IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

SARA ROGERS, *Plaintiff*, v. THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture, *et al.*, *Defendants*.	No. 2:21-cv-01779-DDD-SKC

DEFENDANTS' MOTION TO STAY PROCEEDINGS
PENDING RESOLUTION OF RELATED CLASS ACTION

For the reasons stated below, Defendants Thomas J. Vilsack, in his official capacity as Secretary of Agriculture, and Zach Ducheneaux, in his official capacity as Administrator of the Farm Service Agency (collectively, Defendants), move to stay this case until the final resolution of related litigation that has been certified as a class action under Federal Rule of Civil Procedure 23(b)(2). Pursuant to D.C. Colo. L. Civ. R. 7.1(a), counsel for Defendants conferred with counsel for Plaintiff by telephone, and counsel indicated that Plaintiff opposes this request.

In March 2021, Congress enacted Section 1005 of the American Rescue Plan Act (ARPA), which authorizes funds to provide debt relief on certain loans provided or guaranteed by the U.S. Department of Agriculture (USDA) and held by "socially disadvantaged farmers or ranchers." Congress determined that this relief was necessary to remedy the lingering effects of decades of discrimination against minority farmers in USDA's farm loan programs, which effects were exacerbated by COVID-19 and the failure of prior pandemic relief to reach those farmers. Plaintiff

Sara Rogers filed this action to challenge USDA's implementation of Section 1005 on equal protection grounds. *See* Compl., ECF No. 1. Plaintiff's lawsuit is not the only challenge to Section 1005. There are currently twelve such lawsuits pending before courts across the country, and multiple courts have already granted preliminary relief.

Recent developments in the earliest-filed challenge to Section 1005 warrant a stay of this case. Specifically, on July 2, 2021, the Northern District of Texas certified two Rule 23(b)(2) classes of farmers and ranchers bringing an equal protection challenge to Section 1005 like the one Plaintiff brings here. *See* Order on Class Cert. & PI, *Miller v. Vilsack*, 4:21-cv-595, ECF No. 60 (N.D. Tex.) (attached as Ex. A) (hereinafter "*Miller* Order"). At the same time, that court issued an injunction that prevents the Government from disbursing Section 1005 funds while the case is adjudicated on the merits. *Id.*

Plaintiff is a member of the classes certified in *Miller*, and Defendants will be bound by any relief granted to the classes with respect to Plaintiff should the equal protection claim prevail. Thus, continued adjudication of Plaintiff's claims in this Court, separate from the classes to which she belongs, would be unnecessarily duplicative and risk inconsistent results. A stay would thus preserve judicial resources and prevent hardship to Defendants, who would otherwise be required to continue defending against duplicative claims in separate courts. And, on the other hand, a stay would not prejudice Plaintiff, who will be bound by, and benefit from, any judgment applicable to the classes and in the meantime is protected by the preliminary injunction entered by the *Miller* court as well as two other nationwide injunctions entered by other courts. For these very reasons, courts routinely stay related proceedings pending resolution of a class action—particularly those

under Rule 23(b)(2)—to which a plaintiff belongs. This Court should do likewise and stay this case until final resolution of the class challenge to Section 1005 in *Miller*.[1]

BACKGROUND

On June 29, 2021, Plaintiff filed this case, alleging that USDA's implementation of Section 1005, which authorizes debt relief to "socially disadvantaged farmers or ranchers," violates her right to equal protection. *See* Compl. This case is one of twelve brought in courts around the country bringing a similar challenge.[2] Three courts have preliminarily enjoined disbursement of programmatic funds. *See Miller* Order; *Holman v. Vilsack*, 1:21-cv-1085 (W.D. Tenn.), PI Order, ECF No. 41; PI Order, *Wynn v. Vilsack*, 3:21-cv-514 (M.D. Fla.), ECF No. 41.[3]

Miller, the first-filed case, commenced on April 26, 2021. Compl., *Miller*, ECF No. 1. On June 2, the five *Miller* plaintiffs moved to certify two classes of farmers and ranchers, Br. in Supp. of Mot. for Class Cert., *id.*, ECF No. 13, and for a preliminary injunction, Br. in Supp. of Mot. for PI, *id.*, ECF No. 18.[4] On June 30, 2021, the *Miller* court granted both motions. *Miller* Order. Adopting the plaintiffs' proposed class definitions in full, the court certified the following two

---

[1] Defendants are filing stay motions in all of the other cases challenging Section 1005, except for *Miller*, the case in which the classes have been certified.

