


Selected docket entries for case 23–2143

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Appeal No. 23-2143

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

**Kari Armijo, Secretary of the New
Mexico Human Services Department,**

Defendant-Appellant,

v.

Abigale Knowlton, et al.,

Plaintiffs-Appellees.

On Appeal from the United States District Court
For the District of New Mexico
The Honorable Kenneth J. Gonzales
Case No. 1:88-cv-00385

APPELLEES'-PLAINTIFFS' RESPONSE BRIEF

ORAL Argument is Not Requested

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STATEMENT OF PRIOR RELATED APPEALS

There are four prior appeals in this case. Those prior related appeals are:
08-2009, 08-2146, 16-2064 and 22-2115.

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SUMMARY OF ARGUMENT

This case addresses Defendant's failure to comply with federal law in processing applications and renewals of food and healthcare benefits under the Supplemental Nutrition Assistance Program (SNAP) and Medicaid. In this appeal, Defendant argues that the class definition in this case is flawed, that the class was effectively decertified when a portion of the Decree was dismissed in 2020, and that the district court abused its discretion by insufficiently considering these arguments in its order. The district court certified this appeal as frivolous and dilatory. Defendant did not appeal that ruling.

First, the Court lacks jurisdiction to hear this appeal. As this Court has previously ruled, the district court's order on a motion to dismiss is not appealable under the narrow requirements of 28 U.S.C. §1292(a) and this Court should dismiss this appeal without reaching the merits of Defendant's argument. Second, Defendant's argument as to the plaintiff class's definition and standing has no merit. Defendant stipulated to the class definition, has willingly operated under it for over thirty years and misrepresents who is included in the class. Third, when the Decree was modified at Defendant's request in 2020 and a limited portion of the Decree was dismissed, the district court did not lose jurisdiction over the case. The class has been and continues to be protected by all the remaining Decree requirements. These on-going Decree requirements implement federal regulations and statutes to ensure families receive benefits to which they are entitled and are essential to protecting the

Plaintiff class and remedying Defendant's continuing violations of federal law. These requirements have been approved and enforced for many years by many orders and even with the stipulated approval of Defendant. Fourth, far from abusing its discretion, the district court considered Defendant's arguments and specifically rejected them, based on the law, when it denied Defendant's Motion to Dismiss. Indeed, the district court has considered and rejected the same arguments from Defendant many other times over the course of this litigation.

THE DISTRICT COURT CERTIFIED THAT THIS APPEAL IS FRIVOLOUS AND BROUGHT FOR THE PURPOSE OF DELAY

On October 27, 2023, after full briefing and a hearing, the district court certified that this appeal is frivolous and brought for the purpose of delay. Doc. 1154, Attached to this Response Brief. After discussing the legal standard under *Stewart v. Donges*, 915 F.2d 572, 574 (10th Cir. 1990), and its progeny, the court ruled that the *Stewart* factors merited certifying this appeal as frivolous. The court held that the legal basis for Defendant's appeal was specious and not supported by this Court's precedent. The court also made the following three highly relevant findings as to Defendant's contradictory arguments and dilatory motive for this appeal.

First:

[I]t is not lost on this Court that HSD's argument that this Court lacks subject matter jurisdiction relies on the Court granting HSD's Motion to Modify in 2020. In that motion, HSD argued for piecemeal dismissal of only specific sections and subsections of the Modified Settlement Agreement (MSA) [*i.e.*, the Consent Decree] relating to timeliness—

acknowledging the MSA's remaining sections would remain effective. *See* (Docs. 893 and 894). From the time the Court modified the MSA in 2020 until August 2022, HSD was working toward compliance with MSA's Section III with agreement that there would be a case review. Now, in an abrupt about-face, HSD argues that no controversy exists given this Court's 2020 order modifying the MSA. Such a reversal further demonstrates HSD's dilatory tactics.

Doc. 1154, attached hereto, at 3-4. The district court here recognized that Defendant's appeal represents a reversal from positions Defendant has taken before in this case on the same issues it raises in this appeal. Defendant has repeatedly acknowledged that the case addresses a range of violations of federal law *in addition* to the reporting of timeliness required in Section II that was dismissed in 2020. In 2016 Defendants admitted that the "harm to class members" includes actions taken by Defendant during the application process that result in "initial eligibility determinations either incorrectly determined or determined outside the time limits imposed by law." *See* I Supp. App. 148. In 2020, when *Defendant* moved the Court to dismiss only Section II of the Decree, he argued that "piecemeal dismissal is allowed, both under federal law and the clear language of the MSA." *See* II Supp. App. 240. Now Defendant argues the exact opposite.

Second, the district court found:

HSD is aware that the class scope has never been as narrow as it now contends. In fact, the class scope has been well-defined for decades. Each version of the settlement agreement explains that the class scope includes not only those who received untimely benefits but also those who applied for benefits and were erroneously denied.³ *See, e.g.*, (Doc. 1129) at 7. The Court finds HSD's effort to narrow the class scope—after decades of clarity—is just another delay tactic.

Attachment (Doc. 1154), at 4-5.

Third, the district court found:

HSD's latest appeal parallels its recent [unsuccessful] appeal of this Court's order granting, in part, HSD's last motion to stay. HSD's last motion to stay came on the eve of the 2022 case review. Now, pending a forthcoming ruling on Plaintiffs' Motion to Enforce Compliance, HSD again asks this Court to stay all proceedings. Such conspicuous timing evinces a pattern of dilatory tactics.

Id., at 5. Here, the district court recognized that this appeal is part of a pattern of dilatory tactics by Defendant. In 2022, Defendant filed a motion for stay of all proceedings after the Court ordered that the parties conduct a case review to determine the status of Defendant's compliance with federal law and the Consent Decree. In its Order Staying Case Review Pending Appeal the Court held, in relevant part:

Defendant's attempt to stay all compliance activities appears as a delay tactic, especially given the concededly narrow scope of the issue on appeal. Moreover, it appears to the Court that Defendant invoked appellate jurisdiction on a specious, if not fully spurious, basis solely to avoid a negative case review.

[...] Defendant's pattern of conduct in this case evinces a disregard for the orders of this Court, the mandates of the federal programs at issue, and -- of most concern -- the people served by the New Mexico Human Services Department.

II Supp. App. at 312.

JURISDICTIONAL STATEMENT

THIS COURT DOES NOT HAVE JURISDICTION OVER THIS APPEAL

Defendant states in her jurisdictional statement that the Court has jurisdiction over this appeal under 28 U.S.C. §1292(a)(1) because “it seeks review of an interlocutory order refusing to terminate an injunction” and that a claim of a lack of standing “may be raised by the Court at any point in the litigation.” Opening Brief, p. 3. Defendant fails to meet either of these jurisdictional requirements.

