

**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 CONTINUE THEIR RESPONSE DEADLINE

Defendants respectfully request a continuance of their deadline to answer or otherwise respond to Plaintiffs’ Complaint. Defendants’ current deadline is September 7, 2021. In light of Defendants’ pending motion to stay proceedings in this case, and for the additional reasons set forth below, Defendants respectfully request that the Court continue Defendants’ response deadline until 14 days after the motion to stay is denied or, if granted, 14 days after the stay is lifted. Counsel for Defendants conferred with counsel for Plaintiff, who indicated that Plaintiff opposes this request.

On July 19, 2021, Defendants filed a motion to stay proceedings in this case in light of the certification of classes in the Northern District of Texas that include the plaintiff in this case and, like plaintiff, are challenging Section 1005 of the American Rescue Plan (“ARPA”) on equal protection grounds. *See* ECF No. 8. As indicated therein, Defendants have filed similar motions to stay proceedings in other challenges to Section 1005 across the country. As of this date, four of the five courts, including one in this circuit, that have ruled on Defendants’ motions to stay have

granted Defendants' motions and stayed proceedings in those cases. *See Orders, Carpenter v. Vilsack*, No. 21-0103 (D. Wyo.) (Aug. 16, 2021), Dkt. 33 (here ECF No. 54-1); *Joyner v. Vilsack*, No. 21-1089 (M.D. Tenn.) (Aug. 19, 2021), Dkt. 21 (here ECF No. 55-1); *Faust v. Vilsack*, No. 21-548 (E.D. Wis.) (Aug. 23, 2021), Dkt. 66 (attached here as Ex. 1); *McKinney v. Vilsack*, No. 2:21-212 (E.D. Tex.) (Aug. 30, 2021), Dkt. 40. For the reasons stated in Defendants' motion to stay proceedings in this case, Defendants believe that a stay of proceedings is likewise warranted here.

Further, Plaintiffs will not be prejudiced by this requested continuance because three district courts have already entered nationwide or class-wide preliminary injunctions enjoining Defendants from making payments under Section 1005. *See Order on Class Cert. & PI, Miller*, ECF No. 60; PI Order, *Holman v. Vilsack*, 1:21-cv-1085 (W.D. Tenn.), ECF No. 41; Order, *Wynn v. Vilsack*, 3:21-cv-514 (M.D. Fla.), ECF No. 41.

Accordingly, Defendants respectfully request that the Court continue Defendants' response deadline until the stay motion is resolved by extending Defendants' response deadline until 14 days after the motion to stay is denied or, if granted, 14 days after the stay is lifted.

A proposed order consistent with the above is being file herewith and emailed to the court in editable Word format.

Dated: September 1, 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 September 1, 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

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

[PROPOSED] ORDER

The Court has carefully considered Defendants' motion to continue their response deadline, *see* ECF No. ___, and for good cause shown, GRANTS Defendants' motion. Defendants' response deadline shall be continued until 14 days after Defendants' motion to stay is denied or, if granted, 14 days after the stay is lifted.

SO ORDERED.

Judge Daniel D. Domenico
United States District Court Judge