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February 25, 2021

United States District Court
for the Central District of California
First Street Courthouse
350 West 1st Street Courtroom 6A, 6th Floor
Los Angeles, California 90012-4565

Re: Order of the Chief Judge 20-074

To the Honorable Chief Judge Gutierrez:

Community Legal Aid SoCal (“CLA SoCal”), on behalf of our clients, submits this letter regarding the Order of the Chief Judge 20-074, *In Re: Coronavirus Public Emergency, Order Staying Civil Matters Involving the Commissioner of Social Security as a Party Under 42 U.S.C. § 405(g)* (“the Order”) (Attachment A). CLA SoCal’s mission is to help our neighbors fight injustice by providing compassionate, high-quality legal aid to low-income people throughout Orange and Southeast Los Angeles Counties. Our services include representation of individuals seeking Social Security benefits who have been affected by the Order. This letter is joined by the undersigned legal organizations in California that assist and advocate for older adults and individuals with disabilities receiving or entitled to benefits under Title II and Title XVI of the Social Security Act.

The Order, effective April 17, 2020, stays (1) actions brought against the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g) that were filed on or after April 17, 2020; and (2) those previously-filed actions in which the Commissioner had not prepared and served the Plaintiff with the certified administrative record (“CAR”) as of April 17, 2020. We write to express concern over the continued implementation of the Order and to request that the Court lift the stay, given the changed circumstances since April 2020, the unequal impact it has on the Plaintiffs, and the harm that continued enforcement could have on vulnerable litigants.

Circumstances Have Changed since the Order was Entered

First, we request reconsideration of the Order as circumstances have changed since the Order was entered. The Chief Judge ordered the stay on April 17, 2020, near the beginning of the pandemic. At that point, the Court found that “the Government has shown Social Security Administration [“SSA”] staff is unable to compile and prepare [CARs] that are necessary to the adjudication of

the appeals of the denial of Social Security disability benefits in this Court.”¹ The Chief Judge ordered that the stay would remain in place “until the Commissioner of Social Security resumes operations, including the preparation of CARs, following the conclusion of the COVID-19 public health emergency.”² The circumstances have since changed: the Commissioner has resumed operations and is producing CARs and the pandemic has persisted with no foreseeable end. These changes, addressed in turn below, merit a reconsideration of the Order.

Over the past ten months that the Order has been in place, SSA has modified its operations to continue to serve the public during the pandemic. As part of this adjustment, SSA has found a way to produce CARs in courts across the country, including in cases in California.³ In fact, in jurisdictions other than California, cases filed against SSA were never under a blanket order staying them,⁴ meaning that SSA had to, and did continue to, produce CARs throughout the pandemic. This includes in jurisdictions with caseloads of SSA cases comparable to the Central District’s.⁵ Since all of the CARs are prepared in the same office, *i.e.*, the Commissioner of Social Security’s Office of Appellate Hearings Operations in Falls Church, Virginia,⁶ SSA should be able to produce CARs in the Central District, as it does for other cases throughout the nation. Indeed, it has done so in Central District cases.⁷

¹ Attachment A (Order of the Chief Judge 20-074, *In Re: Coronavirus Public Emergency, Order Staying Civil Matters Involving the Commissioner of Social Security as a Party Under 42 U.S.C. § 405(g)*).

² *Id.*

³ *See, e.g., Carmen Claudia Salgado v. Andrew M. Saul*, 2:20CV06918 (C.D. Cal.) (docket # 15, Notice to Court Regarding Service of Certified Administrative Record); *Snowman v. Commissioner of Social Security*, 1:20CV00776 (W.D.N.Y.) (docket # 12, Transcript); *Myhres v. Commissioner of Social Security*, 3:20CV05797 (W.D. Wash.) (docket # 11, Sealed Social Security Certified Administrative Record-Answer).

⁴ We have only identified orders implementing stays of SSA matters in California district courts. *See infra*, n. 13 for an explanation of measures other district courts have taken with respect to CARs.

