№. _____

In The Supreme Court of the United States

ESTATE OF EARNEST LEE BOYLAND, et. al.
Petitioners

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, et. al.
Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI
with Appendix

Paul A. Robinson, Jr.
3749 Marty Street
Memphis, TN 38109
Problaw937@hotmail.com

Counsel for Petitioner

July, 2019

I. QUESTION PRESENTED

Is it a denial of Equal Protection for the United States Department of Agriculture ("USDA" or "the Department") and Epiq Class Action & Claims Solutions, Inc. ("Epiq"), to afford women and Hispanic claimants access to a remedial claims framework, but bar ,as a threshold matter, access to this claims framework claims by Black male farmers solely due to race and gender in light of the strictest scrutiny to which racial classifications are subject and this Honorable Supreme Court's recent decisions concerning the Government's use of race in the following cases:

1. *Department of Commerce, et al. v. New York,* No. 18-966, June 27, 2019, 588 U.S. ___(2019) which states an agency's stated reason for acting on racial grounds may be rejected by a Court on a strong showing of bad faith or improper behavior and may justify extra-record discovery.

2. *Rucho v. Common Cause, et al.*, No. 18-422, June 27, 2019, 588 U.S.__(2019) which states in light "our country's long and persistent history of racial discrimination…as well as our Fourteenth Amendment jurisprudence

has always reserved the strictest scrutiny for discrimination or classifications based on race.

3. *Kisor v. Wilkie Secretary of Veterans Affairs*, No. 18-15, June 26, 2019. A court must also make an independent inquiry into whether the character and context of agency action , interpretation of its rules is entitled to controlling weight if the agency's interpretation does not reflect its "fair and considered judgment".

4. *Flowers v. Mississippi*, 588 U.S. ____ the argument that racial classifications, may survive when visited upon all races equally, is no more authoritative today than the case which advanced the theorem , *Plessy v. Ferguson*, 163 U.S. 537 (1896).

II. PARTIES

The Petitioners are Estate of Earnest Lee Boyland, Estate of David Shelton, Estate of Lee Sylvester Caldwell (the "non-BFAA Petitioners" or "non-BFAA Plaintiffs"); and the Black Farmers and Agriculturalists Association, Inc. (the "BFAA") who were in the District Court. The Respondents are United States Department of Agriculture (the "USDA") and Petitioners in the Circuit Court, Epiq Class Action & Claims, Inc. ("Epiq"), in its capacity as United States Department of Agriculture Hispanic & Women Farmers and Ranchers Claims Administrator; and Thomas J. Vilsack, in his official capacity as United States Department of Agriculture (sometimes referred to collectively as "Respondents") who were defendants in the District Court and Respondents in the Circuit Court.

III. TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Constitutional Provisions

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

V. OPINIONS BELOW

October 31, 2017 Decision of the United States Court of Appeals for the District of Columbia Circuit Denying Summary Affirmance (Appendix D)

January 15, 2019 Per Curiam Judgment and Order Affirming District Court (Appendix C)

April 24, 2019 Per Curiam Judgment denying Petitioners' Request for Rehearing En Banc (Appendix B)

April 24, 2019 Per Curiam Judgment denying Petitioners' Request for Panel Rehearing (Appendix A)

VI. JURISDICTION

The Order denying Rehearing and Rehearing En Banc was entered on April 24, 2019. Jurisdiction here is based on 28 U.S.C. 1254.

VII. STATEMENT OF THE CASE

Petitioners commenced this action on July 13, 2015, by filing a Complaint alleging Respondents' violation of Title VI of the Civil Rights Act of 1964(42 U.S.C. §2000d) and the Fifth Amendment of the U.S. Constitution. Specifically, Petitioners challenged Respondents' implementation of a discriminatory administrative claims process,(hereinafter the "Love/Garcia Framework") whereby Epiq, at the direction of and on behalf of the USDA as its agent, expressly excludes African-American males from participating in the claims process based solely on Petitioners' race and gender. Petitioners Complaint asserted claims for both monetary damages and injunctive relief.

Epiq and the USDA moved to dismiss the Petitioners' Complaint on October 23, 2015, and March 4, 2016, respectively. On March 16, 2017, the District Court granted Epiq's and the USDA's motion to dismiss. Petitioner filed a timely notice of appeal

on April 17, 2017. On October 31, 2017, the Circuit denied Respondents motion for summary affirmance and directed the parties to address certain issues in their briefs.

On January 15, 2019 the Circuit Court affirmed the district Court. Petitioners' motion for Rehearing and Rehearing en banc was denied on April 24, 2019.

VIII.REASONS FOR GRANTING THE PETITION

SINCE THE DECISION OF THE CIRCUIT COURT, THIS COURT HAS ISSUED FOUR OPINIONS THAT DEAL WITH THE ROLE RACE MAY CONSTITUTIONALLY PLAY IN CONNECTION WITH ACTION BY THE GOVERNMENT OR AN AGENCY. IN THIS CASE USDA ACTED OUTSIDE THE SCOPE OF ITS EXPERTISE AND CONGRESSIONAL MANDATE BY IMPOSING A PRECONDITION ON BLACK MALES THAT DENIED THESE CITIZENS AN OPPORTUNITY TO DEMONSTRATE STATUS TO PARTICIPATE IN THE CLAIMS PROCESS. THIS TYPE OF THRESHOLD EXCLUSION BASED

ON RACE IS CONTRARY TO THE COURT'S OPINIONS DELINEATED IN THE "QUESTION PRESENTED"

ARGUMENT IN SUPPORT

This Petition should be granted for the reason the Circuit Court's January 15, 2019 decision not only directly conflicts with the recent opinions of the United States Supreme Court delineated in the "Question Presented" but also within *Brown v. Board of Education*, 347 U.S. 483 (1954) , *Bolling v. Sharp*, 347 U.S. 497 (1954) and the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234 §14011, 122 Stat. 923 1448 (2008) (hereinafter the "2008 Farm Bill"). This dispute raises the following issues:

> 1. Having conceded that the Garcia/Love credit discrimination claim Framework's sex and ethnicity limitations violate the Fifth Amendment, the Circuit Court decision fails to either analyze or examine whether the Framework's disparate treatment of credit discrimination claims of socially disadvantaged farmers within the meaning §14011 of the 2008 Farm Bill based solely upon the basis of sex and ethnicity, violates

the 2008 Farm Bill's mandate to resolve credit discrimination claims in a "just" manner.

2. The Circuit Court's decision is erroneous for the following reasons:

a. Contrary to the Circuit Court decision's repeated assertion, the Complaint of Petitioners alleged unexpired claims of credit discrimination;

b. The Circuit Court's redressability analysis ignores that the Framework Administrator, EPIQ, processed credit discrimination claims of Hispanics and females without a threshold showing that these claimants sought to press their claims before the United States Department of Agriculture (USDA) prior to July 1997;

c. The Circuit Court's statute of limitation analysis is predicated on the erroneous premise that under the 2008 Farm Bill, Petitioners must be Pigford claimants rather than merely socially disadvantaged farmers; and

d. The Circuit Court's redressability analysis ignores that the Love/Garcia Framework does not require Hispanic and

female claimants to demonstrate having made a prior credit discrimination claim to USDA in order to submit a claim.

3. The Circuit Court's decision fails to comport with the United States Supreme Court decisions in *Brown v. Board of Education* and *Bolling v. Sharp* for the reason it countenances provision by USDA of the right to pursue credit discrimination claims on the basis of sex and ethnicity rather than status as a socially disadvantaged farmer.

I. *INTRODUCTION*

Petitioners raised due process and equal protection claims against the USDA's handling of claims of credit discrimination by Black male farmers. The Circuit Court determined that notwithstanding the likely invalidity of the sex and ethnicity components of the claims process, Petitioners lacked Article III standing to challenge the process for want of redressability. Petitioners' claim is that due to their status as Black males, they have been denied rights bestowed upon them by §14011 of the 2008 Farm Bill as socially disadvantaged farmers. USDA and its claim administrator, EPIQ ,have denied Petitioners due

process of law under the Fifth Amendment to the United States Constitution and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, because USDA has imposed ethnic and gender threshold conditions precedent to any consideration whatsoever of the merit of credit discrimination claims of Black males.

The Circuit Court decision whitewashes Petitioners' unconstitutional, exclusion from the Garcia/Love Framework by USDA on the specious ground that Petitioners lack standing for the reason their complaint fails to allege that they ever asserted that they possessed unexpired claims of credit discrimination. The Circuit Court analysis is flawed in this respect for the reason, the right to pursue a credit discrimination claim here arises from §14011 of the 2008 Farm Bill , the Fifth Amendment and Title VI. Participation in the challenged USDA claims Framework has not been limited to Hispanics or females with unexpired credit discrimination claims or those who had complained in some manner of USDA discrimination before filing claims under the Equal Credit Opportunity Act (ECOA) 15 U.S.C. §1691, et seq. The Circuit Court erroneously endorses the differential treatment accorded to credit discrimination claims of Hispanic and female socially disadvantage farmers, and the claims of Black male socially disadvantaged farmers by USDA solely on

the erroneous ground that Petitioners lack standing for want of readdressability owing to the absence or allegation of any live claims. The Circuit Court's analysis ignores the Congressional mandate within §14011 concerning the only predicate required to challenge USDA credit discrimination, status as a socially disadvantaged farmer. Accordingly, given that the Complaint alleged Petitioners or their ancestors asserted complaints with USDA in a manner substantially equivalent to Hispanic or female socially disadvantaged farmers, if the claims of Hispanic and females are redressable, so too are the claims of Petitioners.

II. *STANDING*

The United States Supreme Court set forth the requirement for Article III standing in *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1962) as follows: 1) injury in fact; 2) causation; and 3) redressability. *Id*. at 560-61. Injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized…and (b) actual or imminent, not conjectural or hypothetical." *Id* at 560. The injury must also be "faily traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the

court." *Id*. Finally, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id*. at 561.

> Here the Circuit Court decision states: Even assuming plaintiffs here would prevail on their challenge to their exclusion from the Framework, their injury is not redressable because they lack live credit discrimination claims to present there. The district court accepted the plaintiffs' description of their injury as "the loss of the 'opportunity…to present a meritorious claim for discrimination against'" USDA challenging past credit discrimination, as do we. *Estate of Boyland*, 242 F. Supp. 3d at 31 (quoting Compl.74, 83, 90). That loss of opportunity cannot be redressed by opening the Framework to plaintiffs, because any credit discrimination claims they once had under ECOA have been extinguished, as explained below.

See, *Estate of Earnest Lee Boyland, et al. v. United States Department of Agriculture*, United States Court of Appeals for the District of Columbia Circuit, Case No. 17-5082, January 15, 2019.

The Circuit Court incorrectly states that the challenged USDA Garcia/Love Framework lawfully

limits redress to credit discrimination from USDA before 1997. In practice, the pre 1997 threshold has not been employed by USDA as a bar to the mere submission of claims by a female or Hispanic farmer, as it has been with Black males.

Petitioners have alleged that under §14011 of the 2008 Farm Bill Congress stated: "[i]t is the sense of Congress that all pending claims and class actions brought against the Department of Agriculture by socially disadvantaged farmers or ranchers…including Native American, Hispanic, and female farmers or ranchers, based on racial, ethnic, or gender discrimination in farm program participation should be resolved in an expeditious and just manner." Pub. L. 110-234, §14011, 122 Stat. 923, 1448 (2008) (codified at 7 U.S.C. §2279-2 note).

The mandate of Congress to USDA is to resolve claims of socially disadvantaged farmers in an "expeditious and just manner." USDA was not given a mandate to create ethnic or gender threshold conditions to the filing of claims by certain disadvantaged farmers but not others. Accordingly, if female and Hispanic farmers may submit claims without a threshold showing of filing a USDA complaint prior to 1997, USDA has no authority to accord an opportunity for Hispanics and females to submit such claims, but not Black males.

It is beyond debate that the well spring of governmental liability for credit discrimination claims lies in the historical treatment and pernicious form of discrimination exacted at the local level by USDA officials against Black farmers. The record in *Pigford* establishes as Judge Friedman notes:

> Forty acres and a mule. That was the promise made by the government to those former slaves who wanted to farm land in the South after the Civil War. As detailed in this Court's opinion in Pigford I, for most African-Americans the promise of forty acres and a mule was never kept, and the United States Department of Agriculture and the county commissioners to whom it delegated so much power bear much of the responsibility for the broken promise to those African-American farmers and their descendants. *Pigford v. Glickman*, 185 F.R.D. at 85. In the early 1900's, there were 925,000 African-American farmers in the United States farming 16 million acres of farmland. By the time the Court approved the *Pigford I* consent decree, there were fewer than 18,000 African-American farms in the United States and African-American farmers owned less than three million acres of

> land. *Id*. As the Court said 12 years ago in approving the consent decree, "[n]othing can completely undo the discrimination of the past or restore lost land or lost opportunities" to the many African-American farmers who were part of the *Pigford I* class. *Id*. at 112. Historical discrimination cannot be undone, but the *Pigford I* consent decree was a significant first step, a step that had been a long time coming. And, as described earlier in this Opinion, supra at 9, nearly 16,000 African-American farmers received a total of more than $1 billion through the claims process created by the settlement of that historic case.

In Re. Black Farmers Discrim Litig., 856, F. Supp. 2d, 41-42 (D.D.C. 2011).

§14011 of the 2008 Farm Bill was enacted to address challenges to this sorrowful legacy of credit discrimination raised by Black farmers, which served as the vanguard for claims by groups, such as Love and Garcia, unaffected by the peculiar and unique impact of slavery upon Petitioners' ancestors. It is contrary to settled discrimination jurisprudence articulated in both *Brown* and *Bolling v. Sharp* to now restrict the opportunity for Black farmers, such as Petitioners, to demonstrate a redressable injury on

grounds that differ from that required from other socially disadvantaged groups such as Love/Garcia claimaints.

III. *DISCRIMINATION COMPLAINT FILED BY JULY 1, 1997*

A. Live Claims:

The Circuit Court decision has made several references to the fact that the Petitioners did not have "live claims"[1] because, among other things ("Plaintiffs do not allege that they complained to USDA before July 2, 1997, and, accepting that they did not do so…"), (Crt. of App. ORDER at 3, 4, 7, 8, 9,

---

[1]Plaintiffs will argue that neither Hispanic (*Garcia*) or Female (*Love*) claimants in the Framework had live claim-or for that matter- *Pigford II*, as being describe by the defendants and accepted by the Court. ***But for***, the 2008 legislation and/or the corresponding voluntary Framework none of the claimants (*Pigford II*, Hispanics and/or Female) had an opportunity to present claims for racial discrimination against USDA, during the relevant period. Again, *Boyland et al* claimants are not asking for no more nor less that the Hispanic and Women claimants are-equal treatment under the law.

12, 14 and 15) two obstacles prevent them from participating in the Garcia/Love Framework…"). The problem with this assumption (*"accepting that they did not do so"*) is that it, along with its conclusions is incorrect.[2] Love/Garcia Plaintiffs were not required to produce this information prior to being allowed the opportunity to participate. First, no claimants who participated in any of the referenced settlement agreements with USDA for racial discrimination were required to show that he or she had filed a discrimination complaint by July 1, 1997, *prior* (emphasis added) to being allowed to receive and or fill out a claim for relief. Every potential claimant in *Pigford I* and or *II*, *Keepseagle*, *Garcia*, *Love* and the referenced Framework was allowed to present that information after being allowed to receive a claims package.[3] Second, the Pigford Consent Decree expressly provided, as did other settlement agreements, that the information needed to submitted a complete claims package would be listed and spelled out in the claim form (Consent Decree at

---

[2]The Court concluded that: "Whatever form the obstacle takes, it prevents the plaintiffs from processing their claims through the Framework."

[3]*See*, Consent Decree at 5(b), 5(f), 6(a) and 9(a)(i).

1(d) that was to be mailed and sent by the facilitator to the claimant who requested one as follows:

> The term "claim package" shall mean the materials sent to claimants who request them in connection with submitting a claim for relief under the provisions of this Consent Decree. The claim package will include (i) a claim sheet and election form and a Track A Adjudication claim affidavit, copies of which are attached hereto as Exhibit A; and (ii) associated documentation and instructions.

Third, the *Pigford II* claimants had an opportunity to correct and or forward any missing material or documents to the facilitator after being allowed to be a claimant in the litigation as follows:

> For each Claimant who has submitted an incomplete Claim Package or for each Claim Package that the Claims Administrator is unable to determine whether it is complete or timely, the Claims Administrator shall send to the Claimant and his or her Counsel a completed Your Claim Package is Not Complete Form (Ex. F). A Claimant shall have thirty (30) calendar days from the date of postmark of such a Form to submit, either by first class

> mail, postage prepaid, or electronically, a Complete Claim Package.

See, Settlement Agreement for *In re Black Farmers Litigation*; Case 1:08-mc-00511-PLF Document 170-2, dated 05/13/11 at Pages 23 of 110 (V(B)(2)).

Fourth, the Framework for Hispanic and Female Farmers and Ranchers made provisions for claimants to submit additional information **(YOU ARE RECEIVING THIS NOTICE BECAUSE THE CLAIM PACKAGE YOU SUBMITTED IS NOT COMPLETE AND WE NEED ADDITIONAL INFORMATION).** This notice provision gave a detailed list of items and documents that the party (claimant) needed to provide and it gave claimants approximately 30 days to forward the same back to the Facilitor. Also, the Framework's Claim Form and its pertinent part; **PART 2: TIER SELECTION** (what document must I send with this form?) as follows:

> **A sworn, verified, or notarized written statement from someone who witnesses USDA's discrimination against you: OR, etc.** ***Id.***

Fifth, the Framework did not require that the claimant show this discrimination complaint to USDA *before* being allowed to participate in the process. In fact, all Hispanic and Female claimants in the Framework had an opportunity to provide additional and otherwise required materials if the facilitator found that certain required documents were missing. Therefore, any material, associated documentation and instructions to include the declaration regarding, *inter alia*, the Complaint of discrimination (July 1, 1997) would be listed and requested in the claims package and not, necessarily required to be submitted before a claims package would be sent to claimants. African American males like *Boyland et al* are the only potential claimants to have been denied for not alleging the discrimination to USDA before being allowed to participate. Contrary to the Circuit Court Opinion this issue was not raised or addressed in the BFAA Motion to Intervene in 2013.

In sum, Petitioners are the only claimants who have been subject to a precondition that they complained of discrimination (live claim) by July 1, 1997, before being allowed to participate in the Framework. But, *Boyland* was not denied participation in the Love/Garcia Framework by the USDA and EPIQ for not submitting a Complaint of

discrimination against USDA by July 1, 1997. Instead, they were denied solely because they were of African American males (Compl. at 73, 79 and 86) without the opportunity to even fill out and or provide any material as was enjoyed by other similarly situated social disadvantaged farmers and ranchers (Compl. at 103).

IV. AGENCY'S INTERPRETATION/CONSTRUCTION.

The USDA's interpretation of any statutes to exclude African American males is both violative of Congress's clear and unambiguous intent and the position of the Department of Justice that address the discrimination issues in 1994 (n. 1) (1994 Opinion and Memorandum for James S. Gilliland) cited in Petitioners' brief. When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress (Compl. at 115). See, *Chevron U.S.A.., Inc. v. NRDC*, 467

U.S. 837 (1984), (citing, *Morton v. Ruiz*, 415 U.S. 199 (1974). If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. *Id*. Clearly, Congress did not intend for USDA to limit the right to present credit discrimination claims to certain racial or ethnic groups.

V. *CONTINUING CLAIMS AND EQUITABLE TOLLING*

In this case USDA did not permit Petitioners to demonstrate that they could overcome statues of limitations issues under either the continuing claims doctrine or equitable tolling.

> Courts of Appeal have explained the continuing claims doctrine as follows:
> [T]he continuing claim doctrine is applicable where "each wrong constituted an alleged violation of a statute or regulation that occurred

> when that particular wrong occurred, independent of the accrual of other wrongs."
> ***
> On the other hand, if there was only a single alleged wrong, even though the wrong caused later adverse effects, our case law has said the continuing claim doctrine is not applicable

Wells v. United States, 420 F.3d (Fed. Cir. 2004) (holding plaintiff could apply the Doctrine to claims against the government for deducting too much from his Navy retirement pay contrary to 5 U.S.C. 5514(a)(1)).[4] "Therefore, a continuing claim exists in cases where the defendant *owes the plaintiff an ever-present duty*, the non performance of which would give rise to a series of actionable breaches, but the doctrine will not apply if the plaintiff's claim arises from a 'seminal event' that would constitute one cause of action for the purposes of the statute of limitations." *Central Pines Land Co. v. United*

---

[4]See also, *Boling v. United States*, 220 F.3d 1365, 1373 (Fed. Cir. 2000) ("The continuing claims doctrine has been applied when the government owes a continuing duty to the Petitioners. In such cases, each time the government breaches that duty, a new cause of action arises.").

States, 61 Fed. Cl. 527, 537 (2004). The doctrine prevents the defendant from escaping liability (*and thereby "acquire a right" to continue its wrongdoing*). *Mitchell v. United States*, 10 Cl. Ct. 63, 75 (1986). The Courts have recognized that "the test for distinguishing continuing claims from single-event claims may not admit of easy of consistent application." *Baka v. United States*, 74 Fed. Cl. 692, 696 (2006). Applied to these facts the imposition of unlawful racial impediments to even submitting a claims package itself is redressable.

Likewise, under *Holland v. Florida*, 560 U.S. 631, a litigant is entitled to equitable tolling of a statute of limitations only if the litigant establishes two elements: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Id*. 649 (internal quotation marks omitted).

In this case Petitioners were denied an opportunity to even argue to USDA that they had been pursuing their rights diligently and that circumstances, such as historic pernicious and virulent racial discrimination against Black males prevented the timely filing of credit discrimination claims. Here USDA without any authority or valid governmental interest summarily excluded

Framework participation by Black males. For this reason the Circuit Court's redressability analysis is incorrect. If the various windows discussed by the Circuit Court to present a credit discrimination claim are open under either the continuing claim doctrine or equitable tolling, these claims would be redressable.

Accordingly, the Circuit Court's redressability analysis fails to consider claims available to Black farmers such as Petitioners and should be reheard.

VI. *CONCLUSION*

In June of this year this Court analyzed the use of racial classifications in various contexts- jury selection , census administration, redistricting and also limited the doctrine concerning judicial deference to agency action to situations where the Agency's action is free from bad faith or improper behavior. USDA has compiled a history of acting in bad faith in relation to Black farmers through its overt discrimination , misfeasance and mistreatment that surpasses the record of any element of our federal government. The exclusion of Black farmers on the basis of their race alone from even presenting a claim in the Love/Garcia framework can not be reconciled with the contempt in which racial

classifications are held in our system of jurisprudence and this Court's recent Equal Protection analyses in the cases decided in June 2019. In view of the above arguments, it is respectfully requested that a Writ of Certiorari issue.

July 23, 2019

Respectfully submitted,

s/Paul A. Robinson, Jr.
Paul A. Robinson, Jr.
3749 Marty Street
Memphis, TN 38109
Problaw937@hotmail.com

Counsel for Petitioners

APPENDIX

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5082 **September Term, 2018**
1:15-cv-01112-TSC
Filed On: April 24, 2019

ESTATE OF EARNEST LEE BOYLAND, ET AL.,
Appellants
v.
UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.,
Appellees

BEFORE: Griffith and Pillard, Circuit Judges; Sentelle, Senior Circuit Judge

ORDER

Upon consideration of appellants' petition for panel rehearing, it is **ORDERED** that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken R. Meadows
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5082 **September Term, 2018**
1:15-cv-01112-TSC
Filed On: April 24, 2019

ESTATE OF EARNEST LEE BOYLAND, ET AL.,
Appellants
v.
UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.,
Appellees

BEFORE: Garland, Chief Judge; Henderson, Rogers, Tatel, Griffith, Srinivasan, Millett, Pillard, Wilkins, Katsas, and Rao, Circuit Judges; Sentelle, Senior Circuit Judge

ORDER

Upon consideration of appellants' petition for rehearing, en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken R. Meadows
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 1, 2018 Decided January 15, 2019

No. 17-5082

ESTATE OF EARNEST LEE BOYLAND, ET AL.,
APPELLANTS

Appellants

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.,

Appellees

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cv-01112)

Robert E. Hauberg Jr. argued the cause and filed the briefs for appellants. *Paul A. Robinson Jr.* entered an appearance.

Jennifer L. Utrecht, Attorney, U.S. Department of Justice, argued the cause for appellees. With her on the brief was *Charles W. Scarborough*, Attorney.

Stephen P. Murphy was on the brief for appellee EPIQ Class Action & Claims Solutions, Inc.

Before: GRIFFITH and PILLARD, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge* PILLARD. PILLARD, *Circuit Judge*: Plaintiffs,

representing the estates of black male farmers, seek to submit claims of past discrimination in agricultural credit programs to a claimsprocessing framework set up to resolve Hispanic and female farmers' credit discrimination claims. In this lawsuit, they assert that the claims-processing framework itself discriminatorily excluded them. In short, they raise a discrimination claim about the handling of discrimination claims. They therefore identify two distinct discrimination claims, one nested within the other: the underlying credit discrimination claims, and the current challenge to the framework. Plaintiffs argue that the district court failed to assume the merits of their claim when it held they lacked standing to bring the current challenge. That is incorrect. Plaintiffs lack standing to challenge the framework because they have no live underlying credit discrimination claims to present there.

Plaintiffs sued the United States Department of Agriculture ("USDA" or "the Department") and Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the firm USDA hired to administer the framework, contending they unlawfully discriminated by affording women and Hispanic claimants exclusive access to a remedial claims framework, the very raison d'être of which was to redress USDA's sex and ethnicity discrimination against female and Hispanic farmers. Plaintiffs allege that the farmers whose estates they represent experienced discrimination in USDA agricultural credit and benefit programs—based not on sex or Hispanic ethnicity,

but on their black racial identity. That claim is certainly plausible. It is well established that, during the 1980s and 1990s, USDA engaged in systemic discrimination on multiple grounds against many of the farmers its programs were supposed to serve. In fact, it was a class action lawsuit by black farmers (the "Black Farmers" suit) that first illuminated USDA's rampant credit discrimination and inspired parallel lawsuits by Native American, female, and Hispanic farmers. And USDA modeled the framework at issue here on the claims-processing system it set up in settlement of the Black Farmers' class action.

Plaintiffs in this case never submitted claims in the Black Farmers remedial process. When they instead sought to present their claims in the parallel framework for claims of discrimination against women and/or Hispanic farmers, the claims processor turned them away. Plaintiffs contend that USDA and Epiq thereby invidiously discriminated against them based on their sex and race. They claim that USDA violated the constitutional equal protection guarantee and that Epiq violated the federal statutory prohibition against discrimination by a program or activity that receives federal financial assistance.

In assessing standing, we assume that plaintiffs could prevail on those claims. Plaintiffs' standing nevertheless fails for want of redressability. The claims-processing framework for women and Hispanic farmers, like the parallel one for black

farmers, can only make good on live claims. Thus, even assuming plaintiffs succeeded in invalidating the framework's challenged sex and ethnicity limitations, they could not benefit unless they had unexpired claims of credit discrimination to process there. Because plaintiffs fail to allege that they have any live claims to process in the framework they challenge, the harm they assert from being excluded is not redressable. Plaintiffs' nested claims target discrimination by USDA during the 1980s in violation of the Equal Credit Opportunity Act (ECOA), which prohibits discrimination in credit transactions. 15 U.S.C. § 1691 *et seq*. ECOA's five-year statute of limitations has long since run on most claims of that vintage. Congress in 1998 legislated an important but limited exception to ECOA's time bar for farmers who had complained of discrimination to USDA between 1981 and July 1997—a period when, Congress found, the Department's internal system for addressing discrimination claims was dysfunctional. Plaintiffs do not allege they sought to press their claims to USDA before July 1997, so they are ineligible to benefit from Congress's tolling of the limitations period for farmers who did. Their decadesold claims are time barred.

Even if we assumed that plaintiffs in fact took steps before 1997 to preserve their claims and merely neglected to so specify in their complaint, they would still be out of luck. Together with everything else they allege, that would mean— as the district court assumed—that they were members of the plaintiff

class in the Black Farmers' lawsuit. Any credit discrimination claim a member of the Black Farmers plaintiff class may have had during the relevant period, whether or not actually pursued in the remedial process established under the Black Farmers' consent decree, is now precluded by that decree, or, for any member who opted out, time barred. Thus, even if the challenged framework were not limited to women and Hispanic farmers, it could do nothing to redress plaintiffs' precluded claims.

I.

A.

Over the past two decades, USDA has resolved discrimination lawsuits with several different groups of farmers. These lawsuits primarily challenged discrimination in USDA's lending programs in violation of ECOA. 15 U.S.C. § 1691 *et seq*. Farmers' bottom lines fluctuate with the weather and crop prices, so "many farmers depend heavily on the credit and benefit programs of the United States Department of Agriculture to take them from one year to the next." *Pigford v. Glickman (Pigford I)*, 185 F.R.D. 82, 86 (D.D.C. 1999) (footnote omitted).[1] If a farmer's crops fail, "he may not have sufficient resources to buy seeds to plant in the following

[1] Subsequent litigation in the case, not relevant here, became known as *Pigford II*. We refer to *Pigford I* for clarity and consistency with other opinions

season"; if he needs a new grain harvester, "he often cannot afford to buy the harvester without an extension of credit." *Id.* "Because of the seasonal nature of farming, it also is of utmost importance that credit and benefit applications be processed quickly or the farmer may lose all or most of his anticipated income for an entire year." *Id.*

Public protest over discrimination in USDA's credit and benefit programs spurred the Department to investigate. That scrutiny uncovered a widespread pattern of discrimination in the Department's agricultural credit and benefit programs. In 1996, then-Secretary of Agriculture Dan Glickman appointed a Civil Rights Action Team to assess the Department's history of racial discrimination and recommend changes. *See id.* at 88. The Action Team documented extensive economic harm to minority farmers from discrimination in USDA programs. *See id.* at 86-88. That discrimination owed partly to USDA's practice of delegating loan application decisions to small, local committees in each county. *Id.* at 86. The county committees were far less diverse than the communities they served. *Id.* at 87. USDA denied or delayed processing loan applications, approved insufficient amounts, discriminatorily denied access to loan servicing options, or imposed restrictive conditions on loans because of the applicants' race, sex, or ethnicity. *See* Fourth Am. Compl. 3, *Love v. Veneman*, No. 1:00-cv-02502 (D.D.C. July 13, 2012), ECF No. 160 (female farmers); Eighth Am. Compl. 2, *Keepseagle v. Veneman*, No. 1:99-cv-03119 (D.D.C. Feb. 11, 2008),

ECF No. 460 (Native American farmers); Third Am. Compl. 13, *Garcia v. Veneman*, No. 1:00cv-02445 (D.D.C. June 30, 2006), ECF No. 144 (Hispanic farmers); *Pigford I*, 185 F.R.D. at 87 (black farmers). ECOA claims formed the core of the four lawsuits filed against USDA on behalf of black, Native American, women, and Hispanic farmers.

ECOA creates a private right of action against a creditor, including the United States, who "discriminate[s] against any applicant, with respect to any aspect of a credit transaction . . . on the basis of race, color, national origin, [or] sex," among other characteristics. *Id*. §§ 1691(a), 1691e(a).

The evidence developed in the *Pigford I* Black Farmers litigation showed that, on top of discrimination by the committees, by 1983, USDA's Office of Civil Rights Enforcement and Adjudication (OCREA), which was responsible for handling civil rights complaints against the Department, "essentially was dismantled and complaints that were filed were never processed, investigated or forwarded to the appropriate agencies for conciliation," to the point that, "[i]n some cases, OCREA staff simply threw discrimination complaints in the trash without ever responding to or investigating them." *Pigford I*, 185 F.R.D. at 88. The public learned of the dysfunction of OCREA in a 1996 report by the U.S. Commission on Civil Rights; only with the publication of the Civil Rights Action Team report the following year did the government begin to reckon with the scale of the discrimination. *See*

USDA *Civil Rights Action Team, Civil Rights at the United States Department of Agriculture 2* (1997); U.S. Comm'n on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs 255* (1996). The same month the Action Team released its report, USDA's Office of the Inspector General issued a report describing USDA's lack of transparency and backlog of unprocessed complaints. *See Pigford I*, 185 F.R.D. at 88. "The acknowledgment by the USDA that the discrimination complaints had never been processed, however, came too late for many African American farmers." *Id*. Farmers' legal recourse was limited by the then-two-year statute of limitations on claims of discrimination in credit transactions under ECOA. 15 U.S.C. § 1691e(f); *see* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1085(7), