IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELIZABETH BARBER, et al, *on behalf of themselves and all others similarly situated*, *Plaintiffs*, vs. ELISABETH DEVOS, *in her official capacity as United States Secretary of Education*, and UNITED STATES DEPARTMENT OF EDUCATION, *Defendants.*	Case No. 20-cv-1137

MOTION FOR PRELIMINARY INJUNCTION AND SUPPORTING MEMORANDUM OF LAW

Named Plaintiff Craigory Lee A. Jenkins brings this motion seeking immediate relief because her wages continue to be garnished by Defendants United Stated Department of Education and Secretary Elisabeth DeVos (collectively, the "Department").

When it passed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Pub. L. No. 116–136, ___ Stat. ___ (2020), Congress threw an economic life preserver to the American people. Individuals and families already struggling to get by and pay their debts under ordinary circumstances, were afforded direct payments, expanded unemployment insurance and relief from onerous obligations in order to pay mortgages and rent and put food on their tables. Public officials in the legislative and executive branches made it perfectly clear by

their public statements that they intended to meet the immediate, urgent needs of their constituents. In the case of the Department of Education their actions have not matched their words.

The beneficiaries of the CARES Act include students who took out federal student loans to pay for their education, among the most debt-inflicted cohorts in the country. The CARES Act suspends their obligation to make loan payments for six months. And it also addresses those borrowers who have struggled most with their debt—who have defaulted on their loans and were therefore subject to wage garnishment by the Department of the Education. Section 3513(e)(1) of the Act provides that "the Secretary shall suspend all involuntary collection related to the loan, including—(1) a wage garnishment authorized under section 488A of the Higher Education Act of 1965 (20 U.S.C. 1095a) or section 3720D of title 31, United States Code." There are no qualifications on the requirement, no provisions for delaying implementation—indeed, the Department has written to students to tell them it has already done so. And, as to some borrowers, Plaintiff acknowledges that the Department has apparently stopped garnishment.

But despite some efforts to comply with the law, the Department continues to garnish the wages of many student loan borrowers. One of those borrowers is Plaintiff Craigory Lee A. Jenkins, whose wages continue to be garnished, depriving her of exactly the relief Congress decided she needed. She is not alone. Borrowers like Ms. Jenkins cannot afford to wait on this relief, and Congress did not intend that they do so. Refunds in the future are not a substitute for the relief borrowers

need today in order to purchase groceries and pay rent and other essential bills. The only way for borrowers to receive the relief that they require, with the urgency Congress intended, is for this Court to issue a preliminary injunction pursuant to Fed. R. Civ. P. 65 requiring the Department to immediately suspend all administrative wage garnishments.

FACTS

A. The Department of Education's Authority to Garnish Wages

As part of its management of the federal student loan program, the Department possesses extensive extrajudicial collection powers, including the authority to garnish federal student loan borrowers' wages without a court order after they default on their student loans. Am. Compl. ¶ 19. In fiscal year 2018 alone, the Department garnished over $840 million from workers with federal Direct Loans. *Id.* ¶ 20.

When a borrower's delinquency qualifies for garnishment, the Department will issue a garnishment order directly to the borrower's employer. *Id.* ¶ 21. Once issued, a garnishment order remains in effect until the Secretary rescinds the order or the debt is paid in full. *Id.* ¶ 23.

At any time, the Department "may compromise or suspend collection by garnishment of a debt in accordance with applicable law." *Id.* ¶ 24. Where the Department's wage garnishment was "barred by law at the time of the collection action," the Department must "promptly refund any amount collected by means of this garnishment." *Id.* ¶ 25.

B. The CARES Act Requires Immediate Suspension of Wage Garnishment & Notice of the Suspension to Borrowers

On March 27, 2020, after passing by a vote of 96-0 in the United States Senate, and by a voice vote in the United States House of Representatives, President Trump signed the CARES Act into law. Am. Compl. ¶ 28. The purpose of the CARES Act is to "[p]rovid[e] emergency assistance and health care response for individuals, families[,] and businesses affected by the 2020 coronavirus pandemic." *Id.*

In an effort to protect financially vulnerable borrowers from mounting financial burdens during the COVID-19 crisis, section 3513(e) of the CARES Act requires the Secretary to suspend, until September 30, 2020, all involuntary collections of defaulted Direct Loans and Federal Family Education Loans ("FFEL") owned by the Department. *Id.* ¶ 30. The Act specifically and explicitly includes suspension of wage garnishment:

> (a) IN GENERAL. —The Secretary shall suspend all payments due for loans made under part D and part B (that are held by the Department of Education) of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.; 1071 et seq.) through September 30, 2020.
> ...
> (e) SUSPENDING INVOLUNTARY COLLECTION.— During the period in which the Secretary suspends payments on a loan under subsection (a), the Secretary shall suspend all involuntary collection related to the loan, including—(1) a wage garnishment authorized under section 488A of the Higher Education Act of 1965 (20 U.S.C. 1095a) or section 3720D of title 31, United States Code.

Id. The CARES Act also required the Department to notify borrowers by April 10, 2020 that their wage garnishments were suspended. *Id.* ¶ 32.

Following passage of the CARES Act, Secretary DeVos stated at the March 27, 2020 White House coronavirus task force press briefing that the Department had "stopped federal wage garnishments altogether for students and families in default." *Id.* ¶ 33. On or around April 9, 2020, the Department sent a notice to borrowers stating: "We stopped all collection activity on the federal student aid debt for the period March 13, 2020, through Sept. 30 2020. During this period you will not . . . have your wages garnished (taken from your paycheck)." *Id.* ¶ 36. The notice further stated that "[t]here's no action you need to take at this time." *Id.* ¶ 37.

C. The Department's Failure to Implement Section 3513 of the CARES Act

Despite these statements, and irrespective of the Department ceasing garnishment for some borrowers, the Department continues to illegally garnish wages of other borrowers in violation of the CARES Act. Yet the CARES Act does not afford the Department the right to haphazard compliance; it says that the Secretary shall suspend *all* involuntary collections. CARES Act Section 3513(e)(1). It has not done so.

Ms. Jenkins is not alone in experiencing continued garnishment. According to the *Washington Post,* as of April 21, 2020, the Department was yet to send letters to numerous employers requesting that they stop wage garnishments, and most of the emails that they tried to send were never opened. *Id.* ¶¶40-41. In addition, on May 1, 2020, *i.e.*, the day after the original Complaint was filed in this case, the Department conceded in a separate litigation that at least twelve borrowers who attended Corinthian Colleges were still experiencing wage garnishment, despite a

federal court order issued in May of 2018 to end that practice for a specific cohort of student loan borrowers. *Id.* ¶ 42 (citing *Manriquez et al. v. DeVos*, No. 17-cv-07210-SK, Dkt. 215 at 8-9 (N.D. Cal, U.S. Dep't of Education, Office of Federal Student Aid, Seventh Monthly Compliance Report filed May 1, 2020)).[1] *See also infra* at 12 (discussing the *Manriquez* action).

D. The Department's Actions Have Harmed Ms. Jenkins

The Department's illegal wage garnishments are causing material and immediate harm to Ms. Jenkins, as well as thwarting the purpose of the CARES Act to provide fast, direct relief to student loan borrowers during the current national emergency. The injury to Ms. Jenkins is being experienced by borrowers across the country. Am. Compl. ¶¶ 40, 42, 54.

Ms. Jenkins is currently employed as a cabinet sales specialist at Lowe's Home Centers. Declaration of Plaintiff Craigory Lee A. Jenkins in Supp. of Mtn. for Preliminary Injunction ("Jenkins Decl.") ¶ 4. Ms. Jenkins earns $17.58 per hour, and earned a total of approximately $29,000 in 2019. *Id.* ¶ 5. That is her sole source of income. *Id.* ¶ 6. Due to the COVID-19 crisis, Ms. Jenkins's customer base has