⁵ For example, the Western District of New York—the only district in the country that exceeded the Central District of California’s caseload of Social Security cases during the period of March 31, 2019 to March 31, 2020—never issued a general order specifically addressing Social Security cases filed during the pandemic. Table C-3, U.S. District Courts—Civil Cases Commenced, by Nature of Suit and District, During the 12-Month Period Ending March 31, 2020, available at <https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2020-tables>; *see Court Operations during COVID-19 Pandemic Event*, W.D.N.Y., <https://www.nywd.uscourts.gov/court-operations-during-covid-19-pandemic-event> (last accessed Feb. 8, 2021). Yet, SSA was able to continue producing CARs in that district. *See, e.g., Snowman v. Commissioner of Social Security, supra*, n. 3. The Western District of Washington is another example of a court with a similar caseload of SSA cases to the Central District’s that did not implement a stay. Table C-3, *supra* (reflecting that Western District of Washington had 30 fewer SSA cases than the Central District of California); *Current General Orders by Topic*, W.D. Wash., <https://www.wawd.uscourts.gov/general-orders-current> (last accessed Feb. 11, 2021). Like in New York, SSA has continued producing CARs in the Western District of Washington. *See, e.g., Myhres v. Commissioner of Social Security, supra*, n. 3.

⁶ Southern District of California’s Order of the Chief Judge No. 21, *In the Matter of Social Security Matters under 42 U.S.C. § 405(g) during the Covid-19 Public Emergency*, filed on Apr. 8, 2020, at ¶ 2.

⁷ *See, e.g., Carmen Claudia Salgado v. Andrew M. Saul, supra*, n. 3. *See also infra*, n. 12.

In addition to the change in SSA’s ability to produce the CARs, it has become clear that there might not be a discernable “conclusion of the COVID-19 public health emergency.”⁸ While vaccinations are in progress, uncertainty remains over when they will be widely available to the public and what efficacy they will have. Thus, as ordered, the stay is at risk of remaining in place indefinitely. For these reasons, we request that the Court reconsider the Order.

The Order is Having an Unequal Impact on Central District Plaintiffs

Second, we request reconsideration of the Order because it is unequally applied in the Central District and the Order is one of the most restrictive we have identified, disadvantaging Plaintiffs in the Central District as compared to other jurisdictions. Currently, there is no designated mechanism by which a Plaintiff can petition the Court to lift the stay. And though the Order allows SSA to lift the stay in individual cases by producing the CAR, there is no judicial review to determine whether SSA is applying its power fairly. The result is that SSA has unfettered discretion over its production of the CAR and, by extension, unfettered discretion over which cases will proceed during the pandemic. This leads to unequal application of the Order to Plaintiffs. Further, this imbalance of power between the parties to lift the stay puts unrepresented litigants at a unique disadvantage. While counsel for represented litigants have had success in negotiating with SSA to produce the CAR in some cases, unrepresented litigants are unlikely to make requests of SSA.

In addition, litigants in other parts of California and the country are not subject to the same strict stay as those who live in the Central District of California. As discussed above, no jurisdictions outside of California imposed a stay. And while other jurisdictions in California imposed a stay, they either allowed litigants to petition the court to lift the stay upon the showing of good cause⁹ or allowed the assigned judge to lift the stay in a given case.¹⁰ As a result, litigants in the Central District of California face more stringent rules than litigants in other jurisdictions.

The Order Puts the Health and Security of Vulnerable Litigants at Risk

Lastly, we request reconsideration of the Order because continuing the stay endangers the health and security of vulnerable litigants. The Order puts on hold cases that challenge the Commissioner’s denial of Title II and Title XVI benefits to the elderly, individuals with disabilities, and individuals with a limited ability to work. These benefits can be critical for Plaintiffs, who may lack the income and resources necessary to meet minimum subsistence for food or shelter. However, Plaintiffs do not receive the Social Security benefits in dispute while their case is pending

⁸ Attachment A (Order of the Chief Judge 20-074, *In Re: Coronavirus Public Emergency, Order Staying Civil Matters Involving the Commissioner of Social Security as a Party Under 42 U.S.C. § 405(g)*).

