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9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 Habeas Corpus Resource Center and the )  
 12 Office of the Federal Public Defender for )  
 13 the District of Arizona, )

14 Plaintiffs, )

15 vs. )

16 United States Department of Justice and )  
 Eric H. Holder, in his official capacity as )  
 17 United States Attorney General, )

18 Defendants. )

Case No.: CV 13-4517

**Defendants' Administrative Motion to Stay Litigation and Toll Deadlines in Light of Lapse in Federal Government Appropriations Pursuant to Local Civil Rule 7-11.**

**Date: TBD**  
**Time: TBD**  
**Courtroom: TBD**

19 Defendants the Department of Justice and Eric H. Holder, Jr., United States  
 20 Attorney General ("the government"), hereby move pursuant to Rule 7-11 of the Local  
 21 Civil Rules, for a stay of proceedings in this matter including, in particular, the  
 22 government's response to Plaintiff's Motion for Temporary Restraining Order, due to a  
 23 lapse in government appropriations. In support thereof, the government states as follows:

24 1. At the end of the day on September 30, 2013, the appropriations act that  
 25 had been funding the Department of Justice ("Department") expired and appropriations to  
 26

1 the Department lapsed. The Department does not know when funding will be restored by  
2 Congress.

3 2. Absent an appropriation, Department attorneys and employees are  
4 prohibited from working, even on a voluntary basis, except in very limited circumstances,  
5 including “emergencies involving the safety of human life or the protection of property.”  
6 31 U.S.C. § 1342.

7 3. In this action, Plaintiffs challenge a recently published Final Rule under  
8 which the Department may certify a mechanism established by a state government for the  
9 appointment and compensation of counsel for death row inmates. *See* 75 Fed. Reg.  
10 58,160 (Sept. 23, 2013). The effective date of the Final Rule is not until October 23,  
11 2013. Under the Final Rule, a state’s application for certification must be published in  
12 the *Federal Register* and then followed by a public comment period. The Department  
13 has advised Plaintiffs’ counsel that a 60-day comment period for an application will be  
14 provided once an application is published.

15 4. During the lapse in appropriations, Department personnel will not take any  
16 actions related to the Final Rule, including the publishing of any applications submitted  
17 by states for certification. Therefore, no applications for certification will be published  
18 until the Department resumes normal business operations, and thus the earliest date that a  
19 state could be certified is sixty days from the end of the lapse in appropriations.<sup>1</sup> In these  
20 circumstances, there should be no prejudice to Plaintiffs if a stay of consideration of  
21 Plaintiffs’ Motion for Temporary Restraining Order were granted.

22 5. If this motion for a stay is granted, undersigned counsel will notify the  
23 Court as soon as Congress has appropriated funds for the Department. The government  
24 requests that, within two business days of the resumption of operations at the  
25

26 <sup>1</sup> If the government shutdown ends before the effective date of the Final Rule, then the earliest that a state could be  
27 certified is December 22, 2013, which assumes publication of the state’s application on the effective date.

1 Department, the parties file a joint status report with proposed briefing schedule for any  
2 motions that have been filed in this action.

3 6. Plaintiffs' counsel has advised that Plaintiffs oppose this motion and the  
4 relief requested herein.

5 Therefore, although we greatly regret any disruption caused to the Court and  
6 Plaintiffs, the government hereby moves for a stay of this litigation, including the  
7 deadlines related to the Motion for Temporary Restraining Order filed last Friday by  
8 Plaintiffs, until Department attorneys and personnel are permitted to resume their usual  
9 civil litigation functions.

10 In the event the instant administrative motion is denied, and the Court declines to  
11 stay consideration of Plaintiffs' Motion for Temporary Restraining Order, the  
12 government will file a separate opposition to that motion and respectfully requests that  
13 Defendants be afforded sufficient time to prepare their opposition.

14 Date: October 7, 2013

Respectfully submitted,

15 STUART F. DELERY  
16 Assistant Attorney General

17 MELINDA HAAG  
18 U.S. Attorney

19 ANTHONY J. COPPOLINO  
20 Deputy Branch Director  
21 Civil Division

22 /s/ Jacqueline Coleman Snead  
23 JACQUELINE COLEMAN SNEAD  
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25 Senior Counsel  
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*Habeas Corpus Resource Ctr. v. Department of Justice*  
Case No. 13-4517  
Defendants' Motion to Stay Litigation

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**Counsel for Defendants**

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