[1] *Manriquez*, filed in December 2017, is a class action lawsuit against the Department seeking debt cancellation for tens of thousands of students who took out federal student loans to attend Corinthian College, a predatory for-profit college chain that abruptly closed in 2015. In May of 2018, the court granted plaintiffs' motion for a preliminary injunction to stop the Department's collection on class members' loans—including through wage garnishment—while the case is ongoing. On October 24, 2019, following the Department's admission that it had been violating the court order by illegally collected on thousands of students' loans—including through wage garnishment—the court held Secretary DeVos in civil contempt, sanctioned the Department with a $100,000 fine, and ordered monthly reporting.

decreased dramatically and she no longer has the ability to earn sales performance bonuses. *Id.* ¶¶ 15-17.

While Ms. Jenkins continues to work, the Department continues to garnish approximately 15 percent of her paychecks, including $235.17 from her March 27, 2020 paycheck, $228.65 from her April 10, 2020 paycheck, $276.25 from her April 24, 2020 paycheck, and $204.16 from her May 8, 2020 paycheck. *Id.* ¶¶ 9-12. In total and to date, $944.23 has been garnished from Ms. Jenkins's paychecks since the CARES Act became law on March 27, none of which has been refunded. *Id.* ¶¶ 9-13.

Ms. Jenkins is struggling to make ends meet, so every dollar matters. *Id.* ¶ 19. Ms. Jenkins lives paycheck to paycheck and often has to leave bills unpaid in order to cover her basic needs. *Id.* ¶ 20. She has no money in her checking or savings accounts, is past due on both her water and electric bills, and is past due on this month's rent. *Id.* ¶ 20-22. By the end of this week, she will have to borrow money to pay rent, and have no money left over to pay for groceries until her next paycheck. *Id*. In addition, because of the COVID-19 pandemic, public transportation has become less frequent and reliable, forcing Ms. Jenkins to spend additional money on rideshare services like Uber to get to work. *Id.* ¶ 18.

The new reality of the COVID-19 crisis has exacerbated Ms. Jenkins's struggles to make ends meet. *Id.* ¶ 23. The funds that the Department has illegally garnished are essential to Ms. Jenkins's ability to cover her basic needs during the pandemic. *Id.* ¶ 24.

On April 30, 2020, Named Plaintiff Elizabeth Barber filed this suit on behalf of a class of similarly situated borrowers. ECF No. 1. On the same day, Ms. Barber filed a motion for class certification. ECF No. 2. On May 7, 2020, Ms. Barber, along with Ms. Jenkins, filed an amended complaint, ECF No. 8, and an amended motion for class certification, ECF No. 9. Ms. Barber's most recent paycheck, dated May 1, 2020, does not show any additional amounts garnished. Am. Compl. ¶ 58. This motion, brought by Ms. Jenkins alone, seeks preliminary injunctive and declaratory relief requiring the Department to immediately suspend all administrative wage garnishments. *Id.*

ARGUMENT

To obtain a preliminary injunction a party must show that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) the injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Gordon v. Holder*, 632 F.3d 722, 724 (D.C. Cir. 2011). The likelihood of success requirement "is the most important of these factors." *EDF Resource Capital, Inc. v. U.S. Small Business Admin.*, 910 F. Supp. 2d 280, 283 (D.D.C. 2012) (quoting *Apotex, Inc. v. Sebelius*, 700 F. Supp. 2d 138, 140 (D.D.C. 2010)). Although some courts in this circuit have acknowledged some uncertainty about the "sliding scale" approach, often courts find that "a strong showing on one factor could make up for a weaker showing on another." *Confed. Tribes of the Chehalis Reservation v. Mnuchin*, No. 20-cv-01002 (APM), 2020 WL 1984297, at *3 (D.D.C. Apr. 27, 2020). Regardless,

where the statutory command is so clear, and the circumstances it addresses are as urgent as they are here, all the factors are easily satisfied.