⁹ Eastern District of California’s General Order No. 615, *In Re: Social Security Matters under 42 U.S.C. § 405(g) during the Covid-19 Public Emergency*, filed on Apr. 14, 2020, at ¶ 11.

¹⁰ Southern District of California’s Order of the Chief Judge No. 21, *In the Matter of Social Security Matters under 42 U.S.C. § 405(g) during the Covid-19 Public Emergency*, filed on Apr. 8, 2020, at ¶ 6.

in federal court.¹¹ Thus, long delays in adjudication of their claims can be devastating for Plaintiffs, particularly during a pandemic. *See Mathews v. Eldridge*, 424 U.S. 319, 342 (1976) (noting that, given “the typically modest resources of the family unit of the physically disabled worker, the hardship imposed upon the erroneously terminated disability recipient may be significant”); *Varney v. Sec’y of Health & Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988) (stating that “applicants for disability benefits often suffer from painful and debilitating conditions, as well as severe economic hardship. Delaying the payment of benefits by requiring multiple administrative proceedings that are duplicative and unnecessary only serves to cause the applicant further damage—financial, medical, and emotional. Such damage can never be remedied.”); *Chagnon v. Schweiker*, 560 F.Supp. 71, 74-75 (D. Vt. 1982) (“[C]ourts have uniformly acknowledged the hardships which attend delays in receiving disability insurance and SSI benefits”).

These vulnerable litigants may have been waiting more than ten months for their day in court, with no end in sight. And the cases are accumulating, creating a backlog that will increase delays. Indeed, since the Order went into effect, approximately 1,100 Social Security cases have been filed in the Central District. *See* Attachment B (Westlaw Litigation Analytics Report for Social Security cases filed in the Central District since April 17, 2020).¹² Continued implementation of the stay jeopardizes the health and security of disabled and elderly Plaintiffs. Like the change in circumstances since April, these risks to the health and security of Plaintiffs support a reconsideration of the Order.

We recognize that we are living through unprecedented circumstances due to the prolonged pandemic and the extreme changes it has brought to the workplace. We commend the Court on its efforts to ensure the integrity of the judicial system during this time. We request that, now that ten months have passed, the Court lift the stay ordered in April of 2020, in light of the indefinite length of the pandemic and the adjustments the Commissioner has made since the beginning of the pandemic, as well as the possible risks to the health and safety of vulnerable Plaintiffs further delay engenders. Should the Court reconsider the Order and find that SSA is still unable to timely produce

¹¹ Plaintiffs may, in some cases, be able to seek interim benefits from the Court. *See* SOC. SEC. ADMIN., GN 03106.063, INTERIM BENEFIT ORDERS (2002). However, we have not found a case where court-ordered interim social security benefits were ordered in the Central District of California.

¹² We are unaware of how many of these cases SSA has either filed a proof of service showing service of the CAR on the Plaintiff or filed the CAR directly with the Court, lifting the stay, as provided for in the Order. A docket search for notices to the court regarding service of certified administrative records in Supplemental Security Income and Social Security Disability Insurance cases filed in the Central District of California since April 17, 2020 turned up 94 results as of February 8, 2021.

the CARs, we would urge this Court to adopt a tailored Order, rather than a blanket stay.¹³ Thank you for your consideration of our request. Please contact Erica Embree at eembree@clsocal.org or 714-571-5282 for further information.

Sincerely,

Erica Embree

Community Legal Aid SoCal

Erica Embree, Staff Attorney, Complex Litigation Unit
Sarah Reisman, Supervising Attorney, Complex Litigation Unit
Sarah Cho, Staff Attorney, Public Benefits Unit
Anita Champion, Supervising Attorney, Public Benefits Unit
Janista Lee, Fellow, Complex Litigation Unit

Supporting Organizations

Disability Rights
California

National Organization of Social
Security Claimants' Representatives

Public Interest Law Project



Western Center
on Law & Poverty

Inner City Law
Center

Drake & Drake, P.C.

California Coalition of
Welfare Rights Organizations



Drake & Drake, P.C.



¹³ While the majority of districts in the country do not have emergency orders in place relating to the production of CARs in SSA cases, some districts have implemented accommodations, without fully staying the cases. The Eastern District of Kentucky granted an extension from 60 days to 120 days after service of process for the Commissioner to file an Answer and administrative transcript. General Order No. 20-17, *In Re: Filing of Answers and Administrative Transcripts in Social Security Benefit Cases*, filed Sept. 25, 2020. The Eastern District of Arkansas ordered that the United States must “timely file and serve the administrative record in all Social Security appeals electronically through CM/ECF” notwithstanding its Local Rule that “requires conventional filing and service of these records.” Admin. Order Four, *In Re: Court Operations during Covid-19 Pandemic – Electronic Filing of Administrative Records in Social Security Appeals*, filed Apr. 7, 2020. Similarly, the District of Oregon issued an order that suspended its Local Rule and previous Standing Order 2016-12 which required that “the United States Attorney provide to the presiding judge and to plaintiff’s counsel a text-searchable CD-ROM of the Administrative Record in Social Security disability cases.” Standing Order No. 2020-11, *In Re: Suspension of CD-ROM Requirement in Social Security Cases during Covid-19 Emergency*, filed Apr. 27, 2020.



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9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 IN RE:

ORDER OF THE CHIEF JUDGE
20-074

12 CORONAVIRUS PUBLIC
13 EMERGENCY

14 ORDER STAYING CIVIL MATTERS
15 INVOLVING THE COMMISSIONER
16 OF SOCIAL SECURITY AS A
17 PARTY UNDER 42 U.S.C. § 405(g)

18
19 WHEREAS the Government has moved *ex parte* for an order staying civil matters
20 involving the Commissioner of Social Security as a party under 42 U.S.C. § 405(g) due
21 to the COVID-19, also known as coronavirus, public health emergency;

22 WHEREAS the Government has shown Social Security Administration staff is
23 unable to compile and prepare certified administrative records (“CARs”) that are
24 necessary to the adjudication of the appeals of the denial of Social Security disability
25 benefits in this Court;

26 Without objection by the Executive Committee and for good cause shown, IT IS
27 ORDERED that the following actions are STAYED: (a) actions brought against the
28 Commissioner of Social Security pursuant to 42 U.S.C. § 405(g) filed on or after the date

1 of this Order; and (b) those previously-filed actions in which the Commissioner has not
2 prepared and served Plaintiff with the CAR.

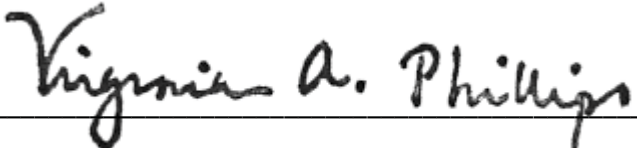
3 IT IS FURTHER ORDERED that the stay will continue until the Commissioner of
4 Social Security resumes operations, including the preparation of CARs, following the
5 conclusion of the COVID-19 public health emergency.

6 IT IS FURTHER ORDERED that the stay entered by this Order automatically will
7 be lifted in individual actions when the Commissioner of Social Security either: (a) files
8 a proof of service showing service of the CAR on Plaintiff; or (b) files the CAR directly
9 with the District Court. Thereafter, case deadlines will proceed pursuant to the
10 applicable case management orders and at the discretion of the assigned Judge(s). It will
11 not be necessary for the Government to move to lift the stay in individual cases.

12 IT IS FURTHER ORDERED that notwithstanding this Order, any Plaintiff may
13 serve the United States with a summons and complaint in a newly-filed action. Actions
14 in which CARs have previously been prepared and served on Plaintiff are not stayed.
15 Those actions may continue subject to the procedures of the assigned Judge(s).

16 IT IS SO ORDERED.

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19 Date: April 17, 2020

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21 _____
22 CHIEF UNITED STATES DISTRICT JUDGE
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Filters: **Case type:** Administrative & Government > Social Security > Disability Insurance; Administrative & Government > Social Security > Supplemental Security Income (NOS 864) | **Court:** Federal > District Ct. > C.D. California | **Date:** From 04/17/2020 to 02/08/2021

Docket analytics

Case type

	Total
Supplemental Security Income (NOS 864)	629
Disability Insurance	474