



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 (N.D. Tex.) (attached as Ex. A). At the same time, that court issued an injunction that (like the one this Court issued) 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 by *Miller*, and Defendant will be bound by any relief granted to the classes with respect to Plaintiff should their equal protection claim prevail. Thus, continued adjudication of Plaintiff's claims in this Court, separate from the classes to which he belongs, would be unnecessarily duplicative and risk inconsistent results. A stay, on the other hand, 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 this Court. But a stay would preserve judicial resources and prevent hardship to Defendant, who would otherwise be required to continue defending against duplicative claims in separate courts. For these very reasons, courts routinely stay proceedings pending resolution of a class action—particularly those under Rule 23(b)(2)—to which the plaintiff belongs. This Court should do likewise and stay the case until final resolution of the class challenge to Section 1005 in *Miller*.<sup>1</sup>

## BACKGROUND

On June 15, 2021, Plaintiff filed this case, alleging that USDA's implementation of Section 1005, which authorizes debt relief to socially disadvantaged farmers or ranchers, violates his right to equal protection. *See* Compl., ECF No. 1. This case is one of twelve brought in courts around

---

<sup>1</sup> The Government is filing stay motions in all of the other related cases challenging Section 1005.

the country that challenge the implementation of Section 1005 on equal protection grounds.<sup>2</sup> Three courts, including this one, have preliminarily enjoined disbursement of programmatic funds. *See Holman*, PI Order, ECF No. 41; Order on Class Cert. & PI, *Miller*; PI Order, *Wynn*, ECF No. 41.<sup>3</sup>

*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.<sup>4</sup> And on June 30, 2021, the *Miller* court granted both motions. Order on Class Cert. & PI, *id.* Adopting the plaintiffs' proposed class definitions in full, the court certified the following two 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)<sup>5</sup> 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,

---

<sup>2</sup> *Miller*, 4:21-cv-595; *Holman*, 1:21-cv-1085; *Wynn v. Vilsack*, 3:21-cv-514 (M.D. Fla.); *Faust v. Vilsack*, 1:21-cv-548 (E.D. Wis.); *Carpenter v. Vilsack*, 21-cv-103-F (D. Wyo.); *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.); *Rogers v. Vilsack*, 1:21-cv-1779 (D. Colo.); *Tiegs v. Vilsack*, 3:21-cv-147 (D.N.D.); *Nuest v. Vilsack*, 21-cv-1572 (D. Minn.). Defendant has not yet been served in all of these cases, and the Government does not waive any objections regarding service.

<sup>3</sup> 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.

<sup>4</sup> 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 plaintiffs' challenge here. *See* Br. in Supp. of Mot. for Class Cert. 4.

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

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 Defendant

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.

Order on Class Cert. & PI 22-23, *id.* Like the nationwide injunction in *Wynn* and *Holman*, the *Miller* injunction precludes disbursement of Section 1005 funds while the case is adjudicated on the merits. Finally, the *Miller* court ordered the parties to submit a proposed schedule for resolving the case on the merits by July 16.<sup>6</sup>

### 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).

When determining whether to grant a stay, courts consider multiple factors, including

---

<sup>6</sup> On June 29, Defendant filed a partial answer and partial motion to dismiss the *Miller* plaintiffs’ non-Section 1005 claims. *See* ECF Nos. 49, 51.

potential prejudice to the non-movant, hardship to the movant if required to go forward, and “the interest in economical use of judicial time and resources.” *Int’l Bhd. of Elec. Workers, Loc. Union No. 2020, AFL-CIO v. AT&T Network Sys.*, 879 F.2d 864, 1989 WL 78212, at \*8 (6th Cir. 1989) (Table). “Relevant to this consideration is the question of whether a separate suit in another jurisdiction involves the same issues and parties and is likely to consider adequately all interests before the court considering a stay.” *Id.* “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.”). Courts should be mindful of the interests in “conserv[ing] judicial resources,” “minimizing duplicative or piecemeal litigation,” and “protect[ing] the parties and the courts from the possibility of conflicting results.” *Baatz v. Columbia Gas Transmission, LLC*, 814 F.3d 785, 789 (6th Cir. 2016). When actions involving the same parties and issues are filed in two different courts, stay or dismissal of the later-filed case is the proper course. *Id.*

## ARGUMENT

The Court should stay the proceedings in this case until final resolution of the class challenge to Section 1005 in *Miller*.<sup>7</sup> 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