First, as before, Defendant erroneously attempts to invoke this Court’s jurisdiction without satisfying the requirements for an interlocutory appeal. See *Hatten-Gonzales v. Hyde*, 579 F.3d 1159 (10th Cir. 2009) (*Hatten-Gonzales I*); *Hatten-Gonzales v. Scrase*, No. 22-2115, 2023 WL 4881437, at *1 (10th Cir. Aug. 1, 2023) (*Hatten-Gonzales II*). As this Court stated in its 2009 decision rejecting jurisdiction:

“[s]ection 1292(a) was intended to carve out only a limited exception to the final-judgment rule of 28 U.S.C. § 1291 and the long-established policy against piecemeal appeals.” *Pimentel & Sons Guitar Makers, Inc. v. Pimentel*, 477 F.3d 1151, 1153 (10th Cir. 2007) (quotation omitted). Accordingly, courts “have construed the statute narrowly to ensure that appeal as of right under § 1292(a)(1) will be available only in circumstances where an appeal will further the statutory purpose of permitting litigants to effectually challenge interlocutory orders of serious, perhaps irreparable, consequence.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981) (quotations and alteration omitted).

Hatten-Gonzales I, 579 F.3d at 1165. Here, as in 2009, Defendant is appealing from the district court’s denial of a motion to dismiss, not an order denying the termination

of an injunction.

This appeal is in the identical posture as the 2009 appeal rejected by this Court for lack of jurisdiction. In its 2009 decision rejecting appellate jurisdiction, the Court ruled:

In our present case, granting the motion [to dismiss] would not have led to dissolution of the MSA. Had HSD’s motion been granted, the district court would have dismissed the case from its active docket and refused further attorneys’ fee requests from plaintiffs, but the MSA would have remained in effect. The MSA specifically provides that the court will retain “continuing jurisdiction ... to resolve disputes and enforce the terms of” the MSA even after dismissal with prejudice. *Cf. Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994) (district courts possess ancillary jurisdiction to enforce a settlement agreement post-dismissal if the court expressly retains jurisdiction or incorporates the agreement in its order of dismissal); *Morris v. City of Hobart*, 39 F.3d 1105, 1110 (10th Cir. 1994) (citing *Kokkonen*, 511 U.S. 375, 114 S.Ct. 1673, 128 L.Ed.2d 391) (same).

Because HSD did not request dissolution or modification of an injunction, the district court’s December 17, 2007 order cannot be characterized as one “refusing to dissolve or modify [an] injunction[].” § 1292(a)(1). Accordingly, we conclude that neither § 1292(a)(1) nor § 1291 confers jurisdiction upon this court over case number 08–2009.

Hatten-Gonzales I, 579 F.3d at 1167 (footnote omitted). Because this appeal is in the same posture as the one the Court rejected in 2009, it should also be dismissed for lack of jurisdiction.

The district court came to the same conclusion when it reviewed Defendant’s current appeal and, after briefing and a hearing, determined that it is frivolous under *Stewart v. Donges*, 915 F.2d at 574, and its progeny. The court also decided that the current appeal was “a dilatory tactic meant for delay.” See Attachment to this Brief

(Memorandum Opinion and Order). Examining the record in the case, the district court ruled that Defendant's motion to dismiss, the subject of this appeal, did not seek to modify or terminate an injunction:

The Court is unpersuaded by HSD's attempt to frame its Motion to Dismiss the Consent Decree as a motion to dissolve [the Consent Decree]. As the Tenth Circuit noted in a previous incarnation of this case, an order denying dismissal is not necessarily a refusal to dissolve an injunction. *Hatten-Gonzales v. Hyde*, 579 F.3d 1159, 1166 (10th Cir. 2009). In that opinion, the Tenth Circuit concluded it did not have jurisdiction to hear HSD's appeal because "[i]n its motion to dismiss, HSD did not request dissolution or modification of an injunction." *Id.* at 1167. Here, like *Hatten-Gonzales*, HSD's Motion to Dismiss "did not seek to alter or eliminate any of the terms of the [Modified Settlement Agreement], nor did it cite Rule 60(b)(5) or the standards from obtaining relief from an order." *Id.* (citing *Horne v. Flores*, 557 U.S. 433 (2009)). Thus, the Court finds that HSD is unlikely to satisfy the requirements for Section 1292(a).

Finally, HSD's latest appeal parallels its recent appeal of this Court's order granting, in part, HSD's last motion to stay [a case review process]. HSD's last motion to stay came on the eve of the 2022 case review. Now, pending a forthcoming ruling on Plaintiffs' Motion to Enforce Compliance, HSD again asks this Court to stay all proceedings. Such conspicuous timing evinces a pattern of dilatory tactics. Thus, for the reasons given, the Court certifies HSD's appeal as frivolous.

Id. at 3-4.

In sum, the Court lacks jurisdiction over Defendant's appeal because the limited basis for jurisdiction under Section 1292 has not been satisfied. Defendant's improper appeal should be dismissed without consideration of the merits of

Defendant's arguments.¹

Second, because the Court lacks jurisdiction to hear this case under Section 1292, it should dismiss the appeal without considering Defendant's erroneous claim about the Plaintiff-class's standing. The Court must have a valid jurisdictional basis for this appeal before it can consider Defendant's other arguments. *See Amazon, Inc. v. Dirt Camp, Inc.*, 273 F.3d 1271, 1276 (10th Cir. 2001) ("A federal court has an independent obligation to examine its own jurisdiction"); *Hatten-Gonzales I*, 579 F.3d at 1165 ("Before proceeding to the merits of HSD's appeals, we must consider our jurisdiction."). Lacking one, dismissal is the proper next step. *See, e.g., Hatten-*

¹ *See also* the district court's prior ruling as to Defendant's pattern of filing frivolous and dilatory appeals, each of which has been rejected by this Court, which the district court found were filed for the purpose of delaying the court's enforcement of federal law:

As an initial matter, the Court finds the appeal is a dilatory tactic meant for delay. ... Defendant's attempt to stay all compliance activities appears as a delay tactic, especially given the concededly narrow scope of the issue on appeal. Moreover, it appears to the Court that Defendant invoked appellate jurisdiction on a specious, if not fully spurious, basis solely to avoid a negative case review.

Defendant's pattern of conduct in this case evinces a disregard for the orders of this Court, the mandates of the federal programs at issue, and -- of most concern -- the people served by the New Mexico Human Services Department. The history of this litigation spans nearly 35 years, and while the Defendant has made progress toward compliance, there remains a lot of work.

Order Staying Case Review Pending Appeal, II Supp. App. at p. 311-312.

Gonzales I, 579 F.3d at 1171 (dismissing for lack of appellate jurisdiction); *Hatten-Gonzales II*, 2023 WL 4881437, at *1 (same); *Fed. Trade Comm'n v. Zurixx*, 26 F.4th 1172, 1176-78 (10th Cir. 2022) (same); *Lewis v. New Mexico Dep't of Health*, 261 F.3d 970, 975, n. 1 (10th Cir. 2001).