[2] *Miller*, 4:21-cv-595; *Holman v. Vilsack*, 1:21-cv-1085; *Joyner v. Vilsack*, 1:21-cv-1089 (W.D. Tenn.); *Carpenter v. Vilsack*, 21-cv-103 (D.Wyo.); *Wynn v. Vilsack*, 3:21-cv-514 (M.D. Fla.); *Faust v. Vilsack*, 1:21-cv-548 (E.D. Wis.); *McKinney v. Vilsack*, 2:21-cv-212 (E.D. Tex.); *Kent v. Vilsack*, 3:21-cv-540 (S.D. Ill.); *Dunlap v. Vilsack*, 2:21-cv-942 (D. Or.); *Tiegs v. Vilsack*, 3:21-cv-147 (D.N.D.); *Nuest v. Vilsack*, 21-cv-1572 (D. Minn.). Defendants have not yet been served in all of these cases, and the Government does not waive any objections regarding service.

[3] The court in *Faust* had entered a temporary restraining order on June 8, 2021, but recently dissolved that order and stayed the *Faust* plaintiffs' motion for preliminary injunction in light of the preliminary injunction entered in *Wynn*. Order 7, *Faust*, ECF No. 49.

[4] Although the plaintiffs in *Miller* assert equal protection, Title VI, and statutory construction claims, their preliminary injunction and class certification motions relied solely on their equal protection challenge to Section 1005 that is virtually identical to Plaintiff's challenge here. *See* Br. in Supp. of Mot. for Class Cert. 4.

classes under Rule 23(b)(2):

> 1. All farmers and ranchers in the United States who are encountering, or who will encounter, racial discrimination from the United States Department of Agriculture on account of section 1005 of the American Rescue Plan Act.
>
> 2. All farmers and ranchers in the United States who are currently excluded from the definition of "socially disadvantaged farmer or rancher," as defined in 7 U.S.C. § 2279(a)(5)–(6)[5] and as interpreted by the Department of Agriculture.

Id. at 5-6. Although *Miller* certified two classes, the plaintiffs and the court emphasized that the classes were specific to the plaintiffs' challenge to Section 1005. *Id.* at 13; Class Cert. Reply 1, ECF No. 41 ("The plaintiffs—at this point in the litigation—are seeking classwide relief *only* against the continued enforcement of the racial exclusions in section 1005 of the American Rescue Plan Act."); *id.* at 4 ("These classes are being proposed for the purpose of obtaining preliminary classwide relief against the racial exclusions in section 1005.").

Additionally, in granting the plaintiffs' preliminary-injunction motion, the court enjoined Defendants

> from discriminating on account of race or ethnicity in administering section 1005 of [ARPA] for any applicant who is a member of the Certified Classes. This prohibition encompasses: (a) considering or using an applicant Class Member's race or ethnicity as a criterion in determining whether that applicant will obtain loan assistance, forgiveness, or payments; and (b) considering or using any criterion that is intended to serve as a proxy for race or ethnicity in determining whether an applicant Class member will obtain loan assistance, forgiveness, or payments.

Miller Order 22-23, *id.* Like the other extant nationwide injunctions, the *Miller* injunction precludes disbursement of Section 1005 funds while the case is adjudicated on the merits. On July 16, 2021, the parties in *Miller* submitted a joint report, proposing a schedule for resolving the

[5] Section 1005 incorporates the definition of "socially disadvantaged farmer or rancher" set out in 7 U.S.C. § 2279(a).

Section 1005 claim in that case. *See Miller*, Jt. Rep., ECF No. 70.[6]

STANDARD OF REVIEW

"The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). That power applies "especially in cases of extraordinary public moment," when "a plaintiff may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted." *Id.* at 707 (modifications omitted).

A court may stay proceedings in order to "control its docket for the purpose of economy of time and effort for itself, for counsel, and for litigants." *Baca v. Berry*, 806 F.3d 1262, 1269-70 (10th Cir. 2015) (quoting *Pet Milk Co. v. Ritter*, 323 F.2d 586, 588 (10th Cir. 1963)); *see also United States ex rel. El Paso Glass Co., Inc. v. David Boland, Inc.*, 2018 WL 1566834, at *1 (D. Colo. Mar. 30, 2018) ("[T]he Court is guided by the factors of judicial economy and convenience for the Court, for counsel, and for the parties."). "Allowing the same issue to be decided more than once wastes litigants' resources and adjudicators' time." *B&B Hardware, Inc. v. Hargus Indus., Inc.*, 575 U.S. 138, 140 (2015); *see also Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) ("As between federal district courts, . . . the general principle is to avoid duplicative litigation."). Thus, it is a "well established policy that a court may, in its discretion, defer or abate proceedings where another suit, involving the identical issues, is pending . . . and it would be duplicative, uneconomical, and vexatious to proceed." *Blinder, Robinson & Co. v. SEC*, 692 F.2d 102, 106 (10th Cir. 1982). In exercising such discretion, courts

[6] On June 29, Defendants filed a partial answer and partial motion to dismiss the *Miller* plaintiffs' non-Section 1005 claims. *See* ECF Nos. 49, 51.

weigh various factors, including (1) the interests of judicial economy, (2) harm to the movant in the absence of a stay, (3) harm to the non-movant in the issuance of a stay, (4) and the public interests at stake. *See id.*; *United Steelworkers of Am. v. Or. Steel Mills, Inc.*, 322 F. 3d 1222, 1227 (10th Cir. 2003).

ARGUMENT

The Court should stay this case until final resolution of the class challenge to Section 1005 in *Miller*.[7] All relevant factors support this proposed stay. First, and most significantly, a stay serves the interests of judicial economy. Because Plaintiff is a member of the classes challenging Section 1005 and will directly benefit from any relief granted in *Miller*, staying this case will avoid unnecessarily duplicative litigation and potentially inconsistent results. Second, a stay will not prejudice Plaintiff, who is already protected by multiple preliminary injunctions and who may receive all the relief she is entitled to upon entry of final judgment in *Miller*. Third, continuing to adjudicate Plaintiff's claim in this Court and in *Miller* simultaneously would impose hardship on Defendants, who would be required to defend against identical claims in multiple courts at the same time—potentially in numerous other courts around the country. Finally, courts regularly stay cases pending resolution of related class actions. This Court should do likewise.

I. A Stay Would Promote Judicial Economy And Avoid Inconsistent Results.

First, staying this case would promote judicial economy by avoiding simultaneous, duplicative litigation of Plaintiff's claim in multiple courts and protecting the parties and the courts from conflicting results. Plaintiff indisputably falls within the definition of the *Miller* classes: she

[7] Defendants have not appealed the order granting a preliminary injunction and certifying the classes in *Miller* but reserve their right to do so. If the classes in *Miller* are decertified for any reason, the parties can brief this Court on whether to lift the stay.

is a farmer who alleges that she is being subjected to racial discrimination due to USDA's provision of Section 1005 debt relief to socially disadvantaged farmers because the definition of "socially disadvantaged farmer or rancher" does not automatically include farmers like her who self-identify as white. And the classes in *Miller* were certified under Rule 23(b)(2), which means that Plaintiff cannot opt out of any judgment applicable to the classes. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-63 (2011). Thus, any relief ordered in *Miller* will apply equally to Plaintiff as it does to all other class members. *Id.* at 361-62 (noting that the relief sought in a Rule 23(b)(2) class "perforce affect[s] the entire class at once"); *see also Juris v. Inamed Corp.*, 685 F.3d 1294, 1312 (11th Cir. 2012) ("Class action judgments will typically bind all members of the class."). Indeed, that relief will be *binding* on Plaintiff and preclude her, like all other class members, from obtaining an alternative judgment in another proceeding. *Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 874 (1984).

Accordingly, permitting Plaintiff to continue litigating her claims in this Court, separate from the rest of the class to which she belongs, would create a risk of inconsistent results that could undermine the preclusive effect of a classwide judgment and confuse Defendants' obligations to different class members. *See Dunn v. Air Line Pilots Ass'n*, 836 F. Supp. 1574, 1584 (S.D. Fla. 1993), *aff'd,* 193 F.3d 1185 (11th Cir. 1999) (expressing concern with "avoid[ing] conflicting orders"). For instance, if the plaintiff class succeeds in its equal protection challenge to Section 1005 in *Miller* but Plaintiff loses her claim here (or vice versa), Defendants would be subject to conflicting judgments concerning the constitutionality of Section 1005 and, importantly, their obligations toward this Plaintiff. Staying this case pending resolution of the class challenge to Section 1005 would promote judicial efficiency by avoiding this risk of contradictory outcomes.

That *Miller* was certified as a class action after Plaintiff filed her case does not undermine the preclusive effect of any classwide judgment or justify Plaintiff's continued litigation of her claims separately in this Court. *Miller* was the first-filed case, and under the first-filed rule, "when two courts have concurrent jurisdiction, the first court in which jurisdiction attaches has priority to consider the case." *Hospah Coal. Co. v. Chaco Energy Co.*, 673 F.2d 1161, 1163 (10th Cir. 1982) (citation omitted). The rule takes three factors into consideration: "(1) the chronology of events, (2) the similarity of the parties involved, and (3) the similarity of the issues or claims at stake." *Wakaya Perfection, LLC v. Youngevity Int'l, Inc.,* 910 F.3d 1118, 1124 (10th Cir. 2018) (citation omitted). Here, the parties and issues involved are not just similar—they are identical. Indeed, because Plaintiff is a class member, *this Plaintiff's claim* is being simultaneously litigated in two separate courts. And "[i]f a class member cannot relitigate issues after final judgment in a class action suit, by analogy a class member should not be able to prosecute a separate equitable action once the member's class has been certified." *Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986) (table). Thus, litigating Plaintiff's claim separately here would only "interfere[] with the ongoing class action." *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991). That would undermine judicial economy and "[t]wo of the primary purposes underlying [Rule] 23"—avoiding "duplicative litigation and inconsistent standards." *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982). Under general principles of judicial economy, underscored by the first-filed rule, the better course is to stay this action pending resolution of the class action certified in the earliest-filed Section 1005 case.

II. A Stay Would Not Prejudice Plaintiff And Would Avoid Hardship To The Government.

For similar reasons, staying this case pending resolution of the class challenge to Section 1005 in *Miller* would not prejudice Plaintiff. Again, the classes certified in *Miller* challenge the same agency action and seek the same relief as Plaintiff here. *Compare* Pls.' Br. in Supp. of Prelim. Inj. ECF No. 18, *Miller* (challenging the implementation of Section 1005 based on USDA's interpretation of "socially disadvantaged farmer or rancher" with reference to race), *with* Compl. (same). Because Defendants will be bound by a final judgment in the class action with respect to this Plaintiff, staying her duplicative case in this Court will not impede her ability to obtain the relief she seeks. And Plaintiff will not be harmed while her case is stayed and the class litigation continues, as three overlapping preliminary injunctions are "preserv[ing] the status quo" in the meantime. Order 7, *Faust* (staying the plaintiffs' preliminary injunction motion because the *Wynn* nationwide injunction adequately protected the plaintiffs).

Moreover, the cases are still in their early stages. As noted, the parties just submitted a proposed case schedule in *Miller* on July 16, 2021. *See* ECF No. 70. And the sole upcoming deadline in this case is Defendants' deadline to respond to Plaintiff's Complaint, by September 7, 2021. Staying this case at such an early stage of the proceedings would therefore not unnecessarily disrupt litigation of Plaintiff's claim and would instead promote its efficient resolution via the consolidated class action proceedings.

Additionally, staying this case would avoid hardship to the Government. As stated, there are currently eleven other substantively similar lawsuits pending around the country. Particularly given the importance of the issues at stake, requiring the Government to defend against any one of them separately from the class action—contending with differing case schedules and discovery

obligations—would run contrary to the Government's and the public's interest in the just and efficient resolution of cases, and especially those of "extraordinary public moment." *Clinton*, 520 U.S. at 707 ("[E]specially in cases of extraordinary public moment, a plaintiff may be required to submit to delay." (modifications omitted)). Requiring the Government to defend up to *twelve* cases simultaneously—on varying schedules and in different jurisdictions—would substantially burden the Government's (and the courts') resources without appreciably benefitting Plaintiff.

III. Courts Regularly Stay Cases Pending Resolution Of Related Class Actions.

Finally, a stay here would be consistent with other courts' recognition that a stay (or even dismissal) is generally warranted upon certification of a class of which the plaintiff is a member.[8] *See, e.g.*, *Jiaming Hu v. U.S. Dep't of Homeland Sec.*, 4:17-cv-02363, 2018 WL 1251911, at *4 (E.D. Mo. Mar. 12, 2018) ("Since class members generally cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified." (internal quotation marks omitted) (citing cases dismissing actions where the plaintiff was a member of certified class in another case)); *see also Mackey v. Bd. of Educ. for Arlington Cent. Sch. Dist.*, 112 F. App'x 89, 91 (2d Cir. 2004) (affirming dismissal without prejudice "based on the rule against duplicative litigation" where plaintiff's allegations "duplicated claims that had been included in separate class actions" against the defendant, and plaintiffs "were members of those classes"); *Aleman ex rel. Ryder Sys., Inc. v. Sancez*, 21-cv-20539, 2021 WL 917969, at *2 (S.D. Fla. Mar. 10, 2021) (noting that "the Court