---

<sup>7</sup> Defendant has not appealed the order granting a preliminary injunction and certifying the classes in *Miller* but reserves its 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.

injunctions and who may receive all the relief he is entitled to upon entry of final judgment in *Miller*. Third, a stay would avoid hardship to Defendant, who otherwise would be required to defend against identical claims in multiple courts at the same time—including in eleven other cases 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.**

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 undisputedly falls within the definition of the *Miller* classes: He is a farmer who alleges that he 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 him 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"); *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 him, 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 his claims in this Court, separate from the rest of the classes to which he belongs, would create a risk of inconsistent results that

could undermine the preclusive effect of a classwide judgment and confuse Defendant's 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 his claim here (or vice versa), Defendant would be subject to conflicting judgments concerning the constitutionality of Section 1005 and, importantly, its 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 his case does not undermine the preclusive effect of any classwide judgment or justify Plaintiff's continued litigation of his claims separately in this Court. *Miller* was the first-filed case, and under the first-filed rule, "when actions involving nearly identical parties and issues have been filed in two different district courts, 'the court in which the first suit was filed should generally proceed to judgment.'" *Baatz*, 814 F.3d at 789 (emphasis and citation omitted); *see also Sutter Corp. v. P&P Indus., Inc.*, 125 F.3d 914, 917 (5th Cir. 1997) (noting the concern with avoiding "piecemeal resolution of issues that call for a uniform result"). The parties and issues in this case and *Miller* are more than "nearly identical"—they are one and the same. Because Plaintiff is a class member, *this Plaintiff's claim* is being simultaneously litigated in two courts. And because Plaintiff and Defendant will both be bound by any classwide judgment on Section 1005, litigating the cases separately does not benefit Plaintiff; it only burdens judicial resources at the risk of creating conflicting outcomes.

Furthermore, both cases are still in their early stages. A proposed case schedule is due in *Miller* by July 16. Order, *Miller*, ECF No. 66. And the sole upcoming deadline in this case is Defendant's August 30 deadline to respond to Plaintiff's Complaint. Thus, staying this case at this

early stage of the proceedings would not unnecessarily disrupt or delay litigation of Plaintiff's claim but would only promote its efficient resolution before any case deadlines have passed.

**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 challenges and seeks 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 Defendant will be bound by a final judgment in the class action with respect to this Plaintiff, staying his duplicative case in this Court will not impede his ability to obtain the relief he seeks. And no harm could possibly befall Plaintiff while his 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).

By contrast, staying this case would avoid hardship to the Government. As stated, there are currently eleven other substantively similar lawsuits pending around the country, with additional requests for preliminary injunctive relief pending in some of those cases.<sup>8</sup> 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 just and efficient resolution of all cases, but 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

---

<sup>8</sup> See ECF No. 9, *McKinney*, 2:21-cv-212; ECF No. 11, *Dunlap*, 2:21-cv-942.



submit to delay.” (modifications omitted)). Requiring the Government to defend against up to *twelve* cases simultaneously—on varying schedules and in different jurisdictions—would substantially burden the Government’s (and the courts’) resources without 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.<sup>9</sup> *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 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,

---

<sup>9</sup> 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).

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 Defendant seeks here: a stay of all proceedings until final resolution of the related class action. *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, the Court should stay proceedings in this case pending resolution of the class challenge to Section 1005 in *Miller*.

Dated: July 16, 2021

Respectfully submitted,

JOSEPH C. MURPHY, JR.  
Acting United States Attorney

s/ Audrey M. Calkins  
Audrey M. Calkins (TN BPR # 030093)  
Audrey.calkins@usdoj.gov  
167 N. Main Street, Suite 800  
Memphis, TN 38103  
901-544-4231  
Fax: 901-544-4230

BRIAN M. BOYNTON  
Acting Assistant Attorney General

LESLEY FARBY  
Assistant Branch Director  
Civil Division, Federal Programs Branch

/s/ Kyla M. Snow  
EMILY SUE NEWTON (VA Bar No. 80745)  
Senior Trial Counsel  
MICHAEL F. KNAPP  
KYLA M. SNOW (Ohio Bar No. 96662)  
GARY D. FELDON  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, D.C. 20005  
Tel: (202) 514-3259 / Fax: (202) 616-8460  
Kyla.snow@usdoj.gov

*Counsel for Defendant*

**CERTIFICATE OF CONSULTATION**

I certify that counsel for Defendant conferred with counsel for Plaintiff regarding this Motion, who indicated that Plaintiff will oppose this Motion.

s/ Kyla M. Snow