

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

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**CASE NO. 1:21-CV-548-WCG**

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ADAM P. FAUST; CHERYL J. ASH; JAMES C. ASH; CHRISTOPHER C. BAIRD;  
BRANDON BANDUCCI; TEENA J. BANDUCCI; CHRISTOPHER D. BOHNENKAMP;  
JOSEPH W. SCHMITZ; THEODORE G. SHIELDS, JR.; JAY T. SLABA; JONATHAN P.  
STEVENS; and LORI J. WATKINS,

Plaintiffs,

v.

THOMAS J. VILSACK, in his official capacity as Secretary the U.S. Department of Agriculture;  
and ZACH DUCHENEAUX, in his official capacity as Administrator of the Farm Service  
Agency;

Defendants.

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**BRIEF OF AMICI CURIAE  
THE RURAL COALITION, THE INTERTRIBAL AGRICULTURE COUNCIL,  
NORTH CAROLINA ASSOCIATION OF BLACK LAWYERS LAND LOSS  
PREVENTION PROJECT, AND  
23 ADDITIONAL FARMING ADVOCACY ORGANIZATIONS  
IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

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Keisha Stokes-Hough  
Alexandra M. Jordan  
**SOUTHERN POVERTY LAW CENTER**  
400 Washington Avenue  
Montgomery, AL 36104  
Tel: (334) 956-8200

*Counsel for Amici Curiae*

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## INTEREST OF AMICI CURIAE

Amici Curiae are twenty-six advocacy organizations that work with and represent the interests of farmers and ranchers across the country.

The **Rural Coalition** is a collection of more than 50 diverse, community-based member organizations that have worked for 42 years to advance the interests of historically underserved producers and rural communities. Since 1978, the Rural Coalition has developed and secured passage of over 45 key federal policies to strengthen rural agriculture, with a critical focus on equitable access and new generation of diverse producers.

The **Intertribal Agriculture Council** (IAC) is a nonprofit 501(c)(3) national organization to pursue and promote the conservation, development, and use of Tribal agriculture resources for the betterment of the 574 federally recognized Tribal governments and over 80,000 Tribal producers. The IAC was founded on the heels of the 1980s farm financial crisis when a report to Congress determined that Tribal producers needed direct and specific technical assistance to support access to USDA programs, especially access to credit through Farm Service Agency. Many of our individual Tribal membership have a direct interest in the outcome of this case and will be irreparably harmed if the debt relief is not provided.

**North Carolina Association of Black Lawyers Land Loss Prevention Project** (LLPP) was founded in 1983 and is a non-profit, public interest organization providing comprehensive legal services and technical support to North Carolina's financially distressed and socially disadvantaged farmers and landowners seeking to preserve their farms, homes, land, and rural livelihoods. Many of our farmers were struggling to retain their farm operations prior to the COVID-19 Pandemic, which has only worsened their conditions. Debt relief is critical for farmers who have experienced discrimination in the implementation of USDA programs, so that they may receive timely access to credit and secure favorable loan terms and servicing of loans.

The **Natural Resources Defense Council** (NRDC) is a national, not-for-profit environmental and public health membership organization that works, on behalf of our 3 million members and activists, to ensure the rights of all people to clean air, clean water, and healthy communities. NRDC is committed to advancing environmental and social justice and seeks to break down the patterns of disproportionate environmental burdens borne by people of color who face social or economic inequities, including in our agricultural system and farming communities.

**Rural Advancement Fund of the National Sharecroppers Fund, Inc.** (RAF) is a 501(c)(3) organization that represents rural farmers, with special focus on African American farmers and young farmers. Denial of American Rescue Plan funds to RAF members will immediately impact at least 20 African American farmers in three counties in South Carolina, many of whom own small family farms that have been passed down for generations.

The **National Latino Farmers and Ranchers Trade Association** (NLFRTA) is a nonprofit based in Washington, DC, that organizes, engages, and empowers Latino farm and ranching advocacy groups, farmworkers transitioning into farm ownership, and, generally, small producers, throughout the United States and beyond. Latino farmers have historically suffered — and continue to suffer — under the discriminatory treatment of USDA staff. The relief offered under the 1005 program is the only possible relief for operations that are rendered even more vulnerable by economic, market, and climate conditions intensified by the pandemic.

**American Indian Mothers, Inc.** (AIMI) is a not-for-profit organization serving the education, health, social service, and agriculture and cultural needs of American Indians and minorities in North Carolina. AIMI serves our communities through 12 different programs in order to fill the gaps in services throughout rural communities. The socially disadvantaged farmers

served by AIMI have experienced extreme hardships during the COVID Pandemic, and without the Section 1005 assistance, these farmers will not be able to plant or plan for the future.

**Arkansas Land and Farm Development Coalition** (ALFDC) is a nonprofit organization founded in 1980 with the mission of stopping Black farmers from losing their land and family farm operations. We serve farmers who, after decades of discrimination and the pandemic, urgently need the debt relief afforded justly to them in Section 1005. Any delay in this relief will limit the few options available for them to retain land and continue to pass land to the incoming generations for the benefit and viability of the rural communities we have long served.

**Cottage House Incorporation** (CHI), founded in 2007, works to promote sustainable agriculture solutions through education of new and beginning farmers, veterans, youth, and women in agriculture. During the pandemic, the farmers served by CHI have experienced food insecurity; been unable to sell their cows, hogs, pigs, and chickens; and lacked funds to buy feed for their animals. Without debt relief, they won't be able to buy seeds or plant or plan for the future. CHI is especially concerned about five producers with FSA Youth loans: without Section 1005, these young farmers will go into default and may not have a way to continue farming.

**Family Farm Defenders** (FFD) is a 501(c)(3) organization and has over 3500 members in all 50 states, including many farmers of color. FFD's mission is to create a farmer-controlled and consumer-oriented food and fiber system, based upon democratically controlled institutions that empower farmers to speak for and respect themselves in their quest for social and economic justice. To this end, FFD supports agroecology, farm and food worker rights, racial justice, animal welfare, consumer safety and right to know, fair trade, and food sovereignty.

**Kansas Black Farmers Association** (KBFA), a 501(c)(3) organization, was founded by fourteen African American Kansas farmers in 1999. KBFA represents more than 150 rural and

urban farmers, agribusiness owners, youth farmers, and associate organizations and works to sustain Black land ownership. Over 50 of KBFA's members are eligible for Section 1005 relief, which they are depending on to continue their farming. The relief will allow the farmers to plant/drill — though a few weeks late due to late rains. An injunction will further delay this season, resulting in some of KBFA's farmers not having a milo, corn, or soybean crop this year.

The **Land Stewardship Project (LSP)** is a member-driven nonprofit organization founded in 1982 in Minnesota to foster an ethic of stewardship for farmland, promote sustainable agriculture, and develop sustainable communities. LSP represents over 6,000 members and thousands more supporters who are farmers, food system workers, and other residents dedicated to creating transformational change in our food and farming system. LSP believes it is critical to address the needs of farmers of color who have endured decades of discrimination in USDA programs and have not received adequate support during the pandemic. The debt relief included in the American Rescue Plan is a necessary step toward creating resilient rural communities.

The **National Young Farmers Coalition (Young Farmers)** aims to shift power and change policy to equitably resource a new generation of working farmers. Young Farmers represents aspiring and working farmers, ranchers, and land stewards who are reorienting agriculture in service to our communities. Young Farmers believes justice is foundational to a transformation in our food and farm systems; we've advocated for the Section 1005 loan-forgiveness program and other necessary programs that serve to increase the security and accessibility of agricultural livelihoods for farmers of color.

The **Oklahoma Black Historical Research Project, Inc. (OBHRPI)** was founded in 1998 to assist historically underserved farmers and ranchers by means of outreach, technical training, and cultural awareness to operate sustainable farms and ranches with an emphasis on sustaining

historic American Indian and African American communities. We are advocates for Socially Disadvantaged Farmers and Ranchers who have been historically underserved and deserve — and urgently need — the relief that is due to them in the ARP.

**Operation Spring Plant, Inc.** is a grassroots 501(c)(3) organization with over 34 years of experience organizing rural and urban, predominantly Black, small family farmers in North Carolina and throughout the southern US. We have served over 1500 farmers, youth, and landowners per year in North and South Carolina, Georgia, and Oklahoma. The farmers we serve are counting on Section 1005 relief to overcome numerous challenges, from a severe drought in 2013 to crop losses, restaurant closures, and inaccessible markets due to COVID-19.

The **Texas Coalition of Rural Landowners** was founded and incorporated in Cypress, Texas, as a Domestic Nonprofit Corporation on May 30, 2021, to assist farmers and ranchers who have sought aid from various USDA agencies. The Coalition's mission is to develop training to provide farmers information, skills, and awareness, in a cultural context; assist rural landowners building strong communities; build an equitable and sustainable food system that is beneficial to underserved rural landowners; and provide assistance to underserved landowners. The producers served by the Coalition have struggled with discrimination, and the disruptions of the pandemic. They are depending upon the relief in the American Rescue Plan.

**World Farmers** advocates for and supports immigrant, refugee, and historically underserved small-scale farmers from farm to market. Started in 1984, our Flats Mentor Farm Program, located in Lancaster, MA, provides access to the land, farming infrastructure, and technical assistance in agricultural production and marketing necessary for several hundred small-scale diversified farmers to grow and market their produce. Section 1005 debt relief payments are critical to supporting farmers without generational wealth in this country, including the immigrant

and refugee farmers with whom we work, and to supporting those farmers of color who are operating within an agricultural system of historic exclusion and displacement.

**Farm Aid** is a nonprofit organization whose mission is to keep family farmers on the land. Since the first Farm Aid Concert in 1985, Farm Aid has raised \$60 million to promote a strong and resilient family farm system of agriculture. Farm Aid operates 1-800-FARM-AID to provide immediate and effective support services to farm families in crisis. We have worked with thousands of farmers and hear every day how the pandemic has stressed them to the limit — most of all the nation’s socially disadvantaged farmers. We have joined this action because we know these farmers need and deserve the aid that is being delayed by this action.

The **Health, Environment, Agriculture, Labor Food Alliance** (HEAL) is a national multi-sector, multi-racial coalition of 50 organizations who represent over two million producers, workers, indigenous groups, scientists, advocates, organizers, and activists. Many of HEAL’s members and their communities have borne the brunt of COVID-19, and many of the producers who are part of our Alliance have gone above and beyond to produce and distribute food for their communities during the pandemic — and have gone into debt as a result. The HEAL Food Alliance opposes preventing the USDA from moving forward with a program designed to relieve debt for farmers of color, and supports the USDA’s defense of debt relief for these farmers.

The **National Family Farm Coalition** (NFFC) was established in 1986 to avert the demise of family farmers caught in the 1980s farm credit crisis. NFFC membership consists of 30 grassroots farm, ranch, and fishing organizations in 42 states and the nation’s capital. Our members are fighting for food providers’ rights, fair prices, clean air and water, strong local economies, and much more. NFFC believes that an attempt to overturn this act of Congress that enables USDA to



meet the urgent and particular needs of socially disadvantaged producers has no merit and only undermines the ability of family farmers who feed us with dignity and respect.

The **Rural Advancement Foundation International-USA** (RAFI-USA) was founded in 1990 to serve and advocate for farmers struggling to keep their farms. Today, our mission is to challenge the root causes of unjust food systems, supporting and advocating for economically, racially, and ecologically just farm communities. Our Farmers of Color Network program works with more than 300 farmers of color in North Carolina and the Southeast U.S.

The **National Sustainable Agriculture Coalition** (NSAC), founded in 2009, is an alliance of 130+ member organizations and their combined 2+ million members that advocates for federal policy reform to advance the sustainability of agriculture, food systems, natural resources, and rural communities. NSAC has heard directly from our members how Black, Indigenous and other People of Color (BIPOC) are treated worse than white farmers within the same applicant pool, including: when seeking fair and timely access to credit, when attempting to apply for and obtain direct USDA aid through support programs (including the Coronavirus Food Assistance Program), and when applying to participate in conservation programs. Consequently, these farmers are at direct risk of losing their livelihoods without urgent relief.

**California FarmLink** is a 501(c)(3) nonprofit organization and lender certified by the U.S. Treasury as a Community Development Financial Institution (CDFI). In 2020, more than 70% of California FarmLink's loans provided capital to Socially Disadvantaged Farmers and Ranchers, including Latina/o farmers in the Central Coast region and Hmong-American refugee farmers in the Fresno region. California FarmLink has at least three borrowers who are in immediate risk of bankruptcy and will likely enter bankruptcy if they do not receive debt relief.

**Community Farm Alliance** (CFA) was founded by Kentucky farmers in 1985 during the Farm Crisis as a vehicle for farmers to collaboratively address the issues facing them, their neighbors and their communities. The COVID-19 pandemic was particularly hard for Kentucky BIPOC farmers, and CFA responded by rallying private donations large and small to create the Kentucky Black Farmer Fund.

**Women, Food, and Agriculture Network** (WFAN) was founded in 1997 with a mission to engage women in building an ecological and just food and agricultural system through individual and community power. WFAN is a national organization, with women and non-binary members across the United States. Delaying debt relief for our BIPOC farmer-members compounds the challenges that they regularly face, particularly during the pandemic, which hit these communities exponentially harder. WFAN believes in the maxim that “justice delayed is justice denied,” and supports the immediate release of these much-needed relief funds.

**Steward Holdings** (Steward) is a private lending partner offering commercial loans and expert support services to regenerative farmers, ranchers, fishermen, and producers so they can expand and sustain their businesses. Steward currently works with over 100 human-scale regenerative farmers, ranchers, fishermen, and producers across the United States. Each day that relief under Section 1005 is delayed only adds to the economic burden being shouldered by farmers we work with, causing additional harm to them, their families, and their communities.

## INTRODUCTION

A preliminary injunction in this case will unnecessarily deprive minority farmers of debt relief, compounding harm from decades of racial discrimination and the COVID-19 crisis. The American Rescue Plan Act (ARPA) was signed into law on March 11, 2021. Section 1005 of the ARPA provides direct, emergency debt relief for socially disadvantaged farmers and ranchers, to ensure their survival in the wake of the COVID-19 crisis. Congress recognized that minority farmers were already operating at a disadvantage when the COVID-19 pandemic struck, and needed immediate support. Accordingly, the legislation authorized the U.S. Department of Agriculture (USDA) to spend “sums as may be necessary” to relieve certain debt burdens for socially disadvantaged producers. Pub. L. No. 117-2, § 1005(a)(1) (2021).<sup>1</sup>

Longstanding federal law defines “socially disadvantaged farmer or rancher” as “a member of a socially disadvantaged group . . . whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” 7 U.S.C. § 2279(a)(5)–(6). In its Notice of Funds Availability, USDA explained that such groups “include, *but are not limited to*: American Indians or Alaskan Natives; Asians; Blacks or African Americans; Native Hawaiians or other Pacific Islanders; and Hispanics or Latinos.”<sup>2</sup>

Plaintiffs seek a preliminary injunction to forestall implementation of Section 1005, arguing that relief to socially disadvantaged farmers and ranchers amounts to a constitutionally impermissible racial classification. But Supreme Court precedent is clear that Congress may employ race-conscious measures if needed to address a compelling government interest, *see, e.g.*,

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<sup>1</sup> *See also* USDA Notice of Funds Availability (NOFA), <https://public-inspection.federalregister.gov/2021-11155.pdf> (noting that USDA “received emergency approval” from Office of Management and Budget for ARPA information collection).

<sup>2</sup> *See* NOFA, *supra* note 1, at 6 (emphasis added).

*Grutter v. Bolinger*, 539 U.S. 306, 326–27 (2003), and the balance of harms weighs strongly against injunctive relief.

As discussed below, Section 1005 is a measured response to past and present discrimination in USDA’s programs, and the disproportionate impact of the COVID-19 pandemic on the nation’s most vulnerable farmers. Having been underserved by prior USDA lending and aid programs, socially disadvantaged farmers are relying on Section 1005 to meet their farming needs this season, and will be irreparably harmed if the promised assistance is delayed or denied.

## ARGUMENT

### **I. Congress Enacted Section 1005 to Address Two Compelling Government Interests: Remediating Discrimination Against Minority Farmers, and Ensuring that COVID-19 Relief Reaches Those Most Impacted by the Crisis.**

“The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 237 (1995).

In crafting Section 1005, Congress was acting in response to *two* compelling, appreciable problems that have particularly disadvantaged minorities: a clear and persistent pattern of racial and ethnic discrimination in USDA’s loan and assistance programs, and the disproportionate economic impact of the COVID-19 pandemic on minority farmers, which threatens to perpetuate the lingering effects of USDA’s discriminatory practices.

#### ***A. Minority farmers have been harmed by persistent discrimination in the USDA’s farm loan programs.***

The Supreme Court has recognized that the government has a compelling interest in “remediating the effects of past or present racial discrimination.” *Shaw v. Hunt*, 517 U.S. 899, 909 (1996). And as government officials have acknowledged in this case, it is “no secret” that the

USDA's loan programs "have historically been infected by discrimination against minority farmers."<sup>3</sup>

Through its Farm Service Agency (FSA) and, formerly, Farmers Home Administration (FmHA), the USDA has operated as the "lender of last resort" to small farmers — a source of direct farm financing for those borrowers who cannot obtain credit elsewhere."<sup>4</sup> But minority farmers have often been excluded from the benefits of this assistance. In various fora over the last four decades, including congressional hearings,<sup>5</sup> civil rights reports,<sup>6</sup> and class action litigation,<sup>7</sup> minority farmers have decried unfair and discriminatory lending practices in USDA programs. Such practices include failing to provide minority farmers with loan program information and applications;<sup>8</sup> awarding minority farmers smaller loans, at higher interest rates, than white farmers;<sup>9</sup> frequent delays in processing loans for minority farmers;<sup>10</sup> applying minority farmers'

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<sup>3</sup> Doc. 17, p. 4.

<sup>4</sup> *Decline of Minority Farming in the United States: Hearing Before the Gov't Just., Info., & Agric. Subcomm. of the H. Comm. on Gov't Operations*, 101st Cong. 27 (July 25, 1990) (statement of David Harris, Jr., Executive Director, Land Loss Prevention Project), [https://www.google.com/books/edition/Decline\\_of\\_Minority\\_Farming\\_in\\_the\\_Unite/XdD4pV3tgeEC?hl=en&gbpv=1](https://www.google.com/books/edition/Decline_of_Minority_Farming_in_the_Unite/XdD4pV3tgeEC?hl=en&gbpv=1).

<sup>5</sup> *See, e.g., Management of Civil Rights at the USDA: Hearing Before the Subcomm. On Gov't Mgmt., Org., & Procurement of The H. Comm. On Oversight And Gov't Reform*, 110th Cong. (May 4, 2008), [https://www.google.com/books/edition/Management\\_of\\_Civil\\_Rights\\_at\\_the\\_USDA/uU-8FKm6V3cC?hl=en&gbpv=0](https://www.google.com/books/edition/Management_of_Civil_Rights_at_the_USDA/uU-8FKm6V3cC?hl=en&gbpv=0).

<sup>6</sup> *See, e.g., U.S. Comm'n on Civil Rights, The Decline of Black Farming in America* 85–134 (1982), <https://files.eric.ed.gov/fulltext/ED222604.pdf>.

<sup>7</sup> *See, e.g., Keepseagle v. Veneman*, No. Civ.A.9903119EGS1712, 2001 WL 34676944 (D.D.C. Dec. 12, 2001) (class action of Native American farmers); *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (class action of Black farmers); *see also Garcia v. Veneman*, 224 F.R.D. 8 (D.D.C. 2004) (putative class of Hispanic farmers).

<sup>8</sup> *See* U.S. Comm'n on Civil Rights, *supra* note 6, at 87.

<sup>9</sup> *See id.*; Exhibit H, p. 2 (Statement of Rural Coalition to the H. Comm. on Agric. Hearing on the State of Black Farmers (March 25, 2021)).

<sup>10</sup> *See* U.S. Comm'n on Civil Rights, *supra* note 6, at 87.

loan payments to the wrong accounts;<sup>11</sup> and accelerating minority farmers' loans without explanation.<sup>12</sup>

Amici represent thousands of minority farmers, many of whom have directly suffered economic injury due to discriminatory practices in the administration of USDA's loan programs. For instance, Alfonso A. Abeyta, a Latino rancher in Antonito, Colorado, has a 400-acre ranch where he raises sheep and cows.<sup>13</sup> He recalls several painful instances of discrimination by USDA representatives. When he first sought a USDA loan to own and operate a ranch, a USDA employee told him that "Mexicans were more suited to being farm workers, not farm owners."<sup>14</sup> He later attempted to take out USDA loans because of several natural disasters. However, USDA representatives denied his applications because he and his family worked other jobs to supplement their income.<sup>15</sup> To Mr. Abeyta's knowledge, white farmers in his area have routinely been able to take out USDA loans even though they worked outside of their ranches.<sup>16</sup> He estimates that his losses from USDA lending discrimination are in excess of \$2.9 million.<sup>17</sup>

Nathaniel Bradford is a Black farmer and rancher from Creek County, Oklahoma, who has worked in agriculture for 30 years.<sup>18</sup> He has been repeatedly discriminated against by FSA offices

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<sup>11</sup> See *Decline of Minority Farming*, *supra* note 4, at 9 (statement of Congressman Mike Espy of Mississippi).

<sup>12</sup> *Id.*

<sup>13</sup> See Exhibit A (Declaration of Alfonso A. Abeyta), ¶¶ 3–4.

<sup>14</sup> *Id.* at ¶ 7.

<sup>15</sup> *Id.* at ¶ 9.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at ¶ 8.

<sup>18</sup> See Exhibit B (Declaration of Nathaniel Bradford), p. 1.

in neighboring Payne and Okfuskee Counties.<sup>19</sup> For the past 15 years, he has been repaying an FSA loan without adequate servicing.<sup>20</sup> Last year, he applied for a new FSA loan to replace a 100-year-old barn.<sup>21</sup> Instead of giving him a loan to build a new barn, FSA appraised the old, derelict barn at \$30,000, and told Mr. Bradford that he would need to pay the full amount in order to remove USDA's lien.<sup>22</sup>

In enacting Section 1005, Congress took action in response to a longstanding and well-documented pattern of discrimination against minority farmers in USDA programs. As Section 1005 authorizes USDA to remedy discrimination that is “traceable to its own actions,” the relief afforded to socially disadvantaged farmers is clearly appropriate under existing Supreme Court precedent. *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 288 (1986) (O'Connor, J., concurring in part and concurring in the judgment).

***B. Minority farmers' precarious financial circumstances have been exacerbated by the COVID-19 pandemic.***

When crafting Section 1005, Congress not only grappled with USDA's extensive history of racial discrimination, but also confronted the devastating economic impact of the COVID-19 pandemic on already struggling minority farmers. Researchers have identified clear racial disparities in the impact of COVID-19: minorities are more likely to lose jobs and wages due to the pandemic;<sup>23</sup> and Black, Hispanic, and Native American people are approximately three times

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at p. 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See Nishesh Chalise & Violeta Gutkowski, *How COVID-19's Economic Impact Varies by Geography and Race*, Federal Reserve Bank of St. Louis: Open Vault Blog (April 21, 2021), <https://www.stlouisfed.org/open-vault/2021/april/how-covid-19-economic-impact-varies-by-geography-and-race>; Mark Hugo Lopez et al., *Financial And Health Impacts Of COVID-19 Vary Widely By Race And Ethnicity*, Pew Research Center (May 5, 2020),

as likely to be hospitalized, and twice as likely to die, from COVID-19 infection.<sup>24</sup> While minority farmers have been disproportionately impacted by the pandemic, prior COVID-19 relief through USDA has failed to reach many of them.<sup>25</sup> Nearly 97% of the \$9.2 billion appropriated through USDA's Coronavirus Food Assistance Program (CFAP) went to white farmers.<sup>26</sup>

Amici represent minority farmers who have been impacted by COVID-19, but received little or no relief under previous USDA pandemic assistance programs. For instance, Mr. Bradford tried to participate in CFAP, but was subjected to extra processes and scrutiny relative to white farmers.<sup>27</sup> Other Black farmers he knows were treated similarly, and Mr. Bradford believes that such roadblocks to participation were initiated by FSA county committees.<sup>28</sup> As a result, white farmers received more government support, including emergency assistance.<sup>29</sup>

Leroy Brinkley, Jr., is a Black rancher who lives in Haskell, Oklahoma.<sup>30</sup> He has operated his 80-acre ranch for 23 years.<sup>31</sup> Both his family and business suffered due to COVID-19. Mr. Brinkley, his wife, and his two-week-old granddaughter all contracted COVID-19.<sup>32</sup> The entire

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<https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/#:~:text=3The%20COVID%2D19%20economic,according%20to%20the%20April%20survey.>

<sup>24</sup> Centers for Disease Control and Prevention, *Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity* (updated May 26, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

<sup>25</sup> Jared Hayes, *USDA Data: Nearly All Pandemic Bailout Funds Went to White Farmers*, Environmental Working Group (Feb. 18, 2021), <https://www.ewg.org/news-insights/news/usda-data-nearly-all-pandemic-bailout-funds-went-white-farmers>.

<sup>26</sup> *Id.*

<sup>27</sup> *See* Exhibit B, p. 2.

<sup>28</sup> *Id.* at pp. 2–3.

<sup>29</sup> *Id.* at p. 3.

<sup>30</sup> *See* Exhibit C (Declaration of Leroy Brinkley, Jr.), ¶ 3.

<sup>31</sup> *Id.* at ¶ 4.

<sup>32</sup> *Id.* at ¶ 8.



family had to quarantine apart from each other for 21 days, and his wife was hospitalized for nine days. Due to the pandemic, Mr. Brinkley could not work for two months, and was only able to work part-time for nearly a year.<sup>33</sup> His ranch was impacted as well, due to lost customers, and higher costs for feed, fuel, and production. Mr. Brinkley hopes to use the debt relief from Section 1005 to cover his losses related to COVID-19.

Henry Brown, a 71-year-old Black farmer, found prior COVID assistance programs impossible to navigate to his benefit.<sup>34</sup> His cow-calf business experienced significant income loss during the pandemic.<sup>35</sup> In addition, from March 2020 to February 2021, his off-farm household income decreased by \$2,200 per month, due to economic costs associated with the COVID-19 pandemic.<sup>36</sup> Mr. Brown made a successful application to the Small Business Administration (SBA) for an Economic Injury Disaster Loan to help with his farm.<sup>37</sup> But he was ultimately penalized by USDA for participating in SBA's coronavirus relief program.<sup>38</sup>

By providing debt relief to the most disproportionately impacted farmers, who were largely left out of prior COVID assistance, Section 1005 lawfully redresses the “persistence” and “lingering effects” of discrimination in USDA's loan programs. *Adarand*, 515 U.S. at 237.

Congress has spent decades receiving and reviewing complaints from minority farmers, holding hearings on and studying the problem of racial discrimination in USDA's programs, and relying on race-neutral alternatives that have proven ineffective in remedying the harm of past and

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<sup>33</sup> *Id.*

<sup>34</sup> See Exhibit D (Declaration of Henry Brown).

<sup>35</sup> *Id.* at ¶ 5.

<sup>36</sup> *Id.* at ¶ 7.

<sup>37</sup> *Id.* at ¶ 8.

<sup>38</sup> *Id.* at p. 3.

present USDA discrimination. *Cf. Sherbrooke Turf, Inc. v. Minn. Dep't of Transp.*, 345 F.3d 964, 970 (8th Cir. 2003) (approving race-conscious measures where “Congress has spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry”). In enacting Section 1005, Congress was also taking urgent action to support the continued viability of minority farmers, who were already economically distressed, due in part to longstanding discrimination in USDA’s programs, and whom evidence confirms are disproportionately impacted by COVID-19.<sup>39</sup> As there is a “strong basis in the evidence” to support Section 1005, and compelling government interests are implicated, the debt relief to socially disadvantaged farmers is constitutionally permissible. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 500 (1989) (citation omitted).

**II. Section 1005 Is a Narrowly Tailored Measure, Employing the Least Restrictive Means to Achieve Congress’s Policy Goals.**

The government’s consideration of race must be narrowly tailored to further its compelling interests. *Croson*, 488 U.S. at 507. Although “[n]arrow tailoring does not require exhaustion of every conceivable race-neutral alternative,” it does “require serious, good faith consideration of workable race-neutral alternatives.” *Grutter*, 539 U.S. at 339. Reviewing courts should also consider “the flexibility and duration of the relief” provided. *United States v. Paradise*, 480 U.S. 149, 171 (1987).

***A. Race-neutral efforts have been attempted, and failed to remedy the effects of USDA’s long and persistent history of discrimination.***

Discrimination based on race and ethnicity has been pervasive in USDA’s programs for decades.<sup>40</sup> In response to complaints about discriminatory and arbitrary implementation, USDA

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<sup>39</sup> See *supra* notes 23–25.

<sup>40</sup> See, e.g., Exhibit H (Statement of Rural Coalition to the H. Comm. on Agric. Hearing on the State of Black Farmers (March 25, 2021)).

has engaged in a series of race-neutral reforms and actions, discussed below, but these changes have been insufficient to overcome continuing harms from past and present discrimination.

First, USDA Farm Loan Programs are themselves an example of race-neutral efforts to expand opportunity for farmers. Access to credit is a routine barrier for socially disadvantaged farmers, and congressional efforts to expand credit access for farmers began decades ago. USDA eventually created farm loan programs that target disadvantaged farmers.<sup>41</sup> To get a loan, farms must be of a modest size, that is to say “family farms;”<sup>42</sup> applicants must have been unable to get credit anywhere else;<sup>43</sup> strict loan limits apply; and officials’ wide latitude in making loans was tightened with voluminous rules designed to make lending more fair. If any race-neutral and targeted program for credit scarcity is imaginable, this is it. Nevertheless, “SDFRs received proportionately fewer loans and less agricultural credit overall than non-SDFRs.”<sup>44</sup>

Aid programs are also administered in a race-neutral manner. In practice, such programs perpetuate inequality, because the race-neutral formulas fail to account for important differences in the circumstances, accessibility, and needs of socially disadvantaged farmers. For instance, an aid program that provides a set dollar figure per acre<sup>45</sup> may meet the needs of farmers with large holdings, but farmers with small acreages — which describes most minority farmers<sup>46</sup> — often

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<sup>41</sup> *Agricultural Lending: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited*, U.S. Gov’t Accountability Off., 13 (July 2019), <https://www.gao.gov/assets/gao-19-539.pdf>.

<sup>42</sup> See *FSA Farm Loan Programs*, U.S. Dep’t of Agric., <https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/>.

<sup>43</sup> See U.S. Comm’n on Civil Rights, *supra* note 6, at 76.

<sup>44</sup> *Agricultural Lending*, *supra* note 41, at 20.

<sup>45</sup> See, e.g., *USDA to Provide Additional Direct Assistance to Farmers and Ranchers Impacted by the Coronavirus*, U.S. Dep’t of Agric. (Sept. 18, 2020), <https://www.usda.gov/media/press-releases/2020/09/18/usda-provide-additional-direct-assistance-farmers-and-ranchers>.

<sup>46</sup> See *Lending to Farmers of Color and Women: New Report Examines Trends And Barriers*, Nat’l Sustainable Agric. Coalition (Aug. 27, 2019), <https://sustainableagriculture.net/blog/gao-report-lending-sdfr/>.

receive too little relief to meet their costs and expenses. The CFAP, for example, afforded the average white farmer \$3,398, whereas the average Black farmer received \$422.<sup>47</sup>

USDA reformed its county committee system, created decades ago, in an effort to provide accountability and fairness in USDA programs in a race-neutral way. County committees are elected by local farmers to make important decisions in the local implementation of USDA programs.<sup>48</sup> Given the realities on the ground, this race-neutral approach to USDA accountability itself became an instrument of discrimination.<sup>49</sup> Seeking a race-neutral solution, in a series of reforms, USDA has transformed the county committee system to make it less powerful and more representative of the whole farming community.<sup>50</sup> But this race-neutral approach has flatly failed to provide racial equality in USDA programs.<sup>51</sup>

Lastly, in response to longstanding complaints that farmers had no means of reversing arbitrary and discriminatory decisions, USDA created an elaborate appeals system, the National Appeals Division (NAD), in 1994.<sup>52</sup> NAD allows farmers to appeal any adverse decision to a relatively autonomous decisionmaker. While NAD may have improved accountability within

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<sup>47</sup> See Hayes, *supra* note 25.

<sup>48</sup> See Farm Service Agency County Committees: In Brief, Cong. Rsch. Serv. (Jan. 29, 2021), [https://www.everycrsreport.com/files/2021-01-29\\_R40179\\_111b8ebb8c5a99b497fb6c42c31be43a9681924a.pdf](https://www.everycrsreport.com/files/2021-01-29_R40179_111b8ebb8c5a99b497fb6c42c31be43a9681924a.pdf).

<sup>49</sup> See Susan Youngblood Ashmore, *Carry It On: The War on Poverty and the Civil Rights Movement in Alabama 1964–1972*, 81, 140–52 (2008), [https://www.google.com/books/edition/Carry\\_it\\_on/SSdp-dtMM1sC?hl=en&gbpv=0](https://www.google.com/books/edition/Carry_it_on/SSdp-dtMM1sC?hl=en&gbpv=0); see also Pete Daniel, *Dispossession: Discrimination Against African American Farmers in the Age of Civil Rights* (2013).

<sup>50</sup> See Farm Security and Rural Investment Act of 2002, § 2501A, <https://www.congress.gov/107/plaws/publ171/PLAW-107publ171.pdf>; see also Farm Service Agency: County Committee Elections 2001, U.S. Dep’t of Agric., [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/coc\\_elections-fact\\_sheet.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/coc_elections-fact_sheet.pdf).

<sup>51</sup> See, e.g., Exhibit B, pp. 2–3.

<sup>52</sup> See Department of Agriculture Reorganization Act of 1994, Subtitle H, 7 U.S.C. §§ 6991–7002.

USDA, it has done nothing to address discrimination. A farmer, for example, is not even allowed to raise discrimination as an issue in a NAD hearing.<sup>53</sup>

As USDA officials have acknowledged in this case, “[t]he necessity of the debt relief in § 1005 is underscored by the inefficacy of the race-neutral alternatives that Congress used before enacting § 1005.”<sup>54</sup>

***B. Relief under Section 1005 will benefit the most vulnerable and underserved farmers: those impacted by USDA discrimination and at the greatest risk of failure.***

Amici advocate for policies that will level the playing field for small farms and socially disadvantaged farmers and ranchers. A remedy for USDA discrimination should do several things. First, it should identify actual farmers who have struggled to succeed in farming. Second, it should target farmers who have participated directly in USDA programs, especially USDA loan programs, because that is where the most thorough record of discrimination exists. Third, the remedy should do something tangible that benefits the farmer, is directly related to the discrimination at hand, and makes that farm more likely to succeed.

Section 1005 meets all three of these criteria.

First, all recipients of relief are actual farmers. USDA farm loan regulations require that Farm Loan Program recipients be farmers when the loan is closed.<sup>55</sup> They can be relatively new farmers, but every loan recipient is an actual farmer. Further, these operations are all large enough to be considered farms, and not just rural residences or tiny homesteads with a small garden.<sup>56</sup> In

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<sup>53</sup> See *Common Questions Related to Appeals*, U.S. Dep’t of Agric., <https://www.nad.usda.gov/content/common-appeal-related-questions>.

<sup>54</sup> Doc. 17-1, p. 33.

<sup>55</sup> See *Your Guide to FSA Farm Loans*, U.S. Dep’t of Agric., 17–21, [https://www.fsa.usda.gov/Internet/FSA\\_File/fsa\\_br\\_01\\_web\\_booklet.pdf](https://www.fsa.usda.gov/Internet/FSA_File/fsa_br_01_web_booklet.pdf).

<sup>56</sup> *Id.* at 70.

addition, the farms receiving relief are of modest size. USDA rules require that they be no larger than a family farm — mainly defined as the borrower doing a large proportion of the work on the farm.<sup>57</sup> None of the recipients of a USDA farm loan, in other words, is a massive farming operation that is in no danger of failure.

Second, because each loan recipient can only receive the loan if the farmer could not get the loan anywhere else,<sup>58</sup> we know that these farms are in danger of being lost due to lack of credit, repossession, foreclosure, bankruptcy or some other financial catastrophe.

Third, we know that these socially disadvantaged farmers — actual borrowers with USDA loans — have faced the brunt of ongoing, well-documented discrimination. These farmers may get loans, but get them late, making successful farming all but impossible.<sup>59</sup> They get loans of smaller amounts than are needed and provided for in the rules.<sup>60</sup> USDA places unreasonable restrictions on the loans and requires more collateral than is justified, thus making additional credit difficult to get.<sup>61</sup> If the farmer has difficulty repaying the debt, USDA rushes to accelerate, repossess, foreclose,<sup>62</sup> and does not use the wide panoply of loan servicing options — including debt write-

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<sup>57</sup> *See id.*

<sup>58</sup> *See Agricultural Lending*, *supra* note 41, at 13.

<sup>59</sup> *See Decline of Minority Farming*, *supra* note 4, at 9 (statement of Congressman Mike Espy), 20 (statement of David Harris, Jr.).

<sup>60</sup> *See Decline of Minority Farming*, *supra* note 4, at 61, 97 (statement of Randi Ilyse Roth, Staff Attorney, Farmers' Legal Action Group).

<sup>61</sup> *See Management of Civil Rights*, *supra* note 5, at 24–26 (testimony of Guadalupe L. Garcia Jr.).

<sup>62</sup> *See id.* at 12 (statement of John Boyd, President, Nat'l Black Farmers Assoc.), 22 (testimony of Guadalupe L. Garcia Jr.).

downs — that the farmers are entitled to when experiencing payment difficulties, and which seem so widely available to white borrowers.<sup>63</sup>

Further, we know that ongoing debt is the most likely way a farm will be lost.<sup>64</sup> Behind virtually every farm collapse is a debt crisis. By relieving the debt, this USDA program provides a precise remedy to help socially disadvantaged farmers survive.

***C. Section 1005 provides temporary relief in response to the exigencies of the COVID-19 pandemic.***

In crafting a relief program for the most vulnerable farmers, Congress also had to consider their urgent financial needs in the context of typically rigid farming schedules.<sup>65</sup> Section 1005 is the most narrowly tailored approach that could deliver relief rapidly during the pandemic (in time to help farmers this season), and without creating problematic barriers to participation (as a grant application process would).

Given the inefficacy of race-neutral attempts to redress the impact of discrimination within USDA, and the urgent need to extend temporary aid to the most vulnerable farmers impacted by the COVID-19 pandemic, Congress's race-conscious measure in Section 1005 is appropriate.

**III. The Balance of Harms Weighs Strongly Against a Preliminary Injunction, Because Minority Farmers and the Public Will Be Harmed, But Plaintiffs Are Not Harmed.**

If the Court enjoins Section 1005, socially disadvantaged producers will be further and irreparably harmed financially, which will have devastating impacts on their operations,

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<sup>63</sup> See *Civil Rights at the U.S. Department of Agriculture (C.R.A.T. Report)*, U.S. Dep't of Agric. Civil Rights Action Team, 22, 26 (Feb. 1997), <https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1997-crat-report.pdf>.

<sup>64</sup> See J. Rabin, *Excess Farm Indebtedness: Not a Sustainable Practice*, Rutgers Cooperative Extension: Sustainable Farming on the Urban Fringe (Oct. 15, 2010), <https://sustainable-farming.rutgers.edu/excess-farm-debt-not-sustainable/>.

<sup>65</sup> See, e.g., *Monthly Crop Stage Calendars*, U.S. Dep't of Agric., <https://ipad.fas.usda.gov/ogamaps/cropmapsandcalendars.aspx>.

customers, families, and communities. Both historic and continued racial discrimination has put them in precarious financial positions that have been exacerbated by the COVID-19 pandemic. As earlier pandemic relief did not reach or have a substantial positive impact on these producers, their financial positions worsened relative to their peers. Congress enacted Section 1005 to provide needed relief to socially disadvantaged farmers, recognizing that if action were not taken soon, they would face irreversible harm.

***A. Discrimination in lending has made it more difficult for minority farmers to survive times of crisis.***

In few other industries is regular infusion of capital, borrowed at fair terms, so necessary to success as in agriculture. Discriminatory practices against minority farmers — particularly in agricultural lending — have forced minority farms and ranches into foreclosure or hampered the economic viability of their operations. USDA has acknowledged that “minority farmers have lost significant amounts of land and potential farm income as a result of discrimination by FSA programs and the programs of its predecessor agencies, ASCS and FmHA.”<sup>66</sup>

Decades of discrimination in lending have set minority farmers up for failure, particularly in times of extreme crisis like a global pandemic. In enacting Section 1005, Congress took this long history of discrimination in lending, and its continuing effects during the coronavirus pandemic, into account. In the committee report accompanying H.R. 1319, Congress explained:

The USDA spends billions of dollars annually to provide crucial support to American agricultural producers. Black farmers and other agricultural producers belonging to racial or ethnic minority groups have received a disproportionately small share of the farm loans and payments administered by USDA as a result of the longstanding and widespread discrimination against these groups. Despite multiple lawsuits, numerous government reports, and the limited programs created by Congress since the 1980s attempting to address the disproportionately low rates of agricultural spending on socially disadvantaged groups, USDA farm loan and payment programs continue to disproportionately benefit farmers who are not racial

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<sup>66</sup> See *C.R.A.T. Report*, *supra* note 63, at 6.



or ethnic minorities. Consequently, the Committee has agreed to achieve its directed spending target by using a tailored approach to increase spending to address these longstanding inequities.<sup>67</sup>

***B. Delay in delivering debt relief will irreparably harm minority farmers.***

Enjoining Section 1005 and denying needed debt relief to minority farmers would destabilize the farm sector as a whole. The immediate harm would not be borne by the Plaintiffs, but rather by the over 250,000 minority farmers this relief was designed to protect. They have already suffered disproportionately from the COVID-19 pandemic, and delaying or denying debt relief while the world is still in the midst of the pandemic would only exacerbate those impacts. The devastating market impacts of the pandemic on American agriculture have already been exceptionally disastrous for minority farmers, as the pandemic has compounded negative externalities from decades of discriminatory lending practices.

These deep impacts on minority farming operations include production to processing gaps, market closures, and loss of sales, all of which result in an inability to generate profit and repay debt. In a survey conducted by amicus curiae Intertribal Agriculture Council (IAC),<sup>68</sup> 86 percent of the Tribal producers who responded have been negatively impacted by the COVID-19 pandemic; 85 percent stated the need for financial assistance and support as a result of the pandemic; and 79 percent reported a production to processing gap.

Amici represent struggling minority farmers who have relied on the Government's assurances of debt relief, and will be harmed if this needed assistance is withheld. For instance, Mr. Bradford's ranch is already in serious jeopardy because of past due balances and delayed farm

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<sup>67</sup> *Rep. of H. Comm. on the Budget to Accompany H.R. 1319*, 12 (Feb. 24, 2021), <https://www.congress.gov/117/crpt/hrpt7/CRPT-117hrpt7.pdf>.

<sup>68</sup> *See Covid-19 Preliminary Survey Results*, Intertribal Agric. Council, <https://www.indianag.org/post/covid-19-preliminary-survey-results>.

and ranch activities stemming from the pandemic.<sup>69</sup> He has made plans for his farm based on the promise of loan forgiveness, putting all of his family's savings into keeping the farm going.<sup>70</sup> If Mr. Bradford does not receive debt relief through Section 1005, he will go bankrupt.<sup>71</sup>

Jane Doe is an Asian poultry farmer in North Carolina.<sup>72</sup> She is also a refugee.<sup>73</sup> She owes hundreds of thousands of dollars in loans which were used to start her family's poultry business.<sup>74</sup> Since her husband's death, she has struggled to manage the farm on her own.<sup>75</sup> The pandemic has caused delays with processing facilities, which have been harmful to her business, and she has been denied participation in aid programs.<sup>76</sup> If she does not receive debt relief through Section 1005, she will not be able to keep the farm going for much longer, and she fears that she will be financially taken advantage of as a widowed, female farmer.<sup>77</sup>

Additionally, without debt relief through Section 1005, debt-to-income ratio restrictions will prevent many socially disadvantaged farmers from obtaining the lending they need to plant and harvest their crops and maintain their farms this season.<sup>78</sup>

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<sup>69</sup> See Exhibit B, p. 3.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See Exhibit E (Declaration of Jane Doe), ¶¶ 2–5. Ms. Doe uses a pseudonym due to concerns about retaliation.

<sup>73</sup> *Id.* at ¶ 5.

<sup>74</sup> *Id.* at ¶ 7.

<sup>75</sup> *Id.* at ¶ 11.

<sup>76</sup> *Id.* at ¶¶ 10, 12.

<sup>77</sup> *Id.* at ¶ 15.

<sup>78</sup> See, e.g., Exhibit B, p. 3; Exhibit F (Declaration of George McNary III), ¶ 13; Exhibit G (Statement of Cassandra P.), pp. 2–3. Ms. P. uses a pseudonym due to concerns about retaliation.

***C. Delaying assistance to minority farmers is also harmful to the public interest.***

Without equitable access to credit, farms and ranches simply cannot survive; without profitable farms and ranches and the related businesses they help sustain, the American economy suffers.<sup>79</sup> American Indian and Alaska Native farmers alone produce \$3.5 billion in raw market value of agricultural commodities annually, according to the National Census of Agriculture.<sup>80</sup> Black farmers produce \$1.4 billion annually.<sup>81</sup> Hispanic farmers produce \$21 billion annually.<sup>82</sup> All told, approximately 250,000 socially disadvantaged farmers and ranchers contribute \$26 billion to the U.S. economy each year, and this is despite carrying a disproportionate amount of debt — an estimated \$20 billion in farm debt<sup>83</sup> — and having less access to farm programs.

If socially disadvantaged farmers are unable to survive pandemic-related losses, that would otherwise be ameliorated by Section 1005 as Congress intended, a loss of that magnitude — after all the losses that the American economy broadly, and the American farm sector particularly, have had to bear since March 2020 — would have devastating economic consequences for all producers, not just those eligible for debt relief under Section 1005. The death of minority-owned farming operations undermines the entire American economy, imperils American farming and ranching

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<sup>79</sup> See *Ag and Food Sectors and the Economy*, U.S. Dep't of Agric. Econ. Rsch. Serv. (noting that agriculture and related industries support 5.2% of the overall American GDP, accounting for \$1.1 trillion annually and supporting 11% of total U.S. employment, with direct on-farm employment accounting for 2.6 million American jobs), <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy/#:~:text=Agriculture%2C%20food%2C%20and%20related%20industries.about%200.6%20percent%20of%20GDP.>

<sup>80</sup> See *American Indian/Alaskan Native Producers, 2017 Census of Agriculture: Highlights*, U.S. Dep't of Agric., 2 (ACH17-7/October 2019), [https://www.nass.usda.gov/Publications/Highlights/2019/2017Census\\_AmericanIndianAlaskaNative\\_Producers.pdf](https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_AmericanIndianAlaskaNative_Producers.pdf).

<sup>81</sup> See *Black Producers, 2017 Census of Agriculture: Highlights*, U.S. Dep't of Agric. (ACH17-9/October 2019), [https://www.nass.usda.gov/Publications/Highlights/2019/2017Census\\_Black\\_Producers.pdf](https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Black_Producers.pdf).

<sup>82</sup> See *Hispanic Producers, 2017 Census of Agriculture: Highlights*, U.S. Dep't of Agric. (ACH17-10/October 2019), [https://www.nass.usda.gov/Publications/Highlights/2019/2017Census\\_Hispanic\\_Producers.pdf](https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Hispanic_Producers.pdf).

<sup>83</sup> See *Agricultural Lending*, *supra* note 41, at 14.

writ large, and could potentially push the farm sector into another farm financial crisis like that of the 1980s. It is difficult to imagine a more compelling government interest than staving off total farm financial collapse.

Potential closure of minority farmers' agricultural operations would also have disastrous consequences for the American food system, particularly for those Americans who are relying on some form of food assistance in the wake of the pandemic-related economic downturn. Preliminary data from a survey of American Indian and American Native households conducted by the Native American Agriculture Fund and the Food Research & Action Center suggest a nearly 1500% rise in usage of federal food programs that connect individuals in need with American-grown or raised food, like the Farmers-to-Families Food Box. These food assistance programs are connected with local producers. In many Tribal communities, the closest local producers are socially disadvantaged farmers. Accordingly, enjoining debt relief will not only devastate these farms, but will also have a disproportionate impact on Tribal citizens' food systems.

***D. An injunction of Section 1005 would undermine Congress's goal of remedying ongoing inequities in USDA funding.***

When Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) on March 23, 2020, they fully recognized the threat facing agriculture. Nearly \$9.2 billion was designated in the CARES Act for the Secretary of Agriculture to use to provide direct support to agriculture producers. The funding went overwhelmingly to white producers, making little to no impact on USDA's socially disadvantaged producers.<sup>84</sup>

Utilizing the CARES Act funding, USDA created a set of programs through the Coronavirus Food Assistance Program (CFAP): direct payments to producers and a Farmers-to-

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<sup>84</sup> See Hayes, *supra* note 25.

Families Food Box Program (FFFB). Both programs did not provide adequate access or financial assistance to socially disadvantaged producers, exacerbating their precarious financial standings going into the pandemic.

In addition to the great disparity between who received and did not receive direct CFAP payments, it took USDA several months before making particular commodities produced by socially disadvantaged farmers and ranchers eligible for CFAP payments. In the first round of CFAP, which ran from April to September 2020, livestock made up more than 48 percent of the total payments.<sup>85</sup> However, bison, a major livestock category for Tribal nations, were not included. With livestock producers making up nearly 60 percent of all Tribal agriculture sales,<sup>86</sup> many producers went months without this funding.

Under the FFFB program, many socially disadvantaged producers did not have access to the program, and/or had their participation limited. Based on the structure of the program and outreach by USDA, very few Tribal producers, if any, were selected to be distributors/purchasers for the programs, and very few Tribal members sold into the program. Many found the requirements to get into the program difficult. Even when the FFFB program reached socially disadvantaged producers, that support was cut abruptly short. One award that went to an organization representing approximately 35 African American producers provided food boxes to predominately minority groups for two rounds of the program.<sup>87</sup> However, despite their demonstrated success, the organization was not provided an award for a third round.<sup>88</sup>

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<sup>85</sup> See *Coronavirus Food Program 1 Data*, U.S. Dep't of Agric., <https://www.farmers.gov/cfap1/data>.

<sup>86</sup> See *American Indian/Alaskan Native Producers*, *supra* note 80.

<sup>87</sup> *An Evaluation of the Farmers to Families Food Box Program*, Harvard Law School: Food Law & Pol'y Clinic, 15 (Feb. 2021), <https://www.chlpi.org/wp-content/uploads/2013/12/F2F-Food-Box-Report-Online-Final1.pdf>.

<sup>88</sup> *Id.*

The totality of the history of past and present discrimination in USDA programs, including the ones created by USDA in response to the economic crisis facing America's agricultural producers, required the creation of Section 1005 to stave off an impending financial crisis for socially disadvantaged producers. Enjoining these payments would not only disregard congressional intent and a clear history of discrimination, but would also fail to acknowledge the current crisis facing minority farmers, who are desperately awaiting relief that has been consistently promised, but never delivered.

### CONCLUSION

Section 1005 is a constitutionally appropriate remedy for past and present discrimination in USDA's programs, enacted by Congress during a time of crisis that has disproportionately impacted minority producers. For the foregoing reasons, Plaintiffs' request for a preliminary injunction should be denied.

Date: June 23, 2021

Respectfully submitted,

/s/Keisha Stokes-Hough

Keisha Stokes-Hough (Miss. Bar No. 103717)  
Alexandra M. Jordan (Ala. Bar No. 4624-X00X)

**SOUTHERN POVERTY LAW CENTER**

400 Washington Avenue

Montgomery, AL 36104

Tel: (334) 956-8200

Fax: (334) 956-8481

keisha.stokeshough@splcenter.org

alexandra.jordan@splcenter.org

*Counsel for Amici Curiae*

EXHIBIT A  
DECLARATION OF ALFONSO A. ABEYTA

## **DECLARATION OF ALFONSO A. ABEYTA**

My name is Alfonso A. Abeyta. I am over the age of 18 and fully competent to make this declaration.

1. I am a Latino rancher who is a member of the National Latino Farmers and Ranchers Trade Association (NLFRTA).

2. I want the NLFRTA and the Rural Coalition to represent my interests in this lawsuit, *Faust v. Vilsack*, No. 1:21-cv-548 (E.D. Wis.).

3. I live in Antonito, a rural town of approximately 656 people in southern Colorado.

4. I own and operate a ranch of over 400 acres, where I raise 500 sheep and 300 cows. I have operated this ranch for 61 years. I am 82 years old.

5. I currently have farm ownership and farm operating loans from FSA. Around the year 1995, I took out USDA loans in the amount of approximately \$350,000.00. I used the loans for real estate loans or ownership.

6. As of June 21, 2021, the outstanding balance on my loans was approximately \$455,000.

7. I believe I have experienced racial discrimination from USDA representatives. For example, when I first sought a USDA loan to own and operate a ranch, a USDA representative told me that “Mexicans were more suited to being farm workers, not farm owners.”

8. From 1981 to 2000, I estimate that my losses directly or indirectly associated with FHA/FSA discrimination were in excess of \$2.9 million.

9. In the past, I have attempted to take out USDA loans because of several natural disasters. However, USDA representatives denied my requests for loans because my family and I



were working other jobs to supplement our income. To my knowledge, white farmers in my area have routinely been able to take out USDA loans even though they worked outside of their ranches.

10. As a result of these loan denials, I had to sell off small pieces of my land to stay afloat financially.

11. In order to pay off my USDA loans, I entered into a land trade agreement with the Bureau of Land Management. However, as a result of delays in USDA representatives' compliance with the land trade agreement, I lost several hundred thousand dollars.

12. In 1996, USDA representatives denied my request for loan subordination based on miscalculations of the improvements I made to the property. While USDA representatives eventually reversed course after I appealed the decision, these delays resulted in a shortened growing season and loss of revenue. In addition, USDA representatives made adverse changes to an agreed upon farm plan for loan subordination without notifying me. These changes caused additional delays and loss of revenue.

13. In 2019, I was denied USDA disaster set-aside loan assistance because I participated in an industrial hemp crop pilot program authorized by the 2014 Farm Bill, which the USDA found was ineligible for loan assistance. I sought direction from USDA representatives before entering into the contract for hemp production and was not clearly advised that the crop would be ineligible for loan assistance.

14. I have filed a formal civil rights complaint with the USDA, appealed a USDA decision to the National Appeals Division, and reached out to the USDA and the President of the United States regarding my experiences of discrimination.

15. Specifically, the staff of the Farm Service Agency referred to my request for loan servicing in a derogatory manner when a loan officer stated: "trash in – trash out."

16. In a discriminatory manner during a farm loan servicing action on my loan in 2019, the FSA office deliberately provided me with inaccurate loan servicing information. More particularly, the FSA provided information on hemp production that was not correct. Later the FSA denied my equitable participation in the disaster set aside program. White farmers were treated more favorable under the same or similar conditions.

17. My business has suffered because of the COVID-19 pandemic. There are fewer buyers available leading to lower market prices.

18. I believe I am eligible for loan forgiveness under Section 1005 of the American Rescue Plan Act because I am a socially disadvantaged farmer who has an outstanding loan balance on a loan with USDA. I recently received a letter from USDA Farm Service Agency informing me that I am eligible to have my loan paid off.

19. If the injunction is not lifted immediately, my farm operations will be harmed in a major financial way.

20. Based on the letter from USDA regarding my eligibility for debt relief, I planned to catch up with yearly ranch obligations that I have been unable to attend to because of the past 3 years of drought conditions in my area.

21. I will be financially harmed if the debt relief is delayed.

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 22, 2021

Respectfully submitted,

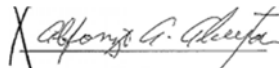
  
Alfonzo Abeyta

EXHIBIT B  
DECLARATION OF NATHANIEL BRADFORD

## DECLARATION OF NATHANIEL BRADFORD

My name is Nathaniel Bradford, and I am a Black farmer in Oklahoma. I am over the age of 18 and fully competent to make this declaration.

1. I am a member of one of Oklahoma Black Historical Research Project and I have a substantial interest in the outcome of this litigation.

2. I want amicus Rural Coalition and amicus Oklahoma Black Historical Research Project, Inc to represent my interests in this lawsuit, *Faust v. Vilsack*, No. 1:21-cv-548 (E.D. Wis.).

3. I live in Creek County in the state of Oklahoma.

4. I offer the following personal narrative:

I have been farming and ranching for thirty years and know the community of minority farmers and ranchers in the counties of Okfuskee, Creek and Okmulgee counties in Oklahoma. The USDS Farm Services Agency (FSA) has a known track record of not working with minority farmers in these counties. I farm 2000 acres, mostly leased in several counties, making my operation one of the largest farms owned by an African American rancher. I feel I have been continuously discriminated against in the FSA offices in both Payne and Okfuskee County. My complaints of discrimination have been of no avail. I've filed formal civil rights complaints; I filed an appeal to the National Appeals Division, and I've discussed this situation with my with my neighboring farms and organizations with which I work. I filed one complaint with USDA, and it was denied due to them stating the filing time. We've been subject to discrimination on multiple occasions which are all documented.

My experiences with FSA and other agencies of the USDA are similar to other smaller minority farmers/ ranchers. The size of our farms/ranch does not matter; we are all subjects of bad

local government agents. For the past 15 years, I have been repaying FSA on a farm ownership without adequate servicing of the loan which is required by federal government regulations.

I have been in mediation for years. I hired lawyer to help him to work out more favorable terms with FSA including a debt restructuring. I learned during the mediation that my attorney was having a private conversation with the FSA people prospecting for more clients instead of instead of representing me.

Last year, I tried to get a new loan to build a new barn to replace one that is over 100 years old and in poor condition. Even though this barn had not been included on my appraisal nor had they required me to insure it. They suddenly they told me it was understood that the barn was included. They appraised it at \$30,000 and required me to me repay that amount in order to remove the lien. Now they said that the barn is of no value, and have removed the lien, but they increased the appraisal by \$30,000. This decisions flies in the face of known convention in borrowing – they have inflated the value of an asset that is essentially worthless and then increased the appraised value anyhow, making my cost of borrowing to finance the new barn I really need prohibitive. This is tantamount to a predatory lending.

I had 110 head of cattle in 2005. Due to the drought of 2007, I lost most of my herd. Climate change is a key factor limiting in my ability to scale up my operation. I was down to 15 cows and after hard work, have rebuild to 115 head of cattle after almost 20 years. During the pandemic, I saw the opportunity to scale up production, and a new barn was part of my plan.

During the pandemic I sought to participate in the CFAP program. I feel I was subjected to extra processes and scrutiny to secure my participation. These roadblocks to participation seem to have been created by the FSA county committee only certain farmers. Other Black farmers have

experienced similar situations. White farmers get more government support including emergency assistance.

I am currently a borrower with the Farm Service Agency. I have a farm ownership and a farm operating loan, and also have a bank loan guaranteed by the Farm Service Agency. I have received a letter from Farm Service Agency saying that I'm eligible to have my debt paid off. I have not yet received a formal offer to pay. During the pandemic, I have been impacted by many factors, including market challenges with cattle prices inflation and feed and fertilizer and other costs I've had to delay production due to lack of the necessary services to operate.

I have made plans based on the proposed loan forgiveness. The delay in these payments will cause me financial harm due to my past due balances, delayed farm and ranch activities and not being able to purchase necessary supplies such as fertilizer feed seed and fuel. We have put all of our savings into our farm in order to improve production. If I don't receive this assistance as promised, we will go bankrupt because we have payments to the USDA and others that we simply will not be able to pay; therefore, our ranch is in serious jeopardy.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 6-22-2021

Respectfully submitted,

/s/ Nathaniel Bradford

Nathaniel Bradford

EXHIBIT C  
DECLARATION OF LEROY BRINKLEY, JR.

**DECLARATION OF LEROY BRINKLEY, JR.**

My name is Leroy Brinkley, Jr. I am over the age of 18 and fully competent to make this declaration.

1. I am an African-American rancher who is a member of the Oklahoma Black Historical Research Project.

2. I want the Oklahoma Black Historical Research Project and Rural Coalition to represent my interests in this lawsuit, *Faust v. Vilsack*, No. 1:21-cv-548 (E.D. Wis.).

3. I live in Haskell, Oklahoma.

4. I own and operate a ranch of 80 acres, where I raise livestock. I have operated this ranch for 23 years and worked as a rancher for 28 years.

5. I currently have farm operating loans from FSA. I have a bank loan from a Farm Credit System lender which is guaranteed by the FSA through the Muscogee (Creek) Nation. I applied for the loans around fall 2020, but due to delays, the application was processed around March 2021. I took out USDA loans in the amount of approximately \$60,000. I planned to use the loans to expand my cattle herd and to establish a construction shop for farming equipment.

6. As of June 21, 2021, the outstanding balance on my loan was approximately \$63,000.

7. I believe I have experienced racial discrimination from USDA and its representatives. For example, I could not participate directly in USDA loan programs because I am a Tribal member. Instead, I had to apply for loans through the Muscogee (Creek) Nation. USDA representatives were unresponsive when I applied for USDA loans. I had a similar experience when I applied for loans in 1991. I did not receive any assistance and my loan



application was rejected. I have discussed these experiences of discrimination with other farmers and Tribal members in my area, and they have shared similar experiences.

8. My family and business have suffered because of the COVID-19 pandemic. My wife contracted COVID-19 and was in the hospital for 9 days. I also contracted COVID-19, along with our 2-week-old granddaughter. Our family had to quarantine apart from each other for 21 days. As a result of the pandemic, I could not go to work for two months and I had to work part-time for approximately 1 year. The pandemic also caused hardship for my ranch operation because I had higher costs for feed, fuel, and production and we lost customers due to COVID-19.

9. I have used my USDA loan in part to cover losses I suffered because of the pandemic, including extra hay and feed at higher prices due to the pandemic, equipment repair, and insurance.

10. I believe I am eligible for loan forgiveness under Section 1005 of the American Rescue Plan Act because I am a socially disadvantaged farmer who has an outstanding loan balance on a loan with USDA.

11. My family and my farm are still recovering from the impacts of the COVID-19 crisis, and it will be much harder to recover if the USDA's debt repayment is delayed.

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 22, 2021

Respectfully submitted,

/s/ Leroy Brinkley, Jr.

Leroy Brinkley, Jr.

EXHIBIT D  
DECLARATION OF HENRY BROWN

## DECLARATION OF HENRY BROWN

1. I, Henry L. Brown, am a 71 African American. I meet the definition of a new and beginning farmer and rancher for purposes of loan making and loan servicing.
2. I desire to have the Amici, Rural Coalition, represent my interests in Civil Action No. 21 – cv-548-WCG.
3. If the injunction is not lifted, I will continue to suffer irreparable financial and economic harm to my farm operation.
4. I am eligible to participate in the Section 1005 program benefits.
5. During the months of March 2020 to February of 2021, I experienced farm income loss due to the COVID 19 pandemic. DOC Family Farms, LLC, a cow – calf operation, is a qualified agricultural business for purposes of Economic Injury Disaster Loans (**EIDL**).  
**See Section 18(b) of the Small Business Act (15 U.S.C. 647(b)).** See 7 CFR 766.104(a) (1) (i), (ii), (iii), (iv), (v).
6. The economic effects of the coronavirus (COVID-19) pandemic caused farmers to miss farm loan payments.
7. During the months of March 2020 to February of 2021, my off farm house hold income decreased monthly by **\$2,200.00** due to work place health and safety dislocations associated with the COVID 19 pandemic, an event that is beyond my control. **See 7 CFR 766.104(a) (1) (i), (ii), (iii), (iv), (v).**

8. As authorized under law the **CARES ACT** (P.L. 116-136) and in order to meet home and farm operational financial obligations that could have been met had the **COVID-19** disaster not occurred, I made a successful application for a Small Business Administration (SBA) Economic Injury Disaster Loans (EIDL) loan pursuant to the amended **CARES ACT**.
9. My Economic Injury Disaster Loans (EIDL) pursuant to Section 18(b) of the Small Business Act (**15 U.S.C. 647(b)**) did not require the Small Business Administration to take a security interest in my cows, calves or related offspring.
10. I have two loans with the U.S. Department of Agriculture Farm Service Agency. One loan is current and not in default. The second loan, identified as 10-079-348420796, was placed in default by Newton Gilman February 19, 2021.
11. The original FSA Promissory Note, identified as 10-079-348420796, in the amount of \$8,980.00 signed on December 21, 2018. The due date for this payment was on June 21, 2020 and has been declared in default on February 19, 2021.
12. I completed a Farm Business Plan dated October 17, 2020 for the purpose of farm loan servicing of the cattle loan identified as 10-079-348420796.
13. According to SBA's **EIDL** requirements, I was not required to include SBA in any financing or loan servicing transactions.
14. On February 4, 2021, USDA temporarily suspended non-judicial foreclosures, debt offsets or wage garnishments, and referring foreclosures to the Department of Justice. USDA is working with the U.S. Attorney's Office to stop judicial foreclosures and evictions on accounts that were previously referred to the Department of Justice. This is

for both direct loans and Farm Storage Facility Loans. Additionally, USDA extended deadlines for producers to respond to loan servicing actions, including loan deferral consideration for financially distressed and delinquent borrowers.

**Acts of farm loan discrimination based on race, age and source of income on February 19, 2021 when FSA:**

- (A) Denied adequate farm loan servicing in accordance with the **CARES Act' EIDL** program;
- (B) Treated, erroneously and in a discriminatory manner, FSA stated that I did not act in good faith during participation in the **CARES Act's EIDL** program and the U.S. Department of Agriculture Farm Service Agency farm loan servicing process;
- (C) I was penalized for lawful participation in **CARES Act's EIDL** program on June 9, 2020;
- (D) FSA stated in relevant part: " Additionally, you did not disclose to FSA that you had obtained financing from SBA on your application as required by Handbook 3 – FLP Par. 65 and as you certified when signing the application."

**/s/ Henry Brown,**

June 22, 2021

Henry Brown  
Declarant

EXHIBIT E  
DECLARATION OF JANE DOE

## **DECLARATION OF JANE DOE**

My name is Jane Doe and I am an Asian farmer in North Carolina. I am over the age of 18 and fully competent to make this declaration. In support of this Declaration, I offer the following:

1. I have a substantial interest in the outcome of this litigation and I am a member of the Farmers of Color Network of the Rural Advancement Foundation International. I am an individual that would be negatively impacted by the Temporary Restraining Order issued by the Court in this lawsuit, *Faust v. Vilsack*, No. 1:21-cv-548 (E.D. Wis.).

2. I live in North Carolina.

3. I am a poultry grower and have been raising poultry for sixteen years.

4. USDA is the guarantor on my loans with a Farm Credit system commercial lender.

5. As an Asian refugee and female farmer, I am a “socially disadvantaged farmer” pursuant to 7 U.S.C § 2279 (e)(2).

6. As an Asian farmer, I am eligible for the debt payment pursuant to Section 1005 of the American Rescue Plan, as passed by Congress and signed by President Biden on March 11, 2021.

7. My husband and I took out loans to start our poultry operation and still have several hundred thousand owing on those loans.

8. I am not delinquent in my loan payments.

9. I have participated in NRCS conservation programs.

10. I feel that as a female farmer and an Asian farmer, I am always forced to take an extra step. I have been denied participation in programs and have had to ask multiple times for assistance.

11. My husband passed away and it is nearly impossible for me to maintain the poultry operation on my own.

12. The coronavirus epidemic has created several kinds of instability in the industry. In the spring of 2020, there were substantial delays with processing facilities, which created disruption with flock size allowances, getting birds to processors and supply of new flocks.

13. I will be significantly damaged if the payment permitted by Congress is delayed by the action of the Court in this matter.

14. Because of the need for constant facility upgrades and the high demands of the poultry farming industry, I cannot continue to farm.

15. The payment of the guaranteed loan will provide me with the ability to consider marketing my property without pressure from buyers that want to take advantage of my status as a widowed female farmer.

16. If the debt payment authorized by law was made in a timely manner, I feel that I would have more options to consider for the stability of my farm and family. Because of the delay, I may not have a choice.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 6-21-2021

Respectfully submitted,

Jane Doe

[Pseudonym]



EXHIBIT F  
DECLARATION OF GEORGE MCNARY III

## DECLARATION OF GEORGE MCNARY III

My name is George McNary III. I am over the age of 18 and fully competent to make this declaration.

1. I am an African American farmer/rancher who is a member of the African American Texas Coalition of Rural Landowners.
2. I want the NLFRTA and the Rural Coalition to represent my interests in this lawsuit, *Faust v. Vilsack*, No. 1:21-cv-548 (E.D. Wis).
3. I live in Hempstead, Texas, which has a population of less than 10,000 residence.
4. I own and operate a ranch/farm that is 110 acres.
5. I am 37 years old. I have operated this farm/ranch for 12 years. I received my first USDA loan in 2010. I subsequently took out two more loans in 2012 and 2019.
6. I currently have approximately \$900,000 in farming debt.
7. I believe I have experienced racial discrimination from USDA representatives. Initially I did not realize that my loan applications were being highly scrutinized. The average dollar amount did not allow for a profitable business, I was given a hard time regarding my agricultural income, which delayed me receiving loans, low ball appraisals, loans not funded/fully funded, never received funding in certain circumstances.
8. Prior to the announcement that the American Rescue Plan passed, the night before it became public information, I received an email from the local county USDA FSA agency asking me to fill out graduation papers within 30 days. I have never received an email like this before. This means I would be expected to pay off the loan and get a commercial loan, which would have made me ineligible for debt relief.
9. I estimate my losses to be approximately \$130,000 from 2010 to the present.
10. In the past, I have applied for USDA loans because of land acquisition. I currently have two loans for this reason.
11. I am a socially disadvantaged farmer/rancher that had to care for a close family member who contracted the COVID-19 virus. I had to take time away from my farm to tend to my family member, as well as help them financially. Which left me unable to buy feed and fertilizer due to the economic hardship.
12. Because daycare was closed due to the pandemic, my wife and I took turns working and caring for our kids, ages one and three years old. As a result, I had to pay someone to do the things that I was not able to do.

13. If the debt forgiveness is delayed due to the TRO, I will not be able to secure additional loans until the loan is paid off due to my current debt to income ratio.
14. I need to purchase equipment. I would also like to purchase land that is currently for sale that I can afford. However, the delay will cause the land that I can afford to be sold, and the more expensive land will be all that is left.
15. If the TRO is granted, there is a chance that my family and I will struggle. There is also a possibility that I will be delinquent in paying my \$18,000 mortgage, which was due in January.

I declare under penalty of perjury that the foregoing document is true and correct.

✓ Date: 6-22-2021

✓ Sign: George McNary III

✓ Print: George McNary III

EXHIBIT G  
STATEMENT OF CASSANDRA P.

## Statement of Cassandra P.

Cassandra P. is a pseudonym for an African American woman farmer who resides in Northport, Alabama and farms 50 acres of pasture and vegetables in Pickens County, Alabama. I am concerned about reprisals from the local FSA office and white farmers who assist me with my farming operation, if my actual name is used.

I am connected to the Rural Coalition and their chairperson John Zippert who may represent me in this case. I have received assistance from the outreach and technical assistance programs run by their member groups for over twenty years.

I am primarily a cattle farmer with over 25 head of brood cows.

I have had three loans with the USDA Farm Services Agency. I received my first loan for \$25,000 in 2008 and used the funds to purchase a farm truck, pea sheller and other equipment. I was able to repay this loan from the results of my farming operation.

In 2011, I borrowed an additional \$25,000 for an FSA Microloan Program for farm equipment although I wanted more funds, the local FSA agent limited me to this amount. In 2013, I received another FSA Microloan for \$25,000 to purchase additional cows. The FSA took a mortgage on two rental houses, with a value of \$40 to \$50,000 on property in Birmingham, I inherited from my mother

I am a school teacher and decided to continue farming my family land utilizing old equipment that my father passed down to me. The equipment is 40 to 50 years old and breaks down often during farming season. One tractor no long goes into reverse which makes it difficult to use for some farming tasks such as moving around hay bales to feed the cows.

I have had as many as 25 brood cows on the land. I now have 18 brood cows.

Prior to the COVID-19 pandemic, I had encountered some problems with my farm operation. I need to improve the grazing with fertilization and some cross fencing. I also have had problems with calving which reduced my revenue stream. In 2018, Hurricane Michael damaged my farm and caused trees to fall killing three breeding animals. A timber harvesting contractor on a neighboring landowner's farm damaged my fence and allowed part of my herd to wander away. I recovered some but not all of the cows that I had.

The timber contractor came back and fixed the fence after I called him numerous times. Overall, I lost five head from the fence problem but I am still planning to sue the timber contractor in small claims court.

These difficulties meant that I fell behind in paying my full payments to FSA on the two outstanding loans. Mr. Phillips in the Tuscaloosa FSA Office told me that I would not be able to get any more farm loans because of my bad payment history. I called a Mr. Coles in the FSA State Office in Montgomery to complain of discrimination and discouragement by the local agent. The situation improved a little after I spoke up, but I still need more help to get my farm to where I want it to be.

During the past 18 months of the COVID-19 pandemic, I continued to experience difficulties in marketing my livestock and vegetables due to low prices and market disruptions. Several members of my immediate family, including a sister and several cousins were directly impacted by the disease. One cousin died of COVID-19 and related health problems.

I was happy to learn of the relief from the Section 1005 ARPA funding to forgive my outstanding loans after years of less than satisfactory loan servicing by FSA. I received my offer letter last week, indicating a balance of \$15,000 on the 2011 loan and \$16,000 on the 2013 loan.

My plan after the loans were paid, was to make a new loan. I was hoping to use these new funds to lime, fertilize and level my pasture land to make it more productive. I also hope to purchase new farm equipment, including a rolled hay bailer and tractor, which would help to upgrade and modernize my operation and make it more productive.

When I learned of the TRO and pending injunction, from my farm organization, I said that once again I would have to put my dreams on hold and try to make do with the brood stock and farm equipment I have until better days.

When the loans are paid, I hope FSA will release my two rental houses in Birmingham, which they took as collateral for the Microloans. This action by FSA, was questionable under the regulations, since they said for a Microloan, you only had to pledge what you bought as collateral. This shows the disparate treatment in lending and over-collateralization faced by most small Black farmers.

Once the rental houses are released from the mortgage, I plan to borrow funds, from a commercial lender, to repair and renovate them so that they can bring in additional revenue to further supplement my teaching

and farming income. I am unable to borrow against these assets now as they are part of the collateral on my FSA Microloans.

In further reflection on the delay in implementation of Section 1005, I say if this loan forgiveness does not come through, I might have to stop farming altogether and turn my land over to some white farmers."

I declare under penalty of perjury that the foregoing statement is true and correct.

Signed this \_\_\_\_21st\_\_\_\_ day of June 2021.

By: /s/ Casandra P.

Note: John Zippert of the ASAC/Federation staff assisted in preparing this farmer declaration. Zippert also serves as Chair of the Rural Coalition Board of Directors.

EXHIBIT H  
STATEMENT OF RURAL COALITION



**STATEMENT OF**

**RURAL COALITION/COALICIÓN RURAL**

With

**Alabama State Association of Cooperatives  
Concerned Citizens of Tillery  
Cottage House, Inc.**

**North Carolina Association of Black Lawyers Land Loss Prevention Project  
Oklahoma Black Historical Research Project, Inc.  
Operation Spring Plant, Inc.  
Rural Advancement Fund of the National Sharecroppers Fund**

To the

**Committee on Agriculture  
U.S. House of Representatives**

**For the Record of the Hearing on the State of Black Farmers Washington, DC  
Thursday, March 25, 2021**

**For More Information Contact:**

John Zippert, RC Chairperson  
Rural Coalition  
Eutaw, Alabama  
205-657-0274  
[Jzippert@aol.com](mailto:Jzippert@aol.com)

Lorette Picciano, Executive Director  
Rural Coalition  
1029 Vermont Avenue NW Suite 601  
Washington, DC 20005  
[lpicciano@ruralco.org](mailto:lpicciano@ruralco.org)  
202-628-7160, Direct: 703-624-8869  
Website: [www.ruralco.org](http://www.ruralco.org)

Savonala (Savi) Horne, ESQ, Executive Director  
[Savi@landloss.org](mailto:Savi@landloss.org)  
Land Loss Prevention Project  
401 N. Mangum Street, 2nd Floor  
Durham, NC 27701  
Phone: (919) 667-8821  
[www.landloss.org](http://www.landloss.org)

## Introduction

Black farmers have been some of our nation's most vital stewards of the land, productive and industrious farmers, and resilient and determined producers. Remarkably, they have also used their farming and business acumen to produce more generations of farmers and landowners, schools, college graduates, separate business ventures, progressive community organizations, and more. Many black farmers and their communities thrived until they made the decision to acquire loans or other financing from the United States Department of Agriculture (USDA). The USDA was supposedly designed to help farmers in times of expansion, blight, and disasters. Yet, its racist lending and supervisory policies caused countless black farmers unwarranted stress and heart ache, debilitating illnesses, financial ruin, constant threats of government takeover, and premature deaths. Consequently, black farmers continue their more than century-old struggle for justice and equality from the U.S. government.

Matthew Grant (1918 – 2001) and Florenza Moore Grant (1921 – 2001) were farmers in Tillery, Halifax County, North Carolina. In the 1940s, they bought their family to the Tillery Resettlement Farms community under the federal Resettlement Administration that offered landless rural people an opportunity for hard work and survival. The Tillery Resettlement (Colored Section) was established as a segregated community with African American families like the Grants receiving smaller farms, smaller houses, and less farm equipment than their white neighbors. African American farmers were offered an opportunity to purchase land in the flood plain of the Roanoke River, while the White area of the Resettlement was out of the river's reach.

Toiling under the material and mental pressures of segregation, Matthew and Florenza raised a family and became leaders in their community. In the early 1970s, under pressures of mechanization of agriculture and competition from big agribusiness, they borrowed money under a U.S. Department of Agriculture (USDA) program that was supposed to help small farmers. They believed that unlike the local government, with its historical role in maintaining racial oppression, the federal program would be fair and supportive of a rapidly disappearing pillar in the nation – the African American family farmer.

By the late 1970s, the Grant family realized their hopes were misplaced. African American farmers were given smaller loans at higher rates than White farmers. In the spring, when White farmers were receiving funds to buy seed and fertilizer, African American farmers were still waiting for their loans. In the local Agriculture Department office, the Grants and their neighbors were told to wait until all White farmers had been seen first. They watched as checks were given out to Whites, only to be told that their money had not yet arrived. Loans to the Grants and other African American farmers were closely supervised, requiring extra signatures and trips to the county seat before farm supplies could be purchased. These hard working, proud survivors of the rural south, farming land that their slave ancestors worked for plantation owners, were treated with disrespect and racial hatred.

Drought years and discriminatory practices prevented the Grants from repaying the loan during the 1970s. In 1981 they signed a Consent Judgment against their property in an agreement that the USDA would release farm equipment and the Grants would withdraw a discrimination

lawsuit. This according to the USDA was a “settlement of sorts” that would allow the Grants to continue farming and moving on with their lives, but the USDA refused to work with them on a means of repayment on the delinquent debt. Subsequently, Matthew and Florenza’s children tried to “assume the debt,” but their proposed monthly payment plan was not accepted. Matthew was actually told by the FmHA district director, “It does not matter who you go to see, who you bring or what you come up with, we are going to sale you out.” Meanwhile, White farmers who had been affected by crop losses were given flexibility to settle their debts. Matthew and Florenza did not deny the debt, but they protested that their financial situation had been worsened by illegal racists practices.

In 1996, the USDA admitted that it had discriminated against the Grant family. However, they prevented the Grants from collecting the settlement that could have paid off their debt. Since that time the Grant family has worked without success to achieve a reasonable settlement with the government. Matthew and Florenza Moore Grant both died in 2001, six months apart from one another.

The Grant family requests that the USDA clear the Matthew and Florenza Moore Grant family debt, meet with our family to discuss an adequate settlement for years of discrimination and turmoil, and assist our family with starting an agricultural education fund for young students interested in farming and being stewards of the land.

### **Cumulative Impact and Consequences of Discrimination**

Experiences such as that of the Grant family are not uncommon, when alternate financial arrangements are used to prevent permanent loss of land, especially when the underlying factor is discriminatory treatment by the government. The USDA has maintained that the Equal Credit Opportunity Act does not cover the impact of pain and suffering. The cumulative impact to the communities where these families farmed included a loss of feeling of good faith in any sort of debt settlement with the government. As a result, many farmers were unwilling to deal with USDA.

The Secretary and the Congress are urged first to hear their stories. As Section 1006 of the American Rescue Plan is implemented, we also urge that the Secretary consider how BIPOC who've taken over operations of their family farm can be given a release from prior debts as long as their debt arose out of some discriminatory actions. USDA and the Congress should take such action to assure that the cloud over the family is lifted so that the next generation farmers can participate in USDA programs on their own as new and beginning farmers. Their eligibility should not be barred because of a look back to debts of their parents or anybody else within their family who had the previous ownership of the farm.

The following excerpt from the introduction of the Statement by John Zippert that the Federation of Southern Cooperatives/Land Assistance Fund and the Rural Coalition to the U.S House of Representatives Committee on Agriculture Subcommittee on Conservation, Credit, Energy and Research on March 27, 2007 summarizes our past recommendation Congress, including issues that remain relevant today:

“Collectively, the Federation, and the Rural Coalition and its members and allies, have worked with thousands of farmers on the intricacies of their dealings with USDA and to seek structural change both administratively and in policy to assure equity and accountability in programs and services.

Over the past decade, we have supplied documents, analysis and testimony to the Civil Rights Action Team, the National Small Farms Commission, the US Congress and the US Civil Rights Commission. A half dozen of us served on the National Small Farms Commission, and we have also participated on other committees and in many sessions with the Secretary and the staff of the Department. We have led efforts to institute the USDA Partners meeting held annually for the past three years to allow USDA to develop relationships and understanding of the work and experience of its Community Based Organization Partners.

Our collaborative legal and legislative work included the 1987 Agriculture Credit Act, the Minority Farmers Rights Act of 1990 that was accepted as section 2501 of the 1990 Farm Bill, the 1994 Agriculture Reorganization Act, and collaborative efforts towards passage of the 1999 Waiver of the Statute of Limitations that removed a critical barrier to the settlement of the longstanding class action lawsuits. Over the years, we have also worked on disaster response, especially following hurricanes Katrina, Rita and Wilma.

We have also worked with this Committee on the most recent 2002 Farm Bill. We appreciate the support the members of this committee who helped assure that structural changes instituted to promote equity were included in that bill.

The average age of farmers continues to rise, especially among African American and other socially disadvantaged producers. For many years, inadequacies and inequities in programs and services have hastened the loss of African-American and other people of color owned farms. Access to credit is essential for all agricultural producers and those who aspire to be agricultural producers. This committee has the ability to take the actions needed to assure that new generations of people of color farmers and ranchers will have access to land and production.

In my years of work with the Federation of Southern Cooperatives/Land Assistance Fund, I have never met a black farmer who was not discriminated against. I believe the same is true for most of the diverse group of African-American, Latino, American Indian, Asian American and female farmers I have encountered within the Rural Coalition. As you well know, there remain issues surrounding the settlement of the Pigford v. Veneman and other still pending class action lawsuits against USDA that need to be addressed. We will provide a supplemental appendix for the record with updated statistics of the status of this settlement and on late claims.

For the past several months, our organizations have worked with a group of colleagues who represent a wide and diverse array of minority farmer and farmworker organizations called the Farm and Food Policy Diversity Initiative. As you begin your work on the 2007 Farm Bill, we share with you the collective wisdom of our organizations and our

partners on some essential changes that Congress can and should make in order to prevent the actions that necessitated legal action in the first place and assure transparency and accountability in the provision of services.

We want to help bring about the day when African American and other minority farmers can turn their attention to growing crops and revitalizing rural communities instead of filing complaints and lawsuits to secure the equitable service to which they are entitled in the first place.

Because of the cumulative effects of many years of discrimination and neglect, we are also proposing remedial measures and special services intended to reverse the impact of years of discrimination and neglect on many minority farmers. Our other recommendations include actions that can be taken to improve services to the many farmers who have suffered disasters in recent years, and some ideas on how to assure that new farmer programs will also serve socially disadvantaged producers.”

We have also attached for the use of this Committee an extensive appendix of the research and policy recommendations Rural Coalition with our members have developed and shared over several decades. Central to this work especially as related to Black farmers were our founding members including the Rural Advancement Fund of the National Sharecroppers Fund (founded 1937) and the Federation of Southern Cooperatives/Land Assistance Fund (founded 1967), and members who have formed and joined since, including Concerned Citizens of Tillery, Cottage House, Inc., North Carolina Association of Black Lawyers Land Loss Prevention Project, Operation Spring Plant and Oklahoma Black Historical, and our allies and partners including Intertribal Agriculture Council and Arkansas Land and Farm Development Corporation and the National Family Farm Coalition and Farm Aid.

The attached Congressional Testimonies include the many policy recommendations we jointly made over the years to this committee and to the U.S. Senate since the first hearings in 2000. On the issue of credit, we have also attached numerous policy briefs related to Farm Credit, many authored by our Policy Advisor, Quinton Robinson, who in 2002 was the House Agriculture Committee staff member who organized the first hearing in the Subcommittee on Departmental Operations. Of particular relevance at present is the need for USDA Farm Services Agency to issue regulations to fully implement the Equitable Relief Provisions and the Heirs Property Relending Fund passed in the 2018 Farm Bill

Over these years, our team of collaborated have worked with the House and Senate Agriculture Committees to develop and promote passage of 40 sections passed in Farm Bills and related legislation since 1986. In those years, we worked with Rep. Edolphus Towns, whose staff member Brenda Pillars gave us access to a typewriter when the opportunity for a new amendment arose, including the amendment for matching grants for state mediation programs. The most extensive work began in the 1987 Agriculture Credit Act when discrimination by race and ethnicity was first defined in the context of federal Agriculture Policy.

It continued in section 2501 of the 1990 Farm Bill, which authorized the first program to tangibly support the organizations who serve black and other farmers who had suffered

discrimination, called the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers (OASDVFR). That statute for the first time that recognized the importance of this network of community-based organizations, including many who testified in this hearing, by making them eligible for grants and contracts. We will underscore the importance of the direct one-on-one technical assistance they have long been doing as a critical factor in stopping foreclosures and helping Black farmers hold onto their land.

We call particular attention to the aforementioned USDA Partners Process. Beginning in 2005 and continuing into the Obama Administration, this process convened a series of dialogues, or conversations, on critical barriers faced by BIPOC farmers and the community-based groups who served them with interagency teams of USDA career staff. The process was led by Shirley Sherrod and other CBO leaders. We estimate that as many as 500 people contributed over those 5 years. The comprehensive [A Time to Change: A Report by the Assessment Conversations Team, Sept. 22, 2010](#) remains useful today both to measure progress and to identify additional changes. It was structured to identify problems, propose solutions including statutory changes needed, and also to describe what success would like. Many of the recommendations informed our proposals to you for the 2008 Farm Bill, and around 30 passed in the statute.

Since that time, many recommendations developed by the wide network of community-based organization who work directly every day with this nation's Black farmers and ranchers, and other Tribal, Latino, Asian Pacific, and other small-scale producers have been passed into law, with some implemented more fully than ever. We have also mobilized our communities to help lawmakers understand the degree of support for this proposals, including with sign on letters and collaboration with Members of Congress especially in Congressional Black and Hispanic Caucuses, including annual Dear Colleague Letters. One of the early ones was led by Rep. Sanford Bishop who for years led efforts to continually press for more funding for the 2501 Program, from \$1 million to its present funding level. We will continue to work also with Secretary Vilsack and his team to assure these funds more effectively reach and support the eligible entities as defined by statute. We will be forwarding additional recommendations to you on how the full suite of Outreach, Beginning Farmer and Local Food programs can best complement each other.

The drafting and action by this committee in this year of 2021 represents a historic and significant step forward in a new effort to begin to right some of the longstanding wrongs faced by Black farmers. We have attached for your record a copy of our March 3 sign on letter that we prepared to help support passage of the historic provisions included in the American Rescue Plan and a brief authored by our Policy Advisor on the relevant authorities supporting these provisions. We are deeply grateful to Chairman David Scott and the members of this committee, several of whom we have worked with for decades, for this action.

### **Relevant Data and Research**

We are already working with USDA on the implementation of Sections 1005 and 1006 of the American Rescue Plan. As the committee's work of oversight continues and the preparation for the 2023 Farm Bill commences, we share additional proposals we are refining with our members and allies to support black farmers in securing land tenure for their families and generations into the future and restoring the agriculture as an economic base of their communities.



Particularly as the debate over climate mitigation begins, we will be highlighting the importance issue of land tenure. New investments of federal dollars over time have often favored larger scale farmers at the expense of others. But as the recent pandemic has shown us, crises such as these cause fundamental disruptions in existing food chains. Resiliency now and in the future point toward the value of reorienting the processing and distribution of food to shorter and more direct local and regional farm to food networks that are closer and more readily adaptable to serve the food needs of some of this nation's most vulnerable communities.

We will specifically address the issue of heirs property later in this piece. First, we thought it helpful to share a sampling of charts we have developed in connection with a research project under an Agriculture and Food Research Initiative project with the National Institute of Food and Agriculture. This AFRI standard research project, "*Community Resilience Through Land Tenure Rights*," will examine the impacts of land tenure arrangements, non-ownership and related encumbrances on the management of small to medium-sized farm operations in a diverse cross section of socially disadvantaged agricultural communities. Rural Coalition and its co-principal investigators include both CBO's and researchers from Tuskegee University and Kansas State University and North Carolina Association of Black Lawyers Land Loss Prevention Project are co-Principal Investigators, with almost a dozen other CBO partners.

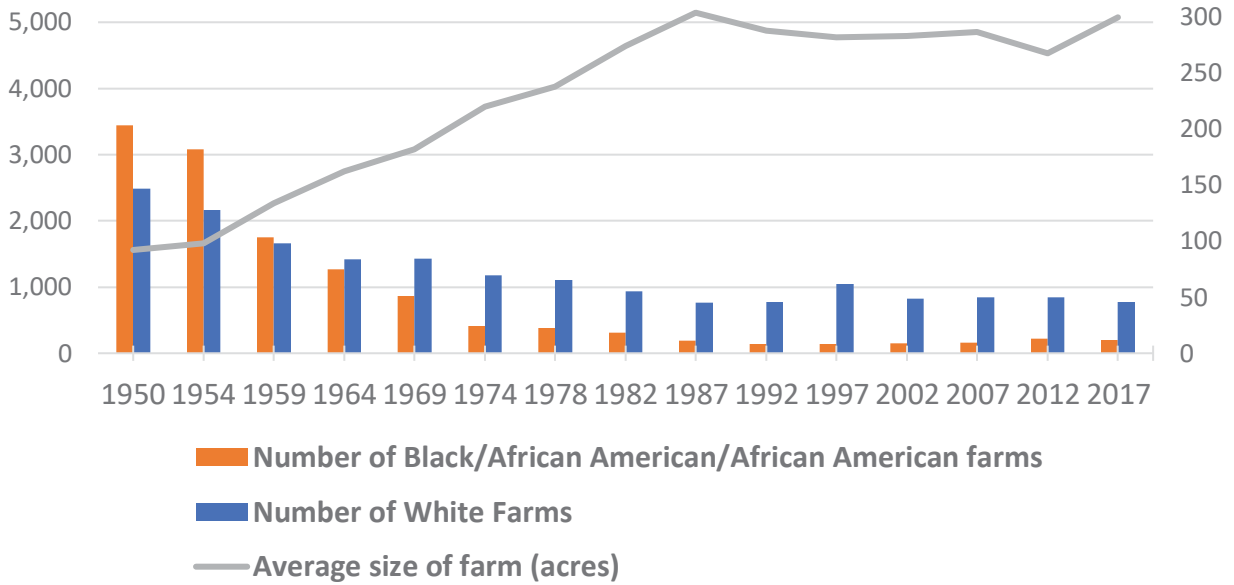
We will also use similar profiles in related research under a Sustainable Agriculture and Research grant, *Securing Land Tenure Rights for Heirs Property Owners*. The North Carolina Association of Black Lawyers Land Loss Prevention Project is Principal Investigator. The Rural Coalition and Tuskegee University and Virginia State University are Co-Principal Investigators along with multiple CBOs and Farmers in the Southern Region. The second grant focuses on the quality and availability of legal services.

These charts provide a snapshot of the trends in loss of land over time as far back as 1959 for Orangeburg County, SC. There also charts for Barber County, AL and Halifax County, NC. While there are specific issues with data at various points in time, we have found that the trends reflected are consistent with data we and others including the 1890 Universities have collected.

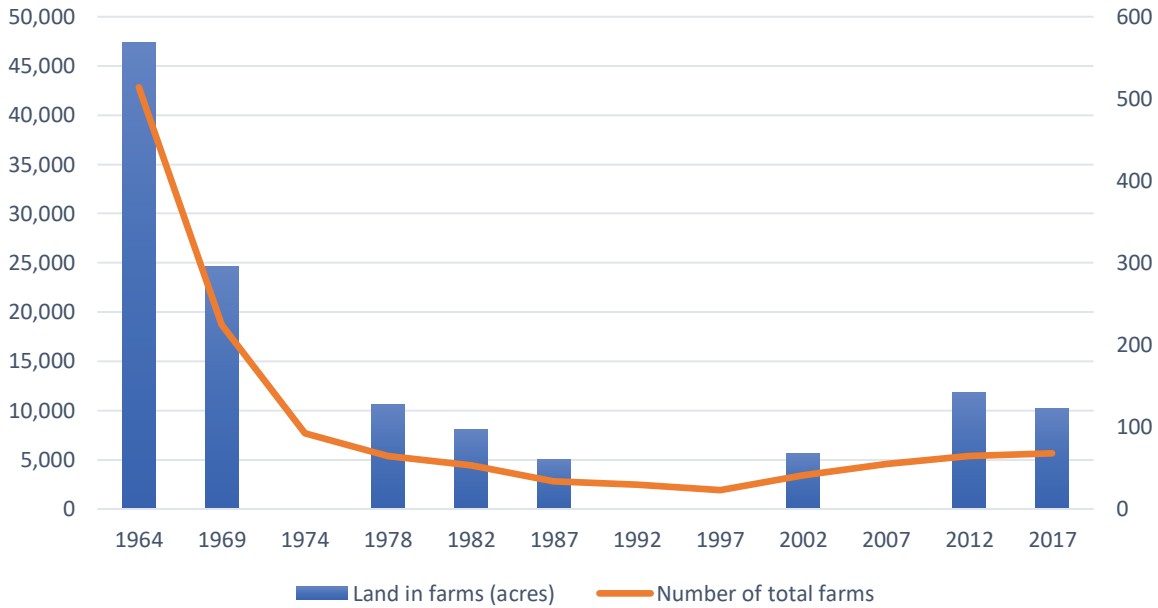
What the charts clearly provide is a sense of the cumulative impact of the past and in some places ongoing failure to address and halt discrimination. The result is the unjust and unnecessary loss of land by African American producers whose place on the land predates the arrival of many others in farming today.

**State of Black Farmers in the U.S. – Historic Land Tenure by County**

**Change in Farm Numbers, Orangeburg County, South Carolina (1950-2017)**

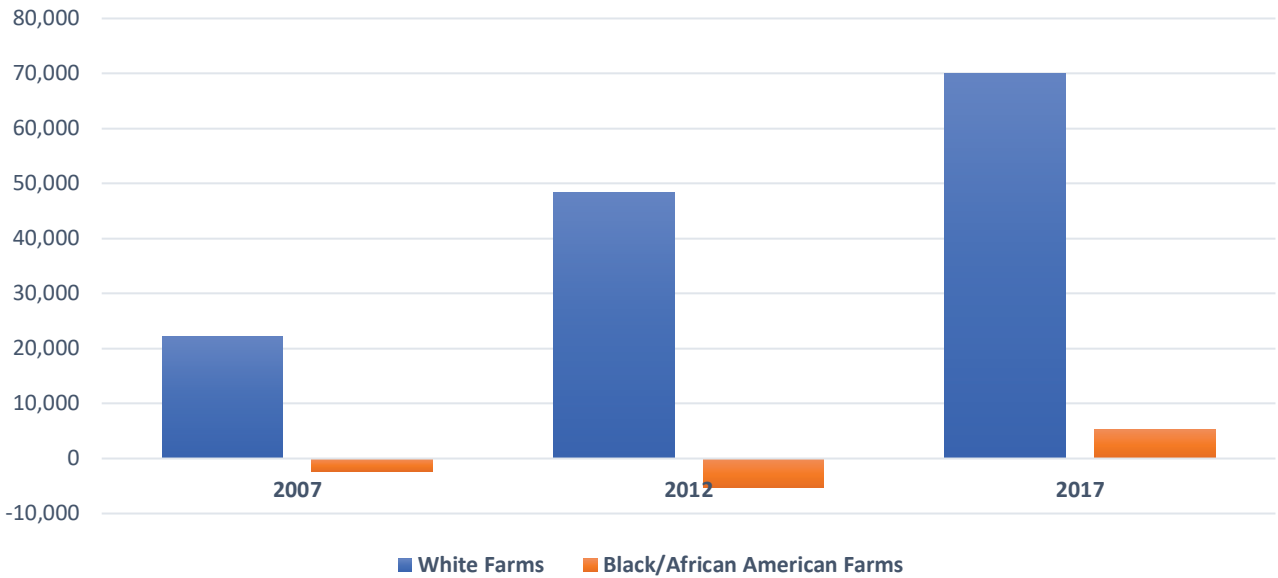


**Black/African American Land Tenure in Barbour County, Alabama, 1964-2017**

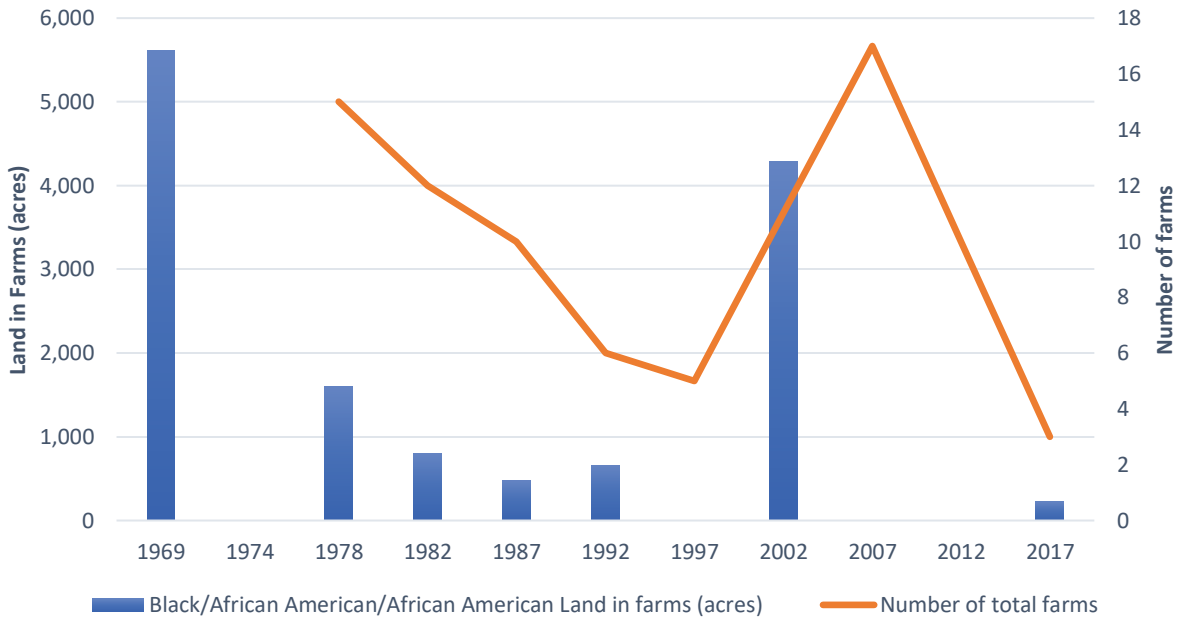




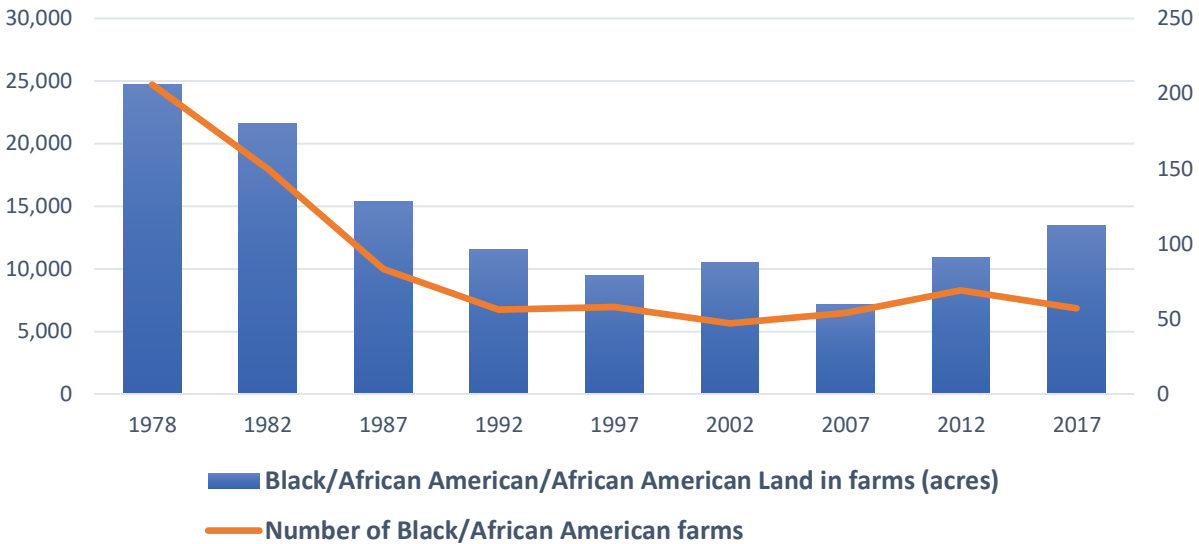
### Net Cash Farm Income by Race in Barbour County, Alabama, 2007-2017



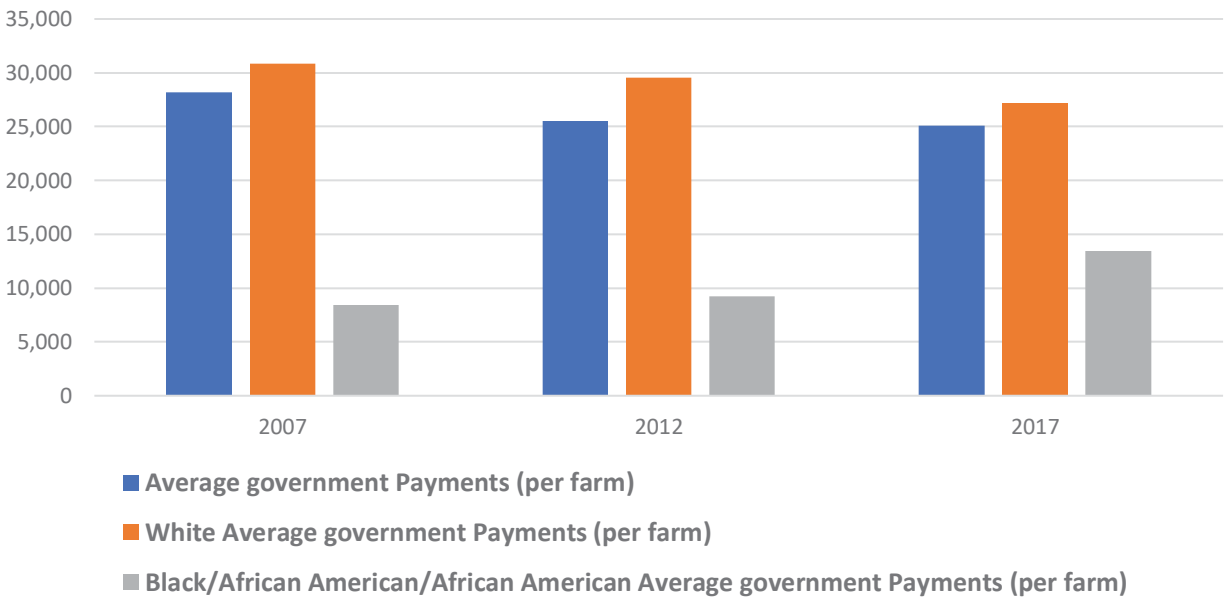
### Black/African American Land in farms (acres) in Dale County, Alabama, 1969-2017



**Decrease in Black/African American Farms and Land in Halifax County, North Carolina, 1978-2017**



**Chart Average Government Payments by Race Ethnicity in Halifax County, North Carolina, 2007-2017**



In almost every county we have already researched over several decades, land ownership has become more concentrated. Many farmers and ranchers have been unable to retain their land. The evidence of disparate treatment is particularly notable with respect to Black farmers and ranchers.

In collaboration with our farmer and rancher leaders, we organized several participatory research projects designed to better understand their views of USDA. The first was around issues related to participation in Crop Insurance programs. The second followed a series of farmer-led training we developed with our members. Our reports are included in the appendix, but the following charts provide a snapshot of how the needs of farmers overlap or diverge with the structure and operation of USDA programs and services.

**Table 1: Socio-Demographic Characteristics of Participants from Rural Coalition Financial Training Project (2004/2005)**

Characteristic	Percent
Gender	
Male	67.5
Female	32.5
	(1048)
Race/Ethnicity	
American Indian	24.8
Asian American	3.5
Black/African American	54.9
White	5.0
Hispanic/Latino	10.7
Other	1.1
	(1052)
Highest Level of Education	
Less than High School Degree	29.6
High School Degree	34.8
Some College, No Bachelor's Degree	29.6
Bachelor's Degree or Higher	6.0
	(1050)
Total Farm Income (after expenses) in 2003	
Less than \$4,999	54.0
\$5,000 - \$9,999	23.5
\$10,000 - \$19,999	13.9
\$20,000 - \$29,999	4.3
\$30,000 or More	4.3
	(814)

**Table 2: Farm Characteristics of Participants from Rural Coalition Financial Training Project (2004/2005)**

Characteristic	Percent
Own Land	84.5 (911/1078)
Rent Land from Others	38.8 (409/1053)
Own <i>and</i> Rent Land	28.1 (295/1048)
Acres in agricultural production in 2003*	
Mean	85.2
Median	15.0
Minimum – Maximum	0 – 2400 (937)
Acres in agricultural production in 2004*	
Mean	87.4
Median	15.0
Minimum – Maximum	0 – 2600 (935)
Produced Commodity Crops in 2003 or 2004	54.5 (561/1030)
Produced Fruits/Vegetables in 2003 or 2004	54.6 (553/1013)
Raised Livestock in 2003 or 2004	47.1 (480/1020)
Produced Commodity Crops, Fruits/Vegetables <i>and</i> Livestock in 2003 or 2004	14.3 (137/960)

\*Ranchers often did not include grazing acreage in their estimates of land in agricultural production. Therefore, the numbers presented here are conservative estimates.

**Table 3: Risk Management Strategies of Participants from Rural Coalition Financial Training Project (2004/2005)**

<b>Risk Management Strategy</b>	<b>Percent</b>
Have Risk Management Plan	4.7 (45/961)
Use a Tax Accountant	42.7 (439/1029)
Make Use of IRS Form Schedule F	18.6 (165/886)
Ever Purchased Crop Insurance	
Yes, Currently Have Policy	9.6
Yes, But No Current Policy	5.8
No, Never	84.6 (971)

**Table 4: Labor Use of Participants from Rural Coalition Financial Training Project (2004/2005)**

<b>Risk Management Strategy</b>	<b>Percent</b>
Spouse, Children or Other Family Members Receive Wages from Farm	17.7 (154/869)
Number of Full-Time Employees	
None	85.4
1-10	14.0
11-20	0.3
21 or More	0.3 (988)
Number of Regular Part-Time Employees	
None	80.6
1-10	17.9
11-20	0.9
21 or More	0.6 (987)
Employed any Seasonal or Migrant Employees in the Past Year	16.4 (127/773)
<i>Any Seasonal or Migrant Employees Participate in H2A Program</i>	<i>50.4 (64/127)</i>
Understand Tax Rules for Farm Labor	14.5 (126/870)

**Table 5: Awareness of and Participation in Government Programs Among Participants from Rural Coalition Financial Training Project (2004/2005)**

<b>Agency/Program</b>	<b>Percent Aware</b>
Farm Services Agency Credit Programs	52.5 (533/1015)
Farm Services Agency Disaster Payments	54.4 (522/959)
Natural Resources Conservation Service	48.7 (465/955)
Cooperative Extension Service	58.1 (567/976)
Rural Development	42.0 (400/953)
Risk Management Agency	35.7 (335/939)
<b>Program</b>	<b>Program Participation</b>
Ever Applied for a Loan from USDA	27.9 (234/839)
<i>Ever Been Denied a Loan from USDA</i>	<i>91.3</i> <i>(210/230)</i>
<i>Ever Received a Loan from USDA</i>	<i>32.0</i> <i>(72/225)</i>
Ever Received USDA Disaster Assistance	36.2 (354/977)
Participate in any Annual Commodity Program	13.5 (113/839)
Participate in any Conservation Program	8.1 (84/1040)

The farmer/mentors requested that we ask not only questions about the number of farmers who prepared schedule F of their tax return. Only 18.6 % said yes. They also wanted to know how many used tax preparers. 40% responded they did. Many of the groups who participated in this research continue to this day provide direct technical assistance to producers on the importance of good financial records, and the need also to provide required reports to document production and report losses.

These findings also underscore the importance of sustaining community-based organizations who are trusted by farmers for assistance in understanding and navigating USDA programs.

Also instructive is one chart from an earlier study which included a slightly different population of producers. We will have more to share as this committee begins work on the next farm bill and on climate issues. We looked at the level of participants in all types of insurance and these are our findings from the year 2002:

**Table 4. Insurance Use from Small, Limited Resource and Minority Farmers Survey**

<b>Variable</b>	<b>Frequency</b>	<b>Percent</b>
<b>Currently use any form of insurance</b>		
Respondents answering yes	<u>116</u>	<u>84.7</u>
	137	100.0
<b>Types of insurance used</b>		
Health insurance*	<u>97</u>	<u>83.6</u>
	116	100.0
Dental insurance	<u>43</u>	<u>37.1</u>
	116	100.0
Accident insurance	<u>39</u>	<u>33.6</u>
	116	100.0
Life insurance	<u>74</u>	<u>63.8</u>
	116	100.0
Disability insurance	<u>29</u>	<u>25.0</u>
	116	100.0
Auto insurance	<u>100</u>	<u>86.2</u>
	116	100.0
General homeowner or renter insurance	<u>84</u>	<u>72.4</u>
	116	100.0
Disaster insurance	<u>25</u>	<u>21.6</u>
	116	100.0
General liability insurance for farm operation	<u>43</u>	<u>37.1</u>
	116	100.0
Crop insurance	<u>29</u>	<u>25.0</u>
	116	100.0

We underscore the importance of the Farm Opportunities Outreach and Training Programs, including the Outreach and Assistance Program for Socially Disadvantaged Farmers and Ranchers. Our community-based organization members routinely accompany farmers the farmers we serve to USDA offices to make sure they are prepared to request services they need and to navigate USDA systems.

Our research findings highlight the need for improved connections and restoration of trust with USDA. Our organizations led efforts to establish systems that would allow USDA to monitor how these systems are working. One particular recommendation as far back as the 2002 Farm Bill was to require the farmer be provided a Receipt for Service on each visit to the agency. Language in the 2008 required USDA to provide a Receipt upon request. Rep. (and now HUD Secretary) Marcia Fudge offered an amendment during the 2014 Farm Bill Mark-up which is now a statutory requirement whose validity is affirmed including in an Administrative Law Judge opinion on a farm appeal. We remind the committee that the required receipt for service is

not uniformly provided in all offices and farmers are still facing push back for asking or outright refusal of their request.

Just last evening, our Rural Coalition Board Member Barbara Shipman of Cottage House, Inc. in Arton, Alabama shared this story. “I had one of my farmers to go into a particular NRCS office and FSA office to request assistance. The young lady threw and not only hit him in the face with his folder, but she also told him *“get out of the office and don't come back until you have three years' worth of farm records.”* Let me tell you please - returning military members have PTSD so it didn't take the snap of a finger to get them in the military zone again so that's why I go with them. So, I ended up having to talk to State Director. He said he was going to get involved. He called back to say he did so and said I should have no problem with anybody else like that.”

Mrs. Shipman, herself an Army veteran of the Gulf War, routinely welcomes recently returned service members from Fort Rucker to consider farming. This particularly newly returned Veteran had grown up on a farm and had a plan for producing pecans and goats.

She also recounted that she recently accompanied two farmers to visit four separate county offices to determine who was supposed to serve them. One was not open for a prescheduled appointment; another was closed. In the last office, the staff member agreed to get on the computer to ascertain the correct service center. She said it was closing time, but she could provide service there at another time. Barbara told her, “that's fine as long as he leaves here with two things – a letter of receipt for service that provides his farm and tract number and a copy of the technology map of where his land is located. Then in future all you have to do give the address and you can pull it down on the computer and print it all. When we walked out of the office, I told him that when you get ready to go back to the office you let me know. We will go together because that's what I do. I will walk him through how to get those things he wants, and I know he's in that computer system. He can't march over to the NRCS, no way, if he's not in the computer system in FSA, step number one.” She works with 40-60 farmers every year to assure service is done right. Without her, “they'll just turn him away and they won't even tell them about the receipt for service and they will not tell him he's due a copy of that topology map of his land or get him a farm and tract number - because that farmer number goes on that letter receipt for something so when he goes in the next time he has to do his put his farm in tracking down in the system and it brings up his file right and then he should have access.”

**Technical Service Providers and Community Based Organizations** - Mrs. Shipman has many other examples to share. Community based organizations need to have a sustained funding, perhaps in new ways, to assure the many CBO staff members who provide such services can be compensated, retained and prepare to train others to perform these services. They could form the foundation of a network of CBO based technical service providers with authority to work on technical assistance for both FSA and NRCS programs.

She and many of our other members, including Mr. Willard Tillman of the Oklahoma Black Historical Research Project, have the stressed the need for ongoing support in order to do the work necessary to help farmers and ranchers connect with USDA. They are also able to build relationships with service centers and assure farmers are able to do what they need to do. These CBO technical service provides are also provide the invaluable service of calling inadequate



service to the attention of USDA leaders at the state and national level, so immediate intervention can be made, with appropriate accountability. It is critical to set in place new policy to provide this kind of trusted technical support to help farmers, ranchers, forest land owners and their families secure land and rebuild local economies.

Technical Support Providers are now used extensively in conservation programs. Authority should be provided to allow these providers who work with CBO's to cover FSA programs also. This would help CBO's to build a sustainable network of next generation leaders trained by our skilled leaders who have supplied technical assistance to our farmer members for over 4 decades. We believe that such investments would improve family wealth, stabilize land values and secure a tax base with improvements to the education, public works and the economic situation of the whole community.

### **Critical and Continuing Issues – County Committees**

Our early collaborative work began in 1997, when we convened a group to address the issue of Farm Service Agency County Committees. After a week of training and dialogue at USDA headquarters coordinated in cooperation with NRCS Chief Pearlie Reed and FSA Credit Director Lou Ann Kling, we examined voting patterns, and eligibility and access issues. Our members looked at county data of eligible voters and how many voted in county committee elections, and ballot counting procedures. We encouraged turnout with some results in subsequent years.

We have also examined over the past few decades the data systems of USDA and how transparency and accountability could be advanced with modification of these systems. In 2000, we prepared testimony for the Senate Committee on Agriculture where we were invited to testify by Senator Richard Lugar. This statement, which we have not located, was very similar to the one shared of the House hearing at the same time.

Senator Lugar, with Senator Blanche Lambert Lincoln and others, included language we recommended to assure transparency and accountability in USDA practices, including the collection and publication of data on the participate rates of producers in USDA programs by race, gender and ethnicity. These provisions were added and were updated in subsequent farm bills. More work is necessary to assure these are available to farmers and groups working with them at the county level. They are also essential to help the Secretary and his team to in a proactive way identify offices that are doing a good job, and offices where improvements or other action are needed.

For many years we urged USDA and the Congress to move from a complaint generated system of solving exclusions proactively instead of only after farmers had have to enter the long and risky process of appeals, civil rights complaints and litigation. We urge the Secretary to also engage the office of the Assistant Secretary for Civil Rights to have the ability to transform systems of analysis necessary to offset problems before the pose a barrier to more farmers.

We share the following story from our Rural Coalition newsletter of December 2000 which recounts the proceedings of the first Senate Agriculture Committee Hearing on Civil Rights in September that year.



## Senate Agriculture Committee Holds First Hearing on Civil Rights in Agriculture: RC Chair Zippert Testifies

On September 12, John Zippert, Chair of the Rural Coalition and Program Director of the Federation of Southern Cooperatives, testified on behalf of both organizations at a landmark Senate hearing on Civil Rights in Agriculture, convened and led by Agriculture Committee Chairman Senator Richard Lugar (R-IN). The results of research done by Rural Coalition Member groups in 1996 and 1997 were included in Zippert's statement and provided the most specific evidence the committee received to support farmers' contentions of long-standing problems of disparate treatment by the county committees that oversee most Farm Services Agency (FSA) programs.

The USDA Inspector General (IG) Roger Viadero gave impassioned testimony on the state of the complaints processing system at the Department, with supporting statements from the U.S. General Accounting Office. Viadero has posted on the IG Web page a complete county-by-county breakdown of complaints filed. He singled out the USDA Office of Civil Rights as the key barrier to USDA's civil rights record, but noted that he had studied FSA county committees and found no problems. He asked what could be wrong with the committees, because they are elected by farmers.


A diverse array of Senators then asked incisive and pointed questions of U.S. Department of Agriculture (USDA) witnesses. Senators Thad Cochran (R-MS), Kent Conrad (D-ND), and Blanche Lincoln (D-AR) joined Senator Lugar in seeking answers from USDA officials about Viadero's testimony: why USDA remained so slow to act on complaints and why civil rights office operations had not yet improved.

In response, USDA Assistant Secretary for Administration Paul Fiddick outlined his plan to professionalize the management of the civil rights operation with techniques he developed in his work in

private sector businesses. He pointed in particular to his creation of a new career post in the Civil Rights office, that of Deputy Director, and he introduced David Widdingham, who is responsible for Operations. When the Senators asked Mr. Widdingham to recount his expertise for the job, he responded that he had been the long-time Director of Civil Rights for the FSA. The USDA employees who testified later had to explain to the Senators why the audience reacted incredulously upon hearing the appointment of a former FSA employee cited as a solution to USDA's longstanding civil rights problems. The real answer: FSA is widely seen as the agency with the worst record of treatment of minority producers, and the very one whose failure to address civil rights complaints for many years led to the *Pigford v. Glickman* lawsuit.

The tone of the hearing then changed, with more scrutiny placed on employment practices and program delivery within USDA. Senator Tom Harkin (D-IA) noted that he was less interested in how the Civil Rights Office was processing complaints than he was in learning why complaints were still being generated. The answer came from the third panel, which included farm and employee organizations such as John Boyd of the National Black Farmers; Lawrence Lucas of the Coalition of Minority Employees; Alexander Piries, the lead attorney on the *Pigford v. Glickman* lawsuit; and others told him why. There was marked similarity in the issues they raised. USDA programs, particularly within FSA, still do not operate fairly, and USDA employees in several agencies still work in an atmosphere of discrimination and hostility.

John Zippert provided the committee not only with evidence of problems, but with recommended solutions. He called for the complete removal of FSA employees from any action responding to complaints in the *Pigford v. Glickman* lawsuit and asked that USDA and the Justice Department be told to stop appealing cases where African American farmers had their claims accepted. He urged the Senators to assure that full funding was made for the Section 2501 minority farms outreach program. He advocated that bureaucratic barriers to the Minority Farm Registry be addressed and the Registry be implemented immediately.

Zippert also countered Viadero's assertion that he found no systemic problems with the county committee system. Zippert noted that if the IG knew so little about the problems with the county committees, perhaps his other findings were also inaccurate. Senator Lugar thanked the Rural Coalition specifically for the new details on county committee elections. Both he and Senator Harkin outlined the need for more action on county committees. After many years of work by the RC and others, attention is finally being paid to the real problems with the committees and the continuing injustices within USDA. The final RC statement will soon be available on our Web site: [www.ruralco.org](http://www.ruralco.org) 

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Rural Coalition is an alliance of regionally and culturally diverse organizations, throughout the U.S. and Mexico, working to build a more just and sustainable food system. We envision a food system which:

- brings fair returns to minority and other small farmers, as well as rural communities;
- supports just and fair working conditions for farmworkers;
- protects the environment; and
- brings safe and healthy food to consumers.



**County Committees** – Below is a snapshot – the last we have – of data on the number of votes cast in the county election of 2009. This election was in only one Local Administrative area.

Data on the over composition of county committees is also included in some attached statements.

**TOTAL BALLOTS CAST BY RACE, ETHNICITY, AND GENDER IN 2009<sup>1</sup>**

Gender	Ethnicity	American Indian or Alaska Native	Asian	Black or African American	Native Hawaiian or Other Pacific Islander	Unknown	White	Total Ballots Cast by Gender and Ethnicity
Female	Hispanic or Latino	73	2	34	9	145	960	1223
	Not Hispanic or Latino	172	108	408	226		3316	4230
	Unknown	123	78	319	147	1095	1782	3544
<b>Female Total</b>		<b>368</b>	<b>188</b>	<b>761</b>	<b>382</b>	<b>1240</b>	<b>6058</b>	<b>8997</b>
Male	Hispanic or Latino	100	52	27	10	366	1332	1887
	Not Hispanic or Latino	392	106	823	125		44837	46283
	Unknown	379	175	992	113	774	40435	42868
<b>Male Total</b>		<b>871</b>	<b>333</b>	<b>1842</b>	<b>248</b>	<b>1140</b>	<b>86604</b>	<b>91038</b>
Organization	Hispanic or Latino	14	3	9	1	314	494	835
	Not Hispanic or Latino	142	95	448	28	277	78620	79610
	Unknown	116	45	607	41	1217	66204	68230
<b>Organization Total</b>		<b>272</b>	<b>143</b>	<b>1064</b>	<b>70</b>	<b>1808</b>	<b>145318</b>	<b>148675</b>
Unknown	Hispanic or Latino	0	0	3		8	92	103
	Not Hispanic or Latino	3	20	43	11	416	1325	1818
	Unknown	6	6	6	7	1772	454	2251
<b>Unknown Total</b>		<b>9</b>	<b>26</b>	<b>52</b>	<b>18</b>	<b>2196</b>	<b>1871</b>	<b>4172</b>
<b>Total Ballots Cast by Race<sup>2</sup></b>		<b>1520</b>	<b>690</b>	<b>3719</b>	<b>718</b>	<b>6384</b>	<b>239851</b>	<b>252882</b>

**Ballot Summary**

LAA Total Eligible Voters	2,021,637
LAA Total Ballots Cast	252,494
Percentage of Eligible Voters that Cast Ballots	12%
National Total of Ballots Disqualified	13,156
Percentage of Ballots Disqualified vs. Ballots Received	5%

<sup>1</sup>Represents only those LAAs in which an election was held in 2009

<sup>2</sup>Due to producers' ability to select more than 1 race, the Total Ballots Cast in 2009 may be greater than LAA Total Ballots Cast in the Ballot Summary Table

When requirements were added in the 2002 and 2008 Farm Bills to authorize the assignment of minority advisors to county committees and to update election provisions, the Congress also changed the law to tie eligibility to participate on county committees to those who participated in farm programs. This should be extended to include farmers who are eligible to participate and registered with USDA, even if they choose not to participate.

However, issues with county committees also continue. In the past two weeks, we were contacted by an Oklahoma farmer who is employed in another state. He had informed the County Office a few years ago that the farm had been transferred to his name. He was seeking help because he currently has a neighbor who has been planting wheat on land that belongs to him and filing claims for payments. He has provided documentation to show that the FSA county office reached written to him demanding he send the certified lease so the

neighboring farmer could collect his payment. The farmer owner wrote a cease and desist letter to his neighbor and asked the office to address the issue of the illegal claims. He also noted that the lease given to the office by the neighbor was fraudulent. While he was seeking response from the county, he reported that the staff asked him not to report this as it would “get a former employee in trouble.” A county committee member also asked him if he wants to sell his land.

We believe these issues merit a full review of the role and practices of the use of county committees and their continuing failure to include and serve the needs of all farmers but especially Black Farmers. In the next farm bill, we believe it is time that this committee review ways to replace county committees with a more professional and accountable system.

### **FSA Farm Credit – Immediate Actions Needed**

We have worked extensively on the issues of Farm Credit over many years and hope we can provide additional recommendations as the committee addresses those particular issues.

At present, the two most essential credit related issues are to assure that Farm Service Agency issue regulations and implement the following:

- 1) Ensure Equitable Relief Provisions to protect the farmer in the case of errors or intentional actions in loan agreements by Farm Service Agency staff members, and
- 2) Implement the Heirs Property Relending Program.

With respect to the Relending program, Congress since the 2018 Farm Bill has appropriated \$20 million for FSA to relend to entities qualified to lend as community development financial institution, and who have significant demonstrated experience serving the needs of socially disadvantaged farmers and ranchers.

There are such institutions available to begin working with families to resolve heirs property encumbrances which keep them out of full participation in USDA programs. These funds are urgently needed. The pandemic has caused the loss of over half a million members of our society. Some of them are farmers. Their families urgently need assistance in handling the difficult issues of settling estates. Making these program available will enable the groups who know how to do this work to immediately assist black and other people of color landowners to secure land tenure in a way the addresses the rights of all interest holders, and to emerge with a succession plan to guide that family in the future.

### **Direct and Guaranteed Loans and Borrowers Rights**

Section 1005 of the American Rescue Plan provides funds to Black farmers and other people of color borrowers to pay off loans from both FSA and Farm Credit Administration. We will have attached a brief we provided to the General Accounting Office in advance of the study they did on the availability of credit to Socially Disadvantaged Farmers and Ranchers. The report suggests several issues for the attention of the Administration and the Congress. We will prepare future input on these provisions.

It is also important to understand the issues farmers are encountering due to lack of data collection and clear procedures to assure that all borrowers rights, including the Equal Credit Opportunity are assured. We have recommended to the Secretary that clear procedures for Farm Credit Borrowers to identify themselves as socially disadvantaged and eligible for the Emergency Relief provided must be set in place.

We further refer you to correspondence between Rural Coalition and both the FSA and the Farm Credit Administration referring to the case of a young farmer. We have redacted the farmer's name. These letters show how FCA tells the farmer to go to the lender, the lender says to go to FCA, and FSA asserts they have no authority on guaranteed loans. These illustrate the point that there is no clarity for the borrower and no real explanation if anyone has authority to act if farmers feel they were discriminated against on a guaranteed loan.

We urge Congress to address these gaps. We further endorse the recommendations provided in the hearing by the Federation of Southern Cooperatives that a separate entity within or similar to other farm credit institutions be established to attend to the unmet needs of this sector of farmers and ranchers.

### **Heirs Property, Insecure Land Tenure, Climate and Rural Communities**

The Federation of Southern Cooperatives/Land Assistance Fund has been identifying the importance of addressing heirs property issues for decades, beginning with a 1980 Report by the Emergency Land Fund.

In 2017, the Oklahoma Black Historical Research Project convened the 100 Farmers Summit In Oklahoma City in March 2017 for in input in advance of the 2018 Summit. <sup>1</sup> The 100 Summit Report: *Addressing the Needs and Concerns of the Underserved Minority Family Farming Community* is included in the attachments. The following issues raised by the 100 Black farmers on heirs property include:

- A) Specific Issues Related to Heir Property** – The following were the key issues that needed to be addressed to restore access to programs for producers lacking clear title or lease on the land they farm or seek to farm:

**Heir Property:** If you have land but there is no will or document saying who will be the administrator of it, your ability to administer and use it is very difficult. If there is not an administrator for the land, you will not be able to get a loan through the USDA. For example, when you want to take out a loan, but you are the beneficiary of land along with your siblings -you have to get all other siblings to sign on to your loan. You will end up in a case with the bank and your siblings to settle your claim interest in the land. Speculators will seek out one or two siblings to see if they can buy them out, then they can petition the courts for the full property to be sold. Called a “speculating interest” in the land to cause land loss. You get a minimal amount of the value of that land.

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<sup>1</sup> Oklahoma Black Historical Research Project, with Rural Coalition, et al., <sup>1</sup> The 100 Summit Report: *Addressing the Needs and Concerns of the Underserved Minority Family Farming Community*,” 2017.

Arkansas' law has changed – the Uniform Partition of Heirs Property Act allows an heir who is a co-owner to buy out another who wants to sell their share of a property at the market value of the property.<sup>2</sup>

**Adverse Possession** is also used by white farmers, investors and property owners to take land. They pay property taxes and take ownership, even where there are not heir property issues. For example, an African American woman rented her land to a white farmer and as part of the rent he paid her taxes for 5 years. One year he did not pay rent and told he did not owe it because now he owned the land

**Strategies:** Get more protections in place for African-American families. A lot of risk factors that can result in land loss – need to address them comprehensively.

**Key point: There is a systemic lack of access to information and resources to resolve heir property issues** - We see a great deal of land that is idle, land that could be productive but isn't. The legal risk varies from state to state. In some states, someone can seize rights to a property simply by paying delinquent taxes. The time in which one is considered to have relinquished their rights to their land varies by state. There was a provision in the 2014 Farm Bill to help get Black farmers' land back; but it didn't go anywhere. We need new support for education on wills and estate planning.”

## **Heirs Property and the Ecological Costs of Discrimination**

Oklahoma Black Historical Research Project worked over the past decade to engage Black farmers in NRCS programs. With Rural Coalition and the Scholars of the America University Farm Bill practicum, the researched the data and experiences of Black farmers in access USDA programs. Their findings are summarized and published in the research paper on the [Ecological Costs of Discrimination](#)<sup>3</sup>

Invasive species thrive in places facing climatic changes and put farmers at further risk. In Oklahoma, *eastern redcedar* is spreading at the rate of 800 acres a day. Without help for mitigation from USDA especially for historically underserved farmers who farm on heirs property, small cow and calf operations have seen their grazing land taken over by redcedar, which competes with pastureland by consuming up to 55,000 gallons of water per acre per year and puts the viability of their operations at further risk. Other risks they have faced over the past decade include severe cycles of floods, droughts, fires, freezes and tornados. Farmers who were deemed ineligible for NRCS program, the OBHRPI learned, were denied because they lacked the documentation to secure farm and tract numbers to demonstrate their control of the land on which they sought benefits.

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<sup>2</sup> In addition to Arkansas; Alabama, Connecticut, Georgia, Montana, Nevada, New Mexico and Texas numerous states have now adopted or have introduced versions of the [Uniform Partition of Heirs Property Act](#). Passage of the Fair Access to Farmers and Ranchers provisions in the 2018 Farm have helped build support to enact the law drafted by the nonprofit [Uniform Law Commission](#) to make it easier to divide property and preserve family wealth as the owners multiply over generations.

<sup>3</sup> Fagundes, Tillman, et al. **Ecological costs of discrimination: racism, red cedar and resilience in farm bill conservation policy in Oklahoma**, October 2019, [Renewable Agriculture and Food Systems](#) 35(4):1-15, DOI: [10.1017/S1742170519000322](#)



The Fair Access for Farmers and Ranchers Act, drafted by then Rep. Fudge, and introduced in the Senate by Senators Doug Jones and Senator Tim Scott, authorized the aforementioned the heirs property relending fund. It also authorized the use of alternate methods of documentation to allow access for farmers to NRCS and other programs to allow them to care for land. For the first time in federal law, it made some of the methods consistent with the processes outlined in the Uniform Partition of Heirs Property state passed law. The third provision, Section 12607 of the 2018 Farm Bill authorized Farmland Ownership Data Collection in order to identify the land tenure trends that may affect generational transitions, and barriers to entry for beginning and socially disadvantaged farmers and ranchers.

The data and studies compiled under Section 12607 are critical inform and guide all levels of agricultural policy making that concern the critical dynamics of heirs' property and absentee land ownership in farming communities. Appropriations of \$3 million annually were authorized. **We urge this committee to assure this important initiative is full funded. This baseline study is essential to allow the Congress to anticipate the impact of various kinds of climate interventions on farm and forest land tenure especially for Black Farmers.**

### **Heirs Property and Forest Land**

Securing and building land tenure is also critical to protecting the intergenerational transfer of land and wealth and building a community with a healthy ecosystem and a tax base to sufficient to support quality education, employment opportunities, and a strong infrastructure. The following abstract of the paper “Taking Goldschmidt to the Woods: Timberland Ownership and Quality of Life in Alabama”<sup>4</sup> summarizes the impact of the degree of highly concentrated land ownership on children, families and the communities:

*Abstract: We use a database of property tax records for 13.6 million acres representing every parcel of privately owned timberland in 48 rural Alabama counties to test two hypotheses inspired by Walter Goldschmidt relating land ownership and quality of life. Our data show private ownership is highly concentrated and 62 percent is absentee owned. We employed Pearson correlations alongside Poisson and negative binomial regression models to estimate influence of both concentrated private ownership and absentee ownership of timberland. Our findings support Goldschmidt-inspired hypotheses that concentrated and absentee ownership of timberland exhibit a significant adverse relationship with quality of life as measured by educational attainment, poverty, unemployment, food insecurity, eligibility for free or reduced-price lunch at public schools, Supplemental Nutritional Assistance Program participation, and population density. Low property taxes in Alabama limit the ability of local governments to generate revenue to support public education or meet other infrastructural or service needs in rural areas. We call on rural sociologists and kindred spirits to pay more attention to the fundamental importance of land ownership which shapes the foundations of power and inequality affecting rural life in America and beyond.*<sup>5</sup>

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<sup>4</sup> September 2020 [Rural Sociology](#) 86(1) DOI: [10.1111/ruso.12344](https://doi.org/10.1111/ruso.12344) Authors: [Conner Bailey](#), [Abhimanyu Gopaul](#), [Ryan Thomson](#), [Auburn University](#); [Andrew Gunnoe](#), [Maryville College](#)

<sup>5</sup>[https://www.researchgate.net/publication/344021201\\_Taking\\_Goldschmidt\\_to\\_the\\_Woods\\_Timberland\\_Ownership\\_and\\_Quality\\_of\\_Life\\_in\\_Alabama](https://www.researchgate.net/publication/344021201_Taking_Goldschmidt_to_the_Woods_Timberland_Ownership_and_Quality_of_Life_in_Alabama)

We look forward to other opportunities sharing our proposals to more fully address the set of issues we have raised, including with respect to climate. We further point to a critical need to assure farmers have access to the qualified and trusted legal and technical assistance necessary to protect their land.

In October 2019, the North Carolina Association of Black Lawyers Land Loss Prevention Project authored a Continuing Legal Education (CLE) manuscript "Assisting Heir Property Owners Facing Natural Disasters: History and Overview of Heir Property Issues." We participated in person as a panelist in the collaborative CLE webinar to train NC Legal Aid volunteer attorneys on service to impacted heir property owners. The webinar took place on October 23. According to Legal Aid's coordinator, there were approximately 124 webinar participants on that date and the course will continue to be available for training purposes.

Through individual direct legal intervention, technical assistance, outreach and policy innovation and implementation, the overall outlook for North Carolina's disaster-affected families has been substantially improved. The benefits include increased property retention, removal of barriers to assistance programs, enhanced food access, heightened farm business risk management, and family engagement in multi-generational planning as a safeguard against inherent co-ownership vulnerabilities.

We project that the pandemic will continue to emphasize the need for education on what defines sustainability and how environmental, economic, health stressors are intertwined and cumulative. This highlights the importance of collaborative work we have all done to expand the framework of justice and increase the tools and resources available to communities to take direct action to promote community health. We see our engagement with Black and Brown-led coalitions and initiatives advancing sustainable environments and community-controlled food only deepening and expanding.

We will provide a letter to Chairman Scott and the Committee in upcoming weeks that better summarizes our immediate recommendations for action.

## **Conclusion**

Today, black farmers find themselves still seeking financial compensation from years of discrimination by the United States Department of Agriculture (USDA). This financial compensation, along with the American Rescue Plan, has been called "unfair reparations," "another handout," or some other dehumanizing term by prominent and influential elected officials and others. This continued systemic and institutionalized racism is further evidence of the unrelenting discrimination that black farmers and their communities experience on a daily basis. Furthermore, many black farmers, their families and communities continue to be on the brink of bankruptcy, foreclosure, and homelessness. The USDA must act now to implement the American Rescue Plan and related initiatives to empower black farmers and their communities. The American Rescue Plan and related initiatives can only be successful if the USDA pays off black farmers' USDA farm loan debts, creates an inclusive and equitable implementation process for the \$1B authorized by Section 1006, and prioritizes policies that help black farmers and their communities to hold onto their land and protect it from further discriminatory practices.



EXHIBIT I  
DECLARATION OF MYKIA XIONG

## DECLARATION OF MAYKIA XIONG

My name is Maykia Xiong and I am a Hmong farmer in North Carolina. I am over the age of 18 and fully competent to make this declaration. In support of this Declaration, I offer the following:

1. I have a substantial interest in the outcome of this litigation and I am a member of the Farmers of Color Network of the Rural Advancement Foundation International.
2. I live and farm in North Carolina.
3. I am a poultry grower in Moore County and have been raising poultry for more than fifteen years.
4. USDA is the guarantor on my loans with a Farm Credit system commercial lender.
5. As a Southeast Asian refugee and female farmer, I am a “socially disadvantaged farmer” pursuant to 7 U.S.C § 2279 (e)(2).
6. As an Asian farmer, I am eligible for the debt payment pursuant to Section 1005 of the American Rescue Plan, as passed by Congress and signed by President Biden on March 11, 2021.
7. My husband and I took out loans to start our poultry operation and still have several hundred thousand owing on those loans.
8. I am not delinquent in my loan payments.
9. I have participated in NRCS conservation programs.
10. I feel that as a female farmer and an Asian farmer, I am always forced to take an extra step. I have been denied participation in programs and have had to ask multiple times for assistance.

11. The coronavirus epidemic has created several kinds of instability in the industry. In the spring of 2020, there were substantial delays with processing facilities, which created disruption with flock size allowances, getting birds to processors and supply of new flocks.

12. I will be significantly damaged if the payment permitted by Congress is delayed by the action of the Court in this matter.

13. Poultry growers are always asked to consider upgrades and improvements and it is a constant reality in this industry.

14. The payment of the guaranteed loan will allow me to continue farming without as much financial pressure.

15. This payment will also provide me with the ability to consider additional ways to make my farming enterprise more sustainable for my family and community.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 6-21-2021

Respectfully submitted,

/s/Maykia Xiong  
Maykia Xiong