

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

GARY VERN CROSLEY,

Plaintiff,

v.

No. 1:20-cv-00044-WJ-JFR

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER EXTENDING TIME FOR SERVICE

THIS MATTER comes before the Court on Plaintiff's response to the Court's Order extending the time to serve Defendant United States of America. *See* Doc. 38, filed May 13, 2020.

The Court previously found that Plaintiff did not show good cause for failing to timely serve the United States. *See* Doc. 38. The Court did not dismiss this case because the statute of limitations would bar Plaintiff from refileing his claim against Defendant United States pursuant to the Federal Tort Claims Act. Instead, the Court granted Plaintiff a 21-day extension of time to properly serve the United States.

On May 14, 2020, Plaintiff contacted the Clerk's Office via telephone and asked the Clerk's Office to notify the undersigned that due to Plaintiff's health, he is unable to serve the United States, and is unable to file a motion for an extension, within the 21-day extension.

The Court grants Plaintiff an additional 90 days to serve Defendant United States for the following reasons. *See Espinoza v. United States*, 52 F.3d 838, 841 (10th Cir. 1995) ("If the plaintiff fails to show good cause, the district court must still consider whether a permissive extension of time may be warranted. At that point the district court may in its discretion either dismiss the case without prejudice or extend the time for service"). A 90-day extension will cause minimal prejudice to Defendant United States and will not significantly impact these proceedings.

Not granting Plaintiff an additional extension would prejudice Plaintiff because dismissal of this case and the statute of limitations would bar Plaintiff from refiling his claim.

IT IS ORDERED that Plaintiff shall have an additional 90 days, until September 1, 2020, to properly serve the United States with a summons and the Amended Complaint. Failure to timely and properly serve the United States may result in dismissal of this case.

A handwritten signature in black ink, appearing to read 'William P. Johnson', is written over a solid horizontal line.

WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE