

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

SARA M. ROGERS,

Plaintiff,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of the United States
Department of Agriculture, and

ZACH DUCHENEAUX, in his official
capacity as Administrator of the Farm Service
Agency,

Defendants.

Case No. 1:21-cv-01779

**PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ MOTION TO
CONTINUE THEIR RESPONSE
DEADLINE [ECF NO. 13]**

Six days before the deadline for its initial responsive pleading, the Government asks that this Court hurriedly act to postpone all case deadlines indefinitely. The pending motion to stay the proceedings was filed on July 19, 2021. The class action that the Government argues is the cause for it seeking the instant relief was certified on July 2, 2021. It is unclear why the Government waited until September 1 to file its motion. In any event, Plaintiff opposes. The Federal Rules of Civil Procedure provide that an extension may be granted *for good cause*. Fed. R. Civ. P. 6(b)(1). The Government does not cite this rule, nor does it mention the phrase “good cause” even once. Nor, even if it had, does the Government meet this burden.

The Government does not seek a definite date in which it will provide its answer or response to Plaintiff’s Complaint. Rather, the Government seeks to extend its response deadline until 14 days after its motion to stay is denied or, if granted, 14 days after the stay is listed. In short, the motion is not due to any unforeseen circumstances, and simply asks for a wholesale erasure of all current case deadlines. The Government is not entitled to the assumption that it will

prevail on its motion to stay, and is not entitled to simply erase current deadlines until its motion is resolved. Other courts have decided the same. *See* Order Den. Defs.’ Mot. to Administratively Stay Deadlines, *Faust v. Vilsack*, 1:21-cv-548 (E.D. Wis. July 13, 2021), ECF No. 55; Order Den. Defs.’ Mot. to Administratively Stay Deadlines Pending Resolution of Defs.’ Mot. to Stay, *Wynn v. Vilsack*, 3:21-cv-514 (M.D. Fla. July 27, 2021), ECF No. 50 (“Until the Court rules on Defendants’ Motion to Stay, this case remains active and the parties are expected to proceed as previously directed.”).

Furthermore, the Government wholly fails to discuss the relevant standard for requesting extensions of time, nor does it show that the standard has been met. Rule 6(b)(1) of the Federal Rules of Civil Procedure provides, in relevant part, “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.” Here, the Government ignores the good cause standard, and its only bases for the extension are that the motion to stay proceedings in this case is pending and that nationwide preliminary injunctions have already been entered in related cases. *See* Defs.’ Mot. to Continue Their Response Deadline, ECF No. 13 at 1-2. These explanations are insufficient to show good cause—the Government never once argues that it cannot meet its answer deadline despite its diligent efforts. Instead, it seeks to avoid its duty to answer or otherwise respond to the complaint for as long as possible, despite having ample time and opportunity to do so.

Furthermore, the Government’s arguments amount mostly to the idea that it will prevail on its motion to stay proceedings. But for obvious reasons, Plaintiff disagrees. Indeed, the Government’s pleadings fail even to cite the correct legal standard in its motion or reply. *See, e.g.*,

United Steelworkers of Am. v. Or. Steel Mills, Inc., 322 F.3d 1222, 1227 (10th Cir. 2003); *String Cheese Incident, LLC v. Stylus Shows, Inc.*, No. 05-cv-01934-LTB-PAC, 2006 WL 894955, at *2 (D. Colo. Mar. 30, 2006). The Government wrongly asserts that the “likelihood of prevailing” factor applied in *United Steelworkers* could not apply here. See Defs.’ Reply in Supp. of Mot. to Stay, ECF No. 11 at 3. But that standard is indeed applied by some judges in this District. See *Ellis v. J.R.’s Country Stores, Inc.*, No. 12-cv-01916-CMA-KLM, 2012 WL 6153513, at *1-2 (D. Colo. Dec. 11, 2012) (applying the “likelihood of success” factor in granting a motion for stay). The Government’s reply brief ignores this case entirely, and again, fails to mention *String Cheese Incident, LLC* even once.¹

The merits of the Government’s motion to stay will be resolved in due course. In the meantime, however, the Government’s eleventh-hour attempt to avoid the upcoming deadline should not be rewarded by the Court with a complete erasure of all deadlines.

CONCLUSION

For these reasons, the Court should deny Defendants’ Motion to Continue Their Response Deadline.

¹ Additionally, the Government makes note of the courts that have granted stays in other cases. But not all of them have. See Order Den. Defs.’ Mot. to Stay, *Holman v. Vilsack*, No. 1:21-cv-01085-STA-jay (W.D. Tenn. Aug. 2, 2021), ECF No. 49. And the Government’s argument in the underlying motion to stay proceedings is that it will be overwhelmed by the numerous cases that it has to defend. But as other courts in other jurisdictions have granted stays, the Government’s interest in staying this case is in fact undermined.

Dated: September 1, 2021,

Respectfully submitted,

/s/ Corey C. Bartkus

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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 September 1, 2021, I caused a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF system which sent notification of such filing to all counsel of record of this matter.

/s/ Corey C. Bartkus

Corey C. Bartkus