ARGUMENT

I. IF THIS COURT DETERMINES IT HAS APPELLATE JURISDICTION TO CONSIDER DEFENDANT'S ERRONEOUS ARGUMENTS, IT SHOULD REJECT THE CLAIM THAT THE DISTRICT COURT LACKS JURISDICTION OVER THIS CASE

A. The Plaintiff-Class Has Standing.

Over 35 years ago the class was certified by District Judge John Conway and defined as:

All present and future applicants to the federal food stamp program, Medicaid Program, or Aid to Families with Dependent Children program (AFDC) who have not or will not receive an eligibility determination or benefits under these programs from the New Mexico Human Services Department (HSD) within the time limits imposed by law.

(Applt. App. at 074 -175). The class was certified by stipulation of Defendants.

When Judge Conway approved the class and the agreement that led to the Consent Decree, he discussed the on-going nature of the agreement:

The Court finds that the Settlement Agreement is fair, reasonable and adequate. The Settlement Agreement was negotiated in good faith and provides for substantial equitable relief affecting each class member equally. The benefits of the Agreement run to the class as a whole and serve the legitimate purpose of providing a uniform, fair and simple means by which a

family in New Mexico may apply for AFDC, Food Stamp or Medicaid benefits and receive a prompt, informative eligibility decision based on its need for assistance.

Order (Approving Settlement Agreement) (August 29, 1990), I Supp. App. at 46.

Defendant's new argument that the class definition is "fundamentally flawed" because it includes future applicants for assistance was not preserved and is not properly before this Court. *United States v. Leffler*, 942 F.3d 1192, 1196 (10th Cir. 2019) ("Generally, a federal appellate court does not consider an issue not passed upon below. When a party fails to raise an argument below, we typically treat the argument as forfeited." Internal citations and quotation marks omitted). Defendant did not raise this argument in the Motion to Dismiss that is the subject of this appeal or anywhere else in its motions before the district court. *See* Attachment 3 to Defendant's Opening Brief.²

In addition, Defendant's argument is without merit. "[A] class will often include persons who have not yet been injured by the defendant's conduct.... Such a possibility or indeed inevitability does not preclude class certification." *DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1198 (10th Cir. 2010) (citing *Kohen v. Pacific Inv. Mgmt. Co.*, 571 F.3d 672, 677 (7th Cir. 2009)). *See also, Mims v. Stewart Title Guar. Co.*, 590 F.3d 298, 308 (5th Cir. 2009) ("Class certification is not precluded

² HSD's motion to dismiss is focused on the injury of the class being redressed. *See* Doc. 1074 at 3-4. The 60b6 motion is focused on the operation of this suit without viable named Plaintiffs. *See* Doc. 1082 at 3-7. *See* Attachments 3 (Doc. 1074) and 4 (Doc. 1082) to Defendant's Brief.

simply because a class may include persons who have not been injured by the defendant's conduct"); *Neale v. Volvo Cars of N. Am., LLC*, 794 F.3d 353, 367 (3d Cir. 2015).

Notably, this Court has repeatedly rejected the very same argument Defendant makes here. *See, e.g., DG ex rel. Stricklin v. Devaughn*, 594 F.3d at 1197–98 (certifying a class defined as “all children who are or will be in the legal custody of [Oklahoma Department of Human Services] due to a report or suspicion of abuse or neglect or who are or will be adjudicated deprived due to abuse or neglect”); *Colorado Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1213–14 (10th Cir. 2014). In *Colorado Cross Disability* the Court summarized its holding by quoting from *DG ex rel. Stricklin*:

“First,” we held, “only named plaintiffs in a class action seeking prospective injunctive relief must demonstrate standing by establishing they are suffering a continuing injury or are under an imminent threat of being injured in the future.” [*DG*, 594 F.3d at 1197]. “Second, Rule 23's certification requirements neither require all class members to suffer harm or threat of immediate harm nor Named Plaintiffs to prove class members have suffered such harm.” *Id.* at 1198.

765 F.3d at 1214.

This Court and other Circuit Courts have consistently approved classes that include future individuals in cases seeking prospective injunctive relief. *See, e.g., DG ex. Rel. Strickland*, 594 F.3d at 1192 (certifying a class defined as “all children who are or will be in the legal custody of [Oklahoma Department of Human Services] due to a report or suspicion of abuse or neglect or who are or will be adjudicated deprived

due to abuse or neglect”); *Leiting-Hall v. Winterer*, 2015 WL 1470459, at *3 (D. Neb. Mar. 31, 2015) (certifying a class defined as “All Nebraska residents who since January 1, 2012 have applied, are applying, or will apply for initial and renewal benefits”); *Like v. Carter*, 448 F.2d 798, 802 (8th Cir. 1971) (certifying a class defined as “eligible St. Louis welfare recipients whose applications have not been acted upon within 30 days after filing”); *Rovidoux v. Celani*, 987 F.2d 931, 939 (2d Cir. 1993) (certifying a class defined as “all current and Future Vermont applicants for assistance from the Food Stamp, ANFC, and Fuel Assistance Programs”); and *Reynolds v. Giuliani*, 118 F.Supp.2d 352, 392 (S.D.N.Y. 2000) (certifying a class defined as “all New York city residents who have sought, are seeking, or will seek to apply for food stamps, Medicaid, and/or cash assistance at Job Center”). This reasoning was relied upon by the district court in upholding the class definition in 2018. *See* II Supp. Appx. at 213. Thus, this substantial precedent weighs heavily against Defendant’s argument here.

Moreover, Defendant’s argument does not make sense. The remedies sought for the Plaintiff-Class have always extended into the future. Otherwise, Defendant would have been free to resort to its illegal practices. As alleged in the original complaints in the two cases that were consolidated, Plaintiffs and the Plaintiff-Class challenged the following practices: Defendant’s illegal requirement that applicants provide information and documents that were burdensome, unreasonable and not allowed by federal law; Defendant’s incorrect and illegal eligibility and benefit

decisions caused by procedures that did not comply with federal law; and Defendant's illegal delays in rendering benefit and eligibility determinations. I Supp. App. 5-7 and Applt. App. at 63-67. Consequently, the current and previous versions of the Consent Decree describe the following issues as having been raised by the Plaintiff-Class in the two consolidated cases, thereby justifying the on-going relief mandated by the Decree:

HSD violates their federally guaranteed rights to receive a prompt eligibility decision, and if eligible benefits by 1) failing to inform applicants adequately eligibility factors which must be verified, the alternate methods by which verification can be accomplished and the availability of HSD assistance in obtaining verification which is not readily available; (2) imposing inconsistent and excessive verification requirements which discourage applicants from completing the application process or result in the unlawful denial of benefits; 3) delaying the issuance of eligibility decisions and benefits beyond federal time standards; 4) failing to screen food stamp applicants routinely and adequately for emergency assistance and providing timely expedited benefits; and 5) failing to provide applicants with adequate written notice of eligibility decisions. The Class Action Complaints for Declaratory and Injunctive Relief filed March 31, 1988 and July 1, 1988, and Sections 2(a), 3, 4 and 5 of the Pre-Trial Order, filed September 27, 1989, are adopted herein by this reference.

