IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

ADAM JOYNER, Plaintiff, v. THOMAS J. VILSACK, *in his official capacity as Secretary of Agriculture,* Defendant.	Case No. 1:21-cv-01089-STA-JAY **Opposition to Defendant's Motion to Stay**

Plaintiff, Adam Joyner, submits this Opposition to Defendant's Motion to Stay proceedings in this case. *See* Dkt. 12. This case should not be stayed due to an unrelated class action in a different district court, in a different state, in a different circuit, brought by different lawyers, on behalf of a different plaintiff, and raising different claims. *See Miller v. Vilsack,* Northern District of Texas No. 4:21-cv-00595-O. That other parties have their own set of arguments against the same statute should not deprive Plaintiff of his day in court and should not deprive this Court of the opportunity to rule on Plaintiff's claims.

This Court should deny the stay because the balance of hardships weighs in favor of allowing Plaintiff to continue this action and because the other litigation to which Defendant points is not so duplicative of the present action as to deny Plaintiff an opportunity to assert his rights.

STANDARD OF REVIEW

Staying a case falls within the broad discretion of the court without any hard and fast test. Generally, the "most important consideration is the balance of hardships; the moving party has the burden of proving that it will suffer irreparable injury if the case moves forward, and that the non-moving party will not be injured by a stay." *IBEW, Local Union No. 2020 v. AT&T Network Sys.*, 879 F.2d 864, 1989 U.S. App. LEXIS 10266 *23 (6th Cir. 1989).

Courts also consider whether a stay would serve the interests of judicial economy by avoiding duplicative litigation. *Id.* at *24. In determining whether litigation is duplicative, "courts generally evaluate three factors: (1) the chronology of events, (2) the similarity of the parties involved, and (3) the similarity of the issues or claims at stake." *Baatz v. Columbia Gas Transmission, LLC*, 814 F.3d 785, 789 (6th Cir. 2016).

The burden is on the moving party to prove a stay is warranted because the party opposing a stay "has a right to a determination of its rights and liabilities without undue delay." *Ohio Envtl. Council v. United States Dist. Court, S. Dist., etc.*, 565 F.2d 393, 396 (6th Cir. 1977).

ARGUMENT

I. The balance of hardships weighs in favor of Plaintiff.

Joyner is a small farmer in rural Tennessee represented by a nonprofit legal advocacy group. Defendant Vilsack is the United States Secretary of Agriculture,

with the full resources of the Department of Justice and federal government at his disposal. The premise that it is more burdensome on the federal government to litigate this case now than it would be burdensome on Joyner to have his lawsuit remain in limbo for what could be years should give this Court pause.

To date, Defendant has filed nothing of substance in this case except for this motion. Defendant asks for a stay of Plaintiff's claims without ever taking the time to answer them. Yet Defendant insists that this will not prejudice Plaintiff, on the premise that claims and arguments they have never answered will be adequately represented by different parties in a different lawsuit. Def's Mot. to Stay, Dkt. 12 at 8. He does so without any knowledge of whether Plaintiff agrees with the approach in the Texas case or whether he might object to some of the relief requested. All Defendant can point to is that both cases raise claims regarding the same statute, but that is not determinative.

Plaintiff owes hundreds of thousands of dollars in federal loans—for which more payments are due and more and more interest is charged as time goes on. Asking him to wait for what may well be years for a resolution of the policy that governs his financial affairs is a tremendous burden, regardless of whether this Court were to decide the appropriate remedy in this case was to "level down" (eliminate the discriminatory forgiveness program for all borrowers) or "level up" (extend the forgiveness to him on a non-discriminatory basis). *See, e.g., Heckler v. Mathews*, 465 US 728, 737 (1984). Without resolution of this case, Joyner must sit in stasis and uncertainty while his rights are argued elsewhere.

By contrast, the Government's claimed burden is simply that its unconstitutional law has proved so susceptible to challenge that a number of other challenges have been filed against it. The Department of Justice, with its thousands of lawyers, can walk and chew gum at the same time. Whatever inconvenience it may be for the Government to address this constitutional challenge, it certainly does not rise to the level of *irreparable injury*, which is Defendant's burden to demonstrate in seeking this stay. *IBEW*, 1989 U.S. App. LEXIS 10266 at *23.

II. A stay would not serve the interests of judicial economy.

Defendant's motion makes much of the number of other cases that have been filed, Def's Mot. to Stay at 8-9, but it is not Plaintiff's burden to justify or undermine any of these other challenges. Many of these lawsuits make different claims, employ different strategies, and name different defendants from the present action. The question for the Court is whether Plaintiff's action is sufficiently duplicative of the litigation in *Miller* that he should be required to wait on the parties there to protect his rights. It is not.

Defendant points to the recent district court order certifying the class in *Miller*, but that certification is not final, as Defendant explicitly admits that this order is subject to appeal and suggests that the Government might appeal it. Def's Mot. to Stay at 5, n.7. At the very least, a stay in this case is not appropriate until Defendant can represent to the Court whether he is appealing the class certification or whether it will remain in place.

Be that as it may, the *Miller* litigation is not duplicative of the present action in any case. Defendant makes much of the class definitions, which Plaintiff concedes are broad, covering all farmers and ranchers not already granted loan forgiveness under Section 1005. Plaintiff also concedes that *Miller* was filed earlier than this case. But 6th Circuit precedent asks this Court to assess duplicative litigation not just on the basis of chronology but also on the identity of the parties and the issues and claims raised. *Baatz,* 814 F.3d at 789.

Plaintiff, here, has no association with the Plaintiff in *Miller*. Most importantly, his claims are not substantively equivalent to the claims in *Miller*. Both complaints challenge Section 1005's limitation of debt relief on the basis of race, but they express much different views as to what should be done about it. In his Complaint, Plaintiff asks that this Court enjoin Defendant from implementing Section 1005 on the basis of race. He pleads for the establishment of a race neutral policy that comports with the requirements of the equal protection clause. *See* Complaint, Dkt. 1 at 8, ¶ b.

The approach taken by the class representative in *Miller* is something else entirely. Rather than limit itself to a basic principle of equality before the law, the *Miller* complaint asks the Texas court to extend "socially disadvantaged" status to "include white ethnic groups that have suffered past prejudice and discrimination." Northern District of Texas No. 4:21-cv-00595-O, Dkt. 1 at 7. It goes on to argue that the court should construe "social disadvantage" to "include individuals who have any discernible trace of minority ancestry." *Id.* at 8. These are claims entirely at

odds with the gravamen of Plaintiff's Complaint. Instead of asking simply to eliminate the discrimination of Section 1005, the *Miller* action looks to extend such discrimination in new and troubling ways, reading definitions of racial categories into federal law. Plaintiff declines to engage in such extensions of the very racial essentialism he wishes to challenge. Instead, his Complaint asks simply that we follow the Supreme Court's teaching on this matter and reaffirm that "[the way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 748 (2007).

Conclusion

For the forgoing reasons, the Defendant's Motion to Stay should be denied.

Respectfully Submitted, July 30, 2021

s/ Reilly Stephens
Reilly Stephens *
Brian K. Kelsey (TN B.P.R. #022874)
Liberty Justice Center
141 W. Jackson St.
Suite 1065
Ph.: 312-637-2280
rstephens@libertyjusticecenter.org
bkelsey@libertyjusticecenter.org

Counsel for Plaintiffs

*Admitted Pro hac vice