[8] Indeed, federal courts regularly stay cases when a class certification motion is only *pending*, rather than already granted, in an earlier-filed related case. *See, e.g.*, *Sanchez-Cobarrubias v. Bland*, CV609-005, 2011 WL 841082, at *1 (S.D. Ga. Mar. 7, 2011) (reciting case history); *Bargas v. Rite Aid Corp.*, CV1303865MWFJEMX, 2014 WL 12538151, at *3 (C.D. Cal. Oct. 21, 2014).

entered an order staying proceedings" pending resolution of a related class action, "recognizing that the cases are related, and that the resolution of the issues raised in the Class Action will necessarily impact the proceedings in" the case); *Richard K. v. United Behavioral Health*, 18-cv-6318, 2019 WL 3083019, at *7 (S.D.N.Y. June 28, 2019), *report and recommendation adopted*, 18-cv-6318, 2019 WL 3080849 (S.D.N.Y. July 15, 2019) (stay and dismissal without prejudice "are routinely found appropriate where, as here, the claims made in an individual lawsuit overlap with the claims being pursued by a certified class of which the individual plaintiff is a member").

In such cases, courts have ordered a stay of the same scope Defendants seek here: a stay of all proceedings until final resolution of the related class action. *See, e.g.*, *Gonzales v. Berryhill*, 18-cv-603, ECF No. 28 (D.N.M. Mar. 5, 2019) (staying proceedings until the district court in a related case "issues a decision on the forthcoming motion for class certification and, if a class is certified in [the related case], until the conclusion of all proceedings in [that case], including any appeals").

The First Circuit's decision in *Taunton Gardens Co. v. Hills* illustrates the propriety of a stay in circumstances strikingly similar to this case. 557 F.2d 877 (1st Cir. 1977). There, the plaintiffs challenged "the administration of a major federal program and the disbursement of a significant amount of federal money," and the case thus "present[ed] issues of 'public moment.'" *Id.* at 879. And there, much like here, the implementation of that federal program had spurred litigation "in more than ten district courts" around the country, and the Government was subject to multiple injunctions. *Id.* Moreover, like this case, a related action was certified as a class action. *See Taunton Gardens Co. v. Hills*, 421 F. Supp. 524, 526 (D. Mass. 1976). Although the plaintiffs in *Taunton Gardens* were not members of that class, the court noted that they challenged the same

program and sought identical relief and, thus, that the class action determined the merits of the case. *Id.* Accordingly, the district court found it was in "the interest of justice" to stay all proceedings—including litigation of the pending motion for preliminary injunction—"pending entry of a final judgment in the class action case." *Id.* The First Circuit upheld the stay, also emphasizing that it was in the "public interest, the court's interest in efficient procedures, and the interest of justice" to stay the case and afford the Government "a reasonable opportunity to resolve its obligations in the national class action." 557 F.2d at 879. It also pointed out that the stay's duration, lasting until an appeal of the class action judgment was resolved, was reasonable. *Id.*

All of the factors considered by *Taunton Gardens* support a stay here: Plaintiff challenges a significant federal program presenting issues of "public moment," and undersigned counsel are defending against claims in twelve courts around the country. Additionally, the recently certified classes in *Miller* seek the same relief Plaintiff seeks in this case—and indeed, since Plaintiff is a member of those classes, resolution of the challenge to Section 1005 in *Miller*, and any relief granted by that court, will operate to protect Plaintiff together with all other class members. Finally, the scope of the stay requested here—until resolution of the class action—is the same as that approved in *Taunton Gardens* and other cases. There, as here, the "public interest, the court's interest in efficient procedures, and the interest of justice" support a stay of all procedures pending resolution of the class challenge to Section 1005 in *Miller*.

CONCLUSION

For these reasons, Defendants respectfully request that the Court stay proceedings in this case pending resolution of the class challenge to Section 1005 in *Miller*.

Dated: July 19, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

LESLEY FARBY
Assistant Branch Director
Civil Division, Federal Programs Branch

/s/ Emily Newton
EMILY SUE NEWTON (VA Bar No. 80745)
Senior Trial Counsel
KYLA M. SNOW (Ohio Bar No. 96662)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
Tel: (202) 305-8356 / Fax: (202) 616-8460
emily.s.newton@usdoj.gov

Counsel for Defendants

I hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2021, a copy of the foregoing motion was filed electronically via the Court's ECF system, which effects service on counsel of record.

/s/ Emily Newton
EMILY SUE NEWTON
United States Department of Justice