Second Modified Consent Decree at Applt. App. p. 76-77.

It is noteworthy that the Consent Decree has been approved three times with this class definition, these remedial targets, and the various remedial elements of the Decree aimed at remedying the on-going (present and future) violations of federal law for class members. *See* Applt. App. at 76 and I Supp. App. at 15 and 48. In addition, this class definition was described without criticism by this Court in its

rejection of Defendant's previous unsuccessful attempts to invoke interlocutory jurisdiction. *See Hatten-Gonzales I*, 579 F.3d 1159; *Hatten-Gonzales II*, 2023 WL 4881437.

Over the years, the district court considered and validated the class definition, including future applicants for assistance, multiple times; repeatedly applied the Decree to the class on an on-going basis; and never determined that the definition was limited only to current class members who did not receive a timely decision, as Defendant now argues. Defendant did not appeal these rulings. Indeed, Defendant made this argument only recently when faced with a negative case review under Section IV of the Decree and Plaintiffs' Motion to Enforce. Since then, the district court has twice ruled that an appeal considering the issues of class definition and standing are frivolous and raised only as a tactic to delay progress in the underlying case. The law is clear that the class definition in this case is valid and that the Decree continues to protect class members.

It is also without dispute that the named class members have standing to seek compliance with the Consent Decree. The original named Plaintiffs, one of whom is still a named plaintiff in this case, and the newly added named Plaintiffs were each denied benefits to which they were entitled because of these same violations of federal law and each remained in jeopardy of continuing violations of law because

he/she had to periodically renew their benefits or re-apply for benefits anew.³ The Plaintiffs' injuries could only be remedied by current and future injunctive relief because they are subject to continuing violations of federal law as a result of Defendant's unlawful renewal and re-application practices. The Consent Decree that was approved, entered and periodically reapproved by the court was intended to remedy these violations immediately and to continue to remedy them in the future.

“In a class action, once standing is established for a named plaintiff, standing is established for the entire class.” *See Amador v. Andrews*, 655 F.3d 89, 99 (2d Cir. 2011) (internal quotation marks omitted). Because the named Plaintiff-Class representatives have suffered an injury in fact that is not conjectural or hypothetical, that is traceable to the challenged action of the Defendant, and that can be remedied by the Court, Plaintiffs and the Plaintiff-Class have standing to pursue necessary remedies in this case.

Until compliance is achieved and the case is fully dismissed through the procedures set forth in the Consent Decree, New Mexico applicants for benefits who are processed by Defendant through practices and policies that violate federal law become part of the class and have standing to obtain remedial relief. Unfortunately, as indicated by Defendant's own corrective action plans and the district court's

³ In 2023 the district court approved the addition of three new named Plaintiffs who were suffering from Defendant's illegal practices to serve as class representatives. See Memorandum Opinion and Order (August 14, 2023), attachment 5 to Appellee's Opening Brief (Doc. 010110940610). Two of the original named Plaintiffs have died.

contempt and enforcement orders, Defendant continues to violate the rights of class members. See, *e.g.*, 2019 and 2020 Corrective Action Plans, I Supp. App. at 233 and 291, and Memorandum Opinion and Order (finding defendant in contempt) (September 27, 2016), II Supp. App. at p. 188. Consequently, it is essential that the class include *future* applicants for benefits to ensure that prospective injunctive relief is finally implemented by Defendant. Without a class that includes future applicants, there would be unnecessary and repeated litigation surrounding the same legal violations, negating the very purpose of class actions.

In short, Defendant's appeal challenging the validity of the Plaintiff-Class's standing has no merit and, as the district court found, is being improperly asserted to avoid or delay its responsibilities under federal law and the Consent Decree.

B. The District Court Did Not Lose Jurisdiction of this Case When It Modified Part of the Consent Decree in 2020 at Defendant's Request.

Defendant's argument – that the district court lost jurisdiction over this case in 2020 when it modified a part of the Consent Decree at Defendant's request – is without merit and should be rejected. In 2020 *Defendant* asked the District Court to modify the Consent Decree by finding that one requirement of the Consent Decree – as to specific and limited timeliness data benchmarks for application processing – had been satisfied and, under the terms of the Decree, should be removed from the Consent Decree, leaving other Decree requirements in place to be enforced by the court. The district court agreed that Defendant met the data benchmarks for

application processing at that time and removed that portion of the Consent Decree, but only that portion. In 2020, Defendant clearly argued that the court continued to have jurisdiction to enforce the Decree. Between 2020 and now Defendant did not contest the court's jurisdiction over this action and agreed to implement an action plan ordered by the court to come into compliance with the rest of the Consent Decree. Three years later, in an about-face, Defendant now misreads the class definition and misconstrues the effect of the dismissal of a small part of the Decree in an effort to have the entire case dismissed.⁴

Based on an incorrect reading of the definition of the class, Defendant wrongly argues that after the 2020 modification of the Consent Decree the court lost jurisdiction over the case because once the limited timeliness benchmarks in Section II of the Decree had briefly been achieved, the class had received all the relief it could be granted in this case and the court's jurisdiction ended. This argument is wrong and was correctly rejected by the district court in its recent ruling that this appeal is

⁴ Defendant's claim in its Brief (p. 13) that it only learned of the class definition recently by searching paper archives is clearly not accurate. At the October 13, 2023, hearing on certification of this appeal as frivolous and on Defendant's stay motion, the district court asked Defendant's counsel why they had waited until now to challenge the class definition and standing when the circumstances that give rise to their current argument occurred in 2020 when the Court dismissed Section II of the Consent Decree. Defendant stated that the Department's Counsel only just recently became aware of the class definition in this case because the class definition is not in the electronic document record of the case. However, in 2016 Defendant quoted the full class definition and referenced Docket Entry 154 in the midst of litigation concerning Defendant's work requirements. *See* I Supp. App. at pp. 147.

frivolous.

The court first found that in 2020 Defendant had explicitly argued in its pleadings that the modification of the Consent Decree sought by Defendant would **not** result in dismissal of the remainder of the Decree:

Moreover, it is not lost on this Court that HSD's argument that this Court lacks subject matter jurisdiction relies on the Court granting HSD's Motion to Modify in 2020. In that motion, HSD argued for piecemeal dismissal of only specific sections and subsections of the Modified Settlement Agreement (MSA) [the Consent Decree] relating to timeliness—acknowledging the MSA's remaining sections would remain effective. *See* (Docs. 893 and 894). From the time the Court modified the MSA in 2020 until August 2022, HSD was working toward compliance with MSA's Section III with agreement that there would be a case review. Now, in an abrupt about-face, HSD argues that no controversy exists given this Court's 2020 order modifying the MSA. Such a reversal further demonstrates HSD's dilatory tactics.

