25-0026	25-0931	25-1680	25-2447	25-3245
23-7312	24-6967	24-8506	25-0027	25-0977	25-1683	25-2462	25-3251
23-7611	24-7083	24-8536	25-0082	25-1003	25-1697	25-2463	25-3255
23-8000	24-7100	24-8684	25-0101	25-1022	25-1749	25-2512	25-3292
24-0179	24-7112	24-8715	25-0214	25-1063	25-1754	25-2533	25-3295
24-0893	24-7225	24-8741	25-0307	25-1107	25-1757	25-2594	25-3312
24-1360	24-7364	24-8748	25-0314	25-1121	25-1761	25-2778	25-3328
24-1641	24-7415	24-8802	25-0321	25-1127	25-1787	25-2805	25-3341
24-1743	24-7443	24-8825	25-0366	25-1145	25-1825	25-2825	25-3343
24-1850	24-7488	24-8991	25-0370	25-1155	25-1878	25-2842	25-3368
24-2276	24-7525	24-8993	25-0389	25-1178	25-1938	25-2888	25-3441
24-2873	24-7537	24-9008	25-0401	25-1201	25-1977	25-2963	25-3445
24-3138	24-7778	24-9066	25-0419	25-1204	25-2022	25-2975	25-3468
24-3208	24-7854	24-9115	25-0434	25-1231	25-2039	25-2984	25-3480
24-3291	24-7962	24-9186	25-0536	25-1285	25-2091	25-2994	25-3501
24-4298	24-8099	24-9234	25-0574	25-1306	25-2093	25-3005	25-3512
24-4698	24-8104	24-9388	25-0593	25-1329	25-2133	25-3010	25-3514
24-4937	24-8130	24-9442	25-0654	25-1330	25-2195	25-3019	25-3527
24-5923	24-8162	24-9446	25-0789	25-1412	25-2227	25-3031	25-3531
24-5962	24-8237	24-9450	25-0791	25-1427	25-2238	25-3040	25-3548
24-6282	24-8273	24-9536	25-0806	25-1435	25-2361	25-3075	25-3565
24-6497	24-8287	24-9590	25-0843	25-1514	25-2376	25-3101	25-3568
24-6503	24-8343	24-9623	25-0844	25-1541	25-2409	25-3127	25-3569
24-6592	24-8404	24-9650	25-0854	25-1544	25-2420	25-3164	25-3581
24-6594	24-8445	25-0018	25-0872	25-1598	25-2434	25-3205	25-3587

PACT Act Cases (2 of 2)

25-3599	25-4120	25-4876	25-5549	25-6258	25-6612	25-7088	25-7585
25-3618	25-4139	25-4922	25-5580	25-6297	25-6630	25-7095	25-7589
25-3620	25-4155	25-4928	25-5584	25-6322	25-6648	25-7112	25-7659
25-3638	25-4183	25-4945	25-5597	25-6348	25-6659	25-7132	25-7677
25-3645	25-4277	25-4986	25-5604	25-6349	25-6664	25-7148	25-7679
25-3657	25-4302	25-4995	25-5633	25-6360	25-6707	25-7156	25-7689
25-3658	25-4306	25-5084	25-5656	25-6381	25-6722	25-7184	25-7699
25-3683	25-4365	25-5088	25-5704	25-6390	25-6733	25-7209	25-7705
25-3699	25-4413	25-5206	25-5727	25-6399	25-6770	25-7210	25-7735
25-3764	25-4426	25-5238	25-5765	25-6410	25-6774	25-7222	25-7800
25-3777	25-4429	25-5271	25-5773	25-6414	25-6802	25-7232	25-7870
25-3799	25-4497	25-5277	25-5777	25-6417	25-6810	25-7240	25-7880
25-3814	25-4530	25-5293	25-5808	25-6425	25-6847	25-7246	25-7915
25-3834	25-4594	25-5300	25-5814	25-6436	25-6865	25-7281	
25-3859	25-4597	25-5332	25-5849	25-6442	25-6872	25-7317	
25-3893	25-4602	25-5352	25-5929	25-6443	25-6905	25-7363	
25-3912	25-4621	25-5381	25-5949	25-6446	25-6956	25-7412	
25-3920	25-4642	25-5394	25-5975	25-6479	25-6962	25-7414	
25-3933	25-4663	25-5400	25-5982	25-6488	25-6965	25-7435	
25-3971	25-4690	25-5434	25-6001	25-6496	25-6968	25-7459	
25-4015	25-4730	25-5439	25-6078	25-6511	25-6987	25-7509	
25-4041	25-4733	25-5452	25-6102	25-6528	25-7001	25-7510	
25-4102	25-4806	25-5458	25-6162	25-6541	25-7018	25-7516	
25-4104	25-4813	25-5472	25-6164	25-6577	25-7027	25-7539	
25-4117	25-4831	25-5537	25-6251	25-6609	25-7039	25-7574	