I. Plaintiff is Likely to Succeed on the Merits of Each of Her Claims

Ms. Jenkins, on behalf of herself and a putative class, brings a claim under Section 706(1) of the Administrative Procedures Act, alleging that, by garnishing the wages of Named Plaintiffs and the class following the March 27 enactment of the CARES Act, the Department has unlawfully withheld its legal obligation to suspend administrative wage garnishments between March 27, 2020, and September 30, 2020, as required by Section 3513(e) of the CARES Act. Ms. Jenkins also claims that the failure to suspend garnishment is not in accordance with law and in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of Sections 706(2)(A) and (C) of the APA. The CARES Act states definitively that the Secretary ***shall*** suspend all involuntary collections on loans, including wage garnishments. CARES Act Section 3513(e)(1). It has not met this obligation.

The statute's requirements are immediate—providing for no delay in implementation. Lest there be any doubt, Section 3513(g)(1)(B) requires the Secretary to "not later than 15 days after the enactment of this Act, notify borrowers . . .of the actions taken in accordance with subsection (e) for whom collections *have been* suspended." So, by the deadline for this required notification, the statute makes clear the collections must already have been suspended. Indeed, in her notification to students, the Secretary claimed she had done so—when in fact,

she has not for countless borrowers. Any delay by the Department in implementing the suspension of collections, even if a subsequent refund is contemplated, violates the plain language of the statute, as well as the legislative purpose of putting money in the hands of cash-strapped Americans *right now*.

The CARES Act's requirement of suspending wage garnishment to pay student loans is unambiguous. Defendants' failure to do so renders indisputable Plaintiff's likelihood of success on the merits.

II. Plaintiff Has Been Irreparably Injured

Next, Ms. Jenkins must demonstrate that she would suffer irreparable injury if the injunction is not granted. To demonstrate such injury, she must show: 1) that the harm will be "certain and great," "actual and not theoretical," and so "imminen[t] that there is a clear and present need for equitable relief to prevent irreparable harm"; and 2) that the harm is "beyond remediation." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 7-8 (D.C. Cir. 2016).

Section 3153 of CARES Act is specifically designed to provide immediate relief from student loan obligations to struggling borrowers, to free up money over a six-month emergency suspension period for life necessities such as food, rent, and essential bills.[2] At its very essence, the law is a temporary, time-sensitive measure designed to provide immediate relief. *See Confed. Tribes*, 2020 WL 1984297, at *1

[2] For example, Senator McConnell explained that the CARES Act "puts urgently-needed cash in the hands of American workers and families. . . . That is what we have to do: Inject a significant amount of money as quickly as possible into households, small businesses, key sectors, and our nation's hospitals and health centers. This bill would do just that — and do it fast." *See* Am. Compl. ¶ 29.

("Congress passed the [CARES Act] to respond to the devastating impacts of the COVID-19 pandemic."). As of this filing, the Department has already deprived many borrowers of the suspension of wage garnishment required by the Act, for more than one of the six months for which this emergency relief has been promised, or roughly 20% of the emergency period.

As described in the Statement of Facts, Ms. Jenkins needs the relief provided by the CARES Act *right now*, as Congress intended. Her already low income has been reduced as a result of the reduction in her customer base during the pandemic. Ms. Jenkins lives paycheck to paycheck and is struggling to get by each week. She has no money in her checking or savings accounts, and is past due on her rent. She is also past due on both her water and electric bills, which she cannot afford to pay in full each month. By the end of some weeks, she does not have enough money to pay for groceries.

These harms are clearly irreparable in nature. *See Garnett v. Zeilinger*, 313 F. Supp. 3d 147, 157 (D.D.C. 2018) (finding irreparable harm when plaintiffs are "forgoing food or other necessities"); *Carabillo v. ULLICO Inc. Pension Plan & Tr.,* 355 F. Supp. 2d 49, 55 (D.D.C. 2004) ("[C]ourts in our Circuit have held that monetary loss may constitute 'irreparable injury' where the plaintiff is so poor that he would be harmed in the interim by the loss of monetary benefits."); *Lee v. Christian Coalition of America*, 160 F.Supp.2d 14, 31-32 (D.D.C. 2001) (finding of irreparable harm where the plaintiffs were so poor that the loss of wages would result in insolvency, eviction, or difficulty in obtaining food); *United Steelworkers of*

Am, AFL-CIO. v. Textron, Inc., 836 F.2d 6, 8 (1st Cir. 1987) (Breyer, J.) (finding irreparable harm where plaintiffs live on a fixed income and where minimal increases in their cost of living creates "potential financial disaster," the possible "deprivation of life's necessities," and concomitant "emotional distress"). "[T]o characterize Plaintiff['s] claimed harm as merely 'economic' is terribly misguided," given that these were measures taken "on an emergency basis . . . to battle a pandemic that is ravaging the nation." *Confed. Tribes*, 2020 WL 1984297 at *8.

Past Department practices establishes that judicial involvement—including a preliminary injunction—is essential to stop that the harm to borrowers that the CARES Act is designed to protect. For example, in *Manriquez v. Devos*, 411 F. Supp. 2d 535 (N.D. Cal. 2019), the district court held the Department in civil contempt—imposing monthly reporting requirements, and a $100,000 fine—for failing to suspend wage garnishment and other collections from a group of Corinthian student-borrowers as required by court order. Six months later, the Department has yet to come in full compliance with the Order. *See Manriquez*, No. 17-cv-07210-SK at Dkts. 167, 174, 215. As egregious as the Department's non-compliance has been in that setting, it did not involve Congressionally mandated *emergency* relief for borrowers, as is the case here. It does prove, however, that the Department cannot be left to its own devices if Congress' objectives are to be met. Additionally, less than ten days ago, in *In Re: Angel Coffey*, the United States Bankruptcy Court for the Northern District of Illinois sanctioned the Department for a "willful violation" of that court's April 13, 2019 order discharging a student loan debt. Despite that

prior order, the Department has continued to garnish Ms. Coffey's wages. *See In Re: Angel Coffey*, Bk No. 16-20631 (Bankr. N.D. Ill. Apr. 28, 2020) at Dkt. Nos. 46-2, 52.

The Department, in public statements, has suggested that it can solve the problem by refunding garnished wages in the future that it continues to collect now. *See* Am. Compl. ¶ 34 (citing April 1, 2020 guidance). But the prospect of a future refund is not what the statute provides—nor is it consistent with its purpose of providing immediate relief to beleaguered citizens. A refund of an illegal garnishment months or even weeks in the future will not prevent Ms. Jenkins from being hungry *this week* or missing bill payments *this month* because her income went down. *See* Jenkins Decl. ¶¶ 20–22. These sorts of losses can never be recoverable against the government and are thus irreparable. *See Garnett*, 313 F. Supp. 3d at 157 ("The harms described in these affidavits—forgoing food or other necessities—are clearly irreparable in nature."); *Kildare v. Saenz*, 325 F.3d 1078, 1083 (9th Cir. 2003) ("[B]ack payments cannot 'erase either the experience or the entire effect of several months without food, shelter or other necessities.'" (citation omitted)).

III. Balance of Equities and Public Interest

The balance of equities and public interest factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The government cannot claim any additional burden from complying with the CARES Act because "[t]he Act itself imposes the burden; [an] injunction merely seeks to

prevent the defendant[] from shirking [its] responsibilities under it." *Garnett*, 313 F. Supp. 3d at 158-59 (citations omitted).

And there can be no gainsaying that suspension of wage garnishment is in the public interest—that is why Congress chose to include it in the relief conferred in its first major pandemic relief package. "[T]here is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Leaving more of borrowers' money in their own hands during these precarious circumstances alleviates not only the suffering of individuals like Ms. Jenkins, but benefits their communities who are less likely to be burdened by neighbors who are evicted and unable to feed themselves and their families.

IV. Conclusion

The Department is causing ongoing and irreparable damage to Ms. Jenkins. Borrowers like Ms. Jenkins cannot afford to wait any longer for the wage garnishments to stop, and Congress did not intend that they do so. The only way for them to receive the immediate relief that Congress intended is for this Court to issue a preliminary injunction requiring the Department to immediately suspend all administrative wage garnishments.

Respectfully Submitted,

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