Memorandum Opinion and Order Certifying Appeal as Frivolous, at 3-4 (Attachment to this Response).

Next, the court rejected Defendant's new interpretation of the composition of the class:

HSD is aware that the class scope has never been as narrow as it now contends. In fact, the class scope has been well-defined for decades. Each version of the settlement agreement explains that the class scope includes not only those who received untimely benefits but also those who applied for benefits and were erroneously denied.³ *See, e.g.*, (Doc. 1129) at 7. The Court finds HSD's effort to narrow the class scope—after decades of clarity—is just another delay tactic.

Id., at 4-5. As the district court recognized, Defendant's argument is based on an illogical misreading of the class definition which would wrongly shrink the entire

case to one issue – specific limited timeliness benchmarks -- thereby ignoring all the other illegal practices which have always been a part of this case.

The class is defined as including federal program applicants “who have not or will not receive an eligibility determination or benefits ... within the time limits imposed by law.” Order (July 19, 1989) (Certifying the Class) Aplt. App. at p. 074-075. The plain meaning of this class definition encompasses three distinct categories of federal program applicants: 1) those who are denied benefits because of eligibility determinations by Defendant through a process that violates federal law, 2) those who receive incorrect benefit amounts as a result of a process that violates federal law, and 3) those who receive their eligibility or benefit amount decisions outside federally mandated time limits. Only the last category was affected by the 2020 modification of the Decree. It is illogical and, indeed, absurd for Defendant now, for the first time, to ignore the first two categories and claim that this case and its class always sought only timely determinations, even if those determinations were made through procedures that violated federal law and resulted in illegal and incorrect eligibility or benefit decisions.

The three categories of class membership described above have been repeatedly ratified by the court and by Defendants since the outset of this case. See all versions of the Consent Decree, including the provisions not dismissed by the Court in 2020, I Supp. App. at p. 15 (1990 Consent Decree); I Supp. App. at p. 48 (1998 Modified Consent Decree); Aplt. App. at p. 076 (2018 Consent Decree). The

court and Defendants correctly recognized that an applicant who timely receives an *erroneous* eligibility or benefit determination as a result of Defendant's violation of federal law, will nonetheless "not receive an eligibility determination or benefits ... within the time limits imposed by law" (see Class definition) and consequently be entitled to relief under federal law and the Consent Decree.

This understanding of the make-up of the class is further supported by the summary of violations of federal law at the core of this lawsuit listed in every version of the Consent Decree, showing that the Class's claims exceed untimely decisions. Supp. App. at p. 5-10 and Aplt. App. at p. 069-070. As summarized in every version of the Consent Decree, Plaintiff alleged that "HSD violates their federally-guaranteed right to receive a prompt eligibility decision and, if eligible, benefits, by: (1) failing to inform applicants adequately of eligibility factors which must be verified, the alternate methods by which verification can be accomplished and the availability of HSD assistance in obtaining verification which is not readily available; (2) imposing inconsistent and excessive verification requirements which discourage applicants from completing the application process or result in the unlawful denial of benefits; (3) delaying the issuance of eligibility decisions and benefits beyond federal time standards; (4) failing to screen food stamp applicants routinely and adequately for emergency assistance and provide timely expedited benefits; and (5) failing to provide applicants with adequate written notice of eligibility decisions. See Class Action Complaints for Declaratory and Injunctive Relief filed March 31, 1988 and

July 1, 1988, and Sections 2(a), 3, 4 and 5 of the Pre-Trial Order, filed September 27, 1989.” *See* I Supp. App. at p. 16 (1990 Consent Decree); I Supp. App. at p. 50 (1998 Modified Consent Decree); and Aplt. App. at p. 076 (2018 Consent Decree).

To redress these harms to the Plaintiff-Class, every version of the Decree has included numerous remedial requirements, in addition to the now-dismissed limited timeliness benchmarks, to address the many other ways Defendant is harming the Plaintiff class by failing to process applications in compliance with federal law. If the now-dismissed limited timeliness requirements were all that mattered to the class, there would have been no need for any of the other remedial provisions in the Consent Decree. But, in fact, the Decree mandates remedies to Defendant’s many other violations of federal law in the application process, including, but not limited to, content and literacy level of notices to applicants, the documentation required from applicants for approval of benefits, interviews with applicants, assistance that must be provided to applicants, telephonic access to case workers, and internal monitoring and quality assurance by Defendant. I Supp. App. at p. 55-69 (1998 Modified Consent Decree); and Aplt. App. at p. 81-86 (2018 Consent Decree).

In addition, and contrary to Defendant’s contention that all timeliness requirements were in the dismissed section of the Decree, current Section III contains many timeliness benchmarks that were not dismissed by the 2020 Decree

modification.⁵ Thus, even if Defendant's view of the class definition were correct, the class continues to have standing to enforce important parts of Section III that address timeliness.

Further proving that the class has not been and should not be interpreted the way Defendant now argues and demonstrating the class's need for continued protection by the court, the district court has issued many orders enforcing remedial

⁵ Decree Section III explicitly ties a number of compliance requirements to timely decisions, including:

Paragraph D. HSD's application procedures shall be designed to identify households eligible for expedited service at the time the household requests assistance in accordance with 7 C.F.R. § 273.2(i)(2).

Paragraph E: In accordance with 7 C.F.R. 273.2(c)(5), Defendant shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process.

Paragraph F: Requiring Defendant to schedule interviews in compliance with 7 CFR 273.2 (e)(3), which requires the agency to schedule interviews as promptly as possible to ensure eligible household receive an opportunity to participate within 30 days after an application is filed.

Paragraph I(8): Requiring HSD to allow an applicant the full application processing time period applicable to each program or 10 working days, whichever is later, to submit the requested verification.

Paragraph J: Details specific requirements in the event of an individual delay.

Paragraph K: HSD agrees to implement all federal regulatory requirements for the administration of SNAP and Medicaid.

provisions of Section III of the Consent Decree over many years, a number of which have even been agreed-upon by Defendant. *See*, I Supp. App. 78 –144 (**Doc. 384**: Ordering Defendant to stop requiring paperwork unnecessary to determine eligibility for benefits; **Doc. 475**: Stipulated by Defendant Ordering Defendant to make benefit determinations of Medicaid for Newborns up for renewal without requiring additional paperwork and where necessary to use a revised form; **Doc. 477**: Stipulated by Defendant, Ordering Defendant to train workers and cease illegal requests for documents not necessary to determine eligibility; **Doc. 500**: Ordering Defendant to suspend substantively incorrect denials; **Doc. 506**: Stipulated by Defendant Ordering Defendant to comply with adequate notice requirements; **Docs. 587 and 601**: Setting deadlines for compliance with preceding Orders); I Supp. App. 155-163 (**Doc. 645**: Order finding that imposition of work requirements for SNAP falls within the Decree) II Supp. App. 164-243 (**Doc. 685**: Order for Defendant to cease implementation of illegal SNAP work requirements; **Doc. 757**: Holding Defendant in contempt and granting other relief; **Doc. 836**: Order adopting the recommendations of the Special Master and ordering training and actions by HSD management; **Doc. 879**: Order Stipulated by Defendant as to corrective actions following a case review); II Supp. App. 277-309 (**Doc. 1040**: Ordering Defendant to conduct a survey required by federal law to determine language translation and interpretation needs; **Doc. 1041**: Corrective Action Plan stipulated by Defendant; **Docs. 1043 and 1044**: stipulated by Defendants Ordering changes to written notices

and interpretation by phone and entered as a minute order; **Doc. 1060**: Ordering corrective action following the results of a case review); and II Supp. App. 318-323 (**Doc. 1069**: Stipulated Order Addressing Issues Raised in Plaintiffs’ Motion to Enforce Compliance).

In sum, the district court’s dismissal of a limited part of the Consent Decree in 2020 did not deprive the Plaintiff class of standing to pursue compliance with federal law in the SNAP and Medicaid programs.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION

As a last resort, Defendant argues that the district court abused its discretion when it denied Defendant’s Motion to Dismiss because it allegedly did not address the issues of standing or jurisdiction in its Order. This is incorrect because the district court did address standing and jurisdiction in two Orders. See Attachments 5 (Doc. 1129) and 6 (Doc. 1133) to Defendant’s Opening Brief. These Orders were made in response to Defendant’s Motion to Dismiss (Doc. 1074) and Motion for Relief from Order(s), (Doc. 1082) in which Defendant made similar and overlapping arguments about named plaintiffs, the validity of the class, and jurisdiction of this case. *See* Attachments 3 (Doc. 1074) and 4 (Doc. 1082) to Defendant’s Opening Brief. In addition, the district court previously considered and ruled on both issues earlier in this litigation as described below. In none of these decisions did the district court abuse its discretion.

The standard for an abuse of discretion is limited and straight-forward:

An abuse of discretion occurs when the district court commits an error of law or makes clearly erroneous factual findings. We have previously characterized an abuse of discretion as an arbitrary, capricious, whimsical, or manifestly unreasonable judgment. Our review of a district court's exercise of discretion is narrow, and we consider the merits of the case only as they affect that exercise of discretion. We note that in the course of our review for abuse of discretion, we examine the district court's legal determinations de novo, and its underlying factual findings for clear error.

Att'y Gen. of Oklahoma v. Tyson Foods, Inc., 565 F.3d 769, 775–76 (10th Cir. 2009)

(internal citations and quotation marks omitted).

First, Defendant incorrectly states that the district court did not reference either standing or jurisdiction in its August 14, 2023 Memorandum and Order. Defendant's Motion to Dismiss was one of two filed by Defendant in close succession, making similar and overlapping arguments about named plaintiffs, the validity of the class, and jurisdiction of this case. *See* Attachments 3 and 4 to Defendant's Brief. In response to Defendant's motions, the district court entered two Orders: Attachment 5 (Doc. 1129) and Attachment 6 (Doc.1133) to Defendant's Brief. The second order (Doc. 1133), at issue in this appeal, denied Defendant's Motion to Dismiss and explicitly stated that it was denied for substantially the same reasons as set forth in the Order denying Defendant's separate Motion for Relief from Orders. *See* Attachment 6 to Defendant's Brief at p. 1. The referenced order explicitly addressed the validity of the class, including the definition and the adequacy of the class representation, as evidenced by injury to the named representatives and the current

version of the Decree (*i.e.*, after the dismissal of Section II in 2020). *See* Attachment 5 to Defendant’s Brief. The district court noted in the referenced Order that Defendant misunderstands the class definition: “While Defendant correctly references the description of the class, his read of the affidavits [by the new named class representatives] is far too narrow and misses the point of the class certification.”

Id. at 7. The court then held:

Each of the proposed named class representatives fits within the scope of the certified class, having applied for benefits and enoneously been denied or having received benefits after a undue delay and each states a desire of being named class representatives. In Ms. Scazzero's situation, she plainly states her intent to apply for benefits at such time when she is released from custody.

Id. Since the district court did address Defendant’s spurious claims and the court’s two orders dispensing with those claims are correct on all aspects of the law and the facts, the court did not abuse its discretion in any way.

Second, over many years the district court has repeatedly considered and ruled on the issues of standing and jurisdiction. In 2016, the district court upheld its own jurisdiction to enforce the requirements of Section II in the previous Decree version (now Section III) and held that

[t]he particular harm as alleged by Plaintiffs has no bearing on the question of [the district court’s] jurisdiction over the implementation of the Decree ... Because Plaintiffs have alleged that Defendant has not properly implemented the new work requirements and their exemptions into his application processing practices, which are governed by the Decree, this Court has jurisdiction to consider Plaintiffs’ concerns, regardless of the nature of the resulting harm to class members.

See Supp. App. at 162. (Defendant's appeal of this decision was denied for being untimely. *Hatten-Gonzalez v. Earnest*, 688 Fed.Appx. 586, 589 (10th Cir. 2017). In 2018, the district court issued an Order reviewing and reiterating the viability of the class definition in this case and specifically dismissed the argument that the case would not end under the current class definition because the Decree has clear terms for compliance and termination of the various sections of the Decree. II Supp. App. at p 213. Defendant did not appeal this decision. In 2020, the district court fully considered the operability of the Decree following the dismissal of Section II and entered an Order interpreting the various portions and their applicability to the class. *See* Doc. 953 Attachment 2 to Defendant's Brief.

Finally, Defendant ends its opening brief with a disparaging comment about the district court's decision in the Amended Order, stating that "One is left with the impression that the district court read neither the motion, nor the briefs or MSA and simply dismissed it out of hand without reference to the facts or the law. There is nothing in the Amended Order that suggests otherwise." Defendant's Brief at p. 17. The irony behind this statement is that it is Defendant who appears not to have read any of the district court's Orders in response to its motions, Plaintiff's motions, and the district court's previous rulings in this case. Because the district court addressed standing and jurisdiction on multiple occasions and provided a legal rationale for standing and jurisdiction, the district court did not abuse its discretion in denying Defendant's Motion to Dismiss.

III. CONCLUSION

For the reasons set forth above, Defendant's interlocutory appeal should be dismissed entirely for lack of jurisdiction and, if the merits of Defendant's arguments are considered by the Court, they each lack merit and should be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2023, I electronically filed the foregoing using the Court's CM/ECF system which sent notification of such filing to:

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Attachment to Plaintiffs-Appellees' Response Brief

Hatten-Gonzales v. Scrase, Secretary of the New Mexico Human Services Department, 88-cv-0385 KG/CG, Memorandum Opinion and Order Certifying Defendant's Appeal as Frivolous and Denying Motion to Stay Proceedings Pending Appeal (Dist. Ct. Doc.1154)

ATTACHMENT TO PLAINTIFFS-APPELLEES RESPONSE BRIEF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ABIGALE KNOWLTON, et al.,

Plaintiffs,

vs.

Civ. No. 88-0385 KG/GBW
Consolidated with
Civ. No. 88-786 KG/GBW

KARI ARMIJO, Acting Secretary of the
New Mexico Human Services Department,

Defendant.

**MEMORANDUM OPINION AND ORDER CERTIFYING DEFENDANT’S APPEAL AS
FRIVOLOUS AND DENYING MOTION TO STAY PROCEEDINGS PENDING APPEAL**

Defendant Kari Armijo, Acting Secretary of the New Mexico Human Services Department (HSD), filed a Notice of Appeal (Doc. 1141) with respect to the Court’s Amended Order (Doc. 1133) denying HSD’s Motion to Dismiss (Doc. 1074). HSD also filed a Motion for Stay of All Proceedings Pending Appeal. (Doc. 1144). The Court held a hearing on this matter on Friday, October 13, 2023, at which counsel for both parties appeared and argued. For the reasons explained below, the Court certifies HSD’s appeal as frivolous and denies its Motion to Stay.

HSD appears to appeal this Court’s order denying its Motion to Dismiss pursuant to 28 U.S.C. § 1292(a)(1), on the basis that it “is a legally unsupported refusal to dissolve the injunction in the action (settlement agreement/decree) and that HSD will be irreparable [*sic*] harmed if the case proceeds any further” (Doc. 1144) at 1–2. The heart of HSD’s argument is that this Court’s 2020 Memorandum Opinion and Order granting, in part, HSD’s Rule 60(b)(5)

Motion to Modify the Consent Decree (Motion to Modify) “eliminate[d] class standing (timeliness) on the Court’s subject matter jurisdiction.” *Id.* at 3.¹

I. *Certifying Appeal as Frivolous*

“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Stewart v. Donges*, 915 F.2d 572, 574 (10th Cir. 1990) (internal quotation marks omitted) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam)). To regain jurisdiction, the district court must certify the appeal as frivolous. *Id.* at 577–78. The proper focus is “whether the appeal from [the] motion [is] frivolous and whether the appeal should delay the [case proceedings].” *Id.* at 577 n.7. “The frivolous standard is met if the district court finds the interlocutory appeal is a sham or a dilatory tactic for delay.” *Dixon v. Okla. Bd. of Veterinary Med. Exam’rs*, 2007 WL 9710984, at *1 (E.D. Okla. Nov. 27, 2007) (citing *Langley v. Adams Cnty., Colo.*, 987 F.2d 1473, 1477 (10th Cir. 1993); *Apostol v. Gallion*, 870 F.2d 1335, 1339 (7th Cir. 1989)). Here, for the following three reasons, the Court finds that HSD’s appeal is a dilatory tactic meant for delay.

First, the Court finds that HSD has not established that the Tenth Circuit has appellate jurisdiction. Less than three months ago, the Tenth Circuit explained to HSD that it has jurisdiction to review “[i]nterlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions.” *Hatten-Gonzales v. Scrase*, 2023 WL 4881437, at *4 (citing 28 U.S.C.

¹ HSD also argues that this Court’s denial of its Motion to Dismiss was arbitrary and capricious. Docketing Statement at 5, *Knowlton et al. v. Armijo*, No. 23-2143 (10th Cir. Sept. 14, 2023). The Court refers HSD to this Court’s Amended Order, explaining that HSD’s arguments substantially, if not entirely, overlapped with issues the Court addressed in Memorandum Opinion and Order. (Doc. 1133) at 1.

§ 1292(a)(1)). The Tenth Circuit noted that “Section 1292(a) was intended to carve out only a limited exception to the final-judgment rule of 28 U.S.C. § 1291 and the long-established policy against piecemeal appeals.” *Id.* at 5 (internal quotations omitted) (quoting *Pimentel & Sons Guitar Makers, Inc. v. Pimentel*, 477 F.3d 1151, 1153 (10th Cir. 2007)).

The question of appellate jurisdiction is now squarely before the Tenth Circuit, and while it remains for that Court to determine whether it has jurisdiction here, *see, e.g., Stewart*, 915 F.2d at 574 (considering frivolousness of appeal and stating, “[w]e have jurisdiction to determine our jurisdiction”) (citations and quotations omitted), it appears to this Court that HSD does not satisfy the Section 1292(a) requirements. The Court is unpersuaded by HSD’s attempt to frame its Motion to Dismiss the Consent Decree as a motion to dissolve. As the Tenth Circuit noted in a previous incarnation of this case, an order denying dismissal is not necessarily a refusal to dissolve an injunction. *Hatten-Gonzales v. Hyde*, 579 F.3d 1159, 1166 (10th Cir. 2009). In that opinion, the Tenth Circuit concluded it did not have jurisdiction to hear HSD’s appeal because “[i]n its motion to dismiss, HSD did not request dissolution or modification of an injunction.” *Id.* at 1167. Here, like *Hatten-Gonzales*, HSD’s Motion to Dismiss “did not seek to alter or eliminate any of the terms of the [Modified Settlement Agreement], nor did it cite Rule 60(b)(5) or the standards from obtaining relief from an order.” *Id.* (citing *Horne v. Flores*, 557 U.S. 433 (2009)). Thus, the Court finds that HSD is unlikely to satisfy the requirements for Section 1292(a).

Moreover, it is not lost on this Court that HSD’s argument that this Court lacks subject-matter jurisdiction relies on the Court granting HSD’s Motion to Modify in 2020. In that motion, HSD argued for piecemeal dismissal of only specific sections and subsections of the Modified Settlement Agreement (MSA) relating to timeliness—acknowledging the MSA’s remaining

sections would remain effective. *See* (Docs. 893 and 894). From the time the Court modified the MSA in 2020 until August 2022, HSD was working toward compliance with MSA’s Section III with agreement that there would be a case review. Now, in an abrupt about-face, HSD argues that no controversy exists given this Court’s 2020 order modifying the MSA. Such a reversal further demonstrates HSD’s dilatory tactics.²

Second, HSD is aware that the class scope has never been as narrow as it now contends. In fact, the class scope has been well-defined for decades. Each version of the settlement agreement explains that the class scope includes not only those who received untimely benefits

² The Court also notes that in HSD’s Reply to Defendant’s Motion to Dismiss, it argued for the first time in—without support—that “[o]nly the definition of the actual controversy as clearly stated in the 1989 class certification, not the MSA or subsequent agreements/actions, can be the measure of this Court’s subject matter jurisdiction.” (Doc. 1091) at 7. The Court disagrees. HSD appeared to argue, among other things, for the retroactive application of Federal Rule of Civil Procedure Rule 23(C)(1)(B). In so doing, HSD relied on a Third Circuit case applying Rule 23(c)(1)(B). *See* (Doc. 1091) at 1–2. HSD, however, ignored that Subdivision (c)(1)(B) was added in 2003 as part of a substantial amendment to Rule 23.² *Watchel ex rel. Jesse v. Guardian Life Ins. Co. of America*, 453 F.3d 179 (3rd Cir. 2006). Rule 23(c)(1)(B)’s requirements did not exist when this Court certified the class in 1989, and HSD provided no legal support for retroactively applying Subdivision (c)(1)(B) in this case.

but also those who applied for benefits and were erroneously denied.³ *See, e.g.*, (Doc. 1129) at 7. The Court finds HSD's effort to narrow the class scope—after decades of clarity—is just another delay tactic.

Finally, HSD's latest appeal parallels its recent appeal of this Court's order granting, in part, HSD's last motion to stay. HSD's last motion to stay came on the eve of the 2022 case review. Now, pending a forthcoming ruling on Plaintiffs' Motion to Enforce Compliance, HSD again asks this Court to stay all proceedings. Such conspicuous timing evinces a pattern of dilatory tactics. Thus, for the reasons given, the Court certifies HSD's appeal as frivolous.

II. *Denying HSD's Motion to Stay*

HSD argues that it satisfies the four factors considered in granting a stay, and the Court should therefore stay all proceedings. For the reasons explained below, this Court denies HSD's Motion to Stay.

Four factors govern whether to grant a stay pending appeal:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay;

³ Every version of the consent decree has explicitly included Plaintiffs' allegation:

[T]hat HSD violates their federally-guaranteed right to receive a prompt eligibility decision and, if eligible, benefits, by: (1) failing to inform applicants adequately of eligibility factors which must be verified, the alternate methods by which verification can be accomplished and the availability of HSD assistance in obtaining verification which is not readily available; (2) imposing inconsistent and excessive verification requirements which discourage applicants from completing the application process or result in the unlawful denial of benefits; (3) delaying the issuance of eligibility decisions and benefits beyond federal time standards; (4) failing to screen food stamp applicants routinely and adequately for emergency assistance and provide timely expedited benefits; and (5) failing to provide applicants with adequate written notice of eligibility decisions.

Settlement Agreement, Aug. 28, 1990 at 2; Modified Settlement Agreement, August 27, 1998 (Doc. 460) at 2; Second Revised Modified Settlement Agreement, August 21, 2018 (Doc. 853) at 1–2.

(3) whether issuance of the stay will substantially injure the other party interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009) (internal quotation marks omitted). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the court’s] discretion.” *Id.* at 433–34. A stay “is an extraordinary remedy that should not be granted in the ordinary case, much less awarded as of right.” *Id.* at 437 (Kennedy, J., concurring).

First, HSD contends that it has shown a strong likelihood of succeeding on the merits in its appeal because it believes this Court lacks subject matter jurisdiction. (Doc. 1144) at 3. The Court disagrees. For the same reasons already discussed herein, this Court finds it unlikely that the Tenth Circuit has jurisdiction to hear HSD’s appeal.

Second, HSD argues it will suffer irreparable injury because it will be subject to orders and related compliance activities while this Court lacks jurisdiction. *Id.* This Court, however, finds HSD will not suffer irreparable injury absent a stay. While granting a stay may relieve HSD’s burden of complying with the MSA, HSD would still be subject to similar federal requirements regardless of a stay.⁴ *Id.* at 4. Thus, any injury HSD may suffer by complying with court orders, simply, is not irreparable.

Third, HSD argues Plaintiffs will not be substantially injured if a stay is granted because federal agencies will continue to supervise applicant processing. *Id.* Contrary to HSD’s argument, this Court finds Plaintiffs will suffer substantial injury if a stay is granted. HSD’s SNAP and Medicaid programs have been subject to federal supervision since their inception.

⁴ The processing requirements set forth in the MSA are directly in line with federal requirements. (Doc. 853) at 6–11. Because the MSA closely tracks and implements federal laws, this Court does not believe compliance to be too burdensome.

See 7 U.S.C. § 2020(a); 42 U.S.C. § 1396(b)(5). In the past, federal supervision has not motivated HSD to comply with federal laws. At this time, the Court is not persuaded that such supervision alone will encourage HSD's compliance. Without HSD's compliance with the MSA, Plaintiffs will continue to suffer injuries which have been the subject of this litigation for years.⁵

Finally, HSD argues the public interest lies with the taxpayer and denying the stay will cause taxpayers expenditures in litigation. (Doc. 1144) at 4. The Court disagrees. The public interest, instead, lies in ensuring HSD complies with the MSA and its obligations under law. The purpose of SNAP and Medicaid is to alleviate hunger, provide essential health services, and promote the general welfare. *See* 7 U.S.C. § 2011; 42 U.S.C. § 1396. The MSA exists to ensure vast swaths of the public in New Mexico have access to food and medical care. Thus, members of the public are best served when the MSA is enforced.⁶ Given HSD's history of non-compliance, the Court is not confident this public interest will be served if a stay is granted.

While HSD is concerned with expenses to the taxpayers (the people of New Mexico), it fails to acknowledge the overarching public benefit of ensuring all eligible Medicaid and SNAP applicants receive benefits. HSD argues a stay will allow it to devote more resources to providing benefits. It claims it is currently overwhelmed, not by the processing procedures, but by constant supervision and reporting requirements. Transcript of October 13, 2023, Motion

⁵ This Court has previously stated, “[a] SNAP beneficiary’s loss of food assistance is irreparable.” (Doc. 658) at 14-15.

⁶ HSD believes retroactive benefits are an appropriate remedy for non-compliance. Although retroactive benefits can cover prior healthcare expenses, retroactive food benefits cannot prevent hunger.

Hearing, at 11:15–25.⁷ Yet, HSD has already admitted it will continue to be under federal supervision and reporting requirements regardless of a stay. (Doc. 1144) at 4. Thus, the Court finds HSD’s arguments unpersuasive.

For these reasons, this Court finds that none of the factors weigh in favor of granting a stay. The Motion to Stay is denied, and the Court certifies HSD’s appeal as frivolous following the hearing on this matter and for the reasons state above. *See Stewart*, 915 F.2d at 577; *United States v. Hines*, 689 F.2d 934, 936–37 (10th Cir. 1982). With this certification, this Court retains jurisdiction over the case.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE

⁷ The Court’s citations to the hearing transcripts refer to the court reporter’s original, unedited versions. Any final transcript may contain some differences in page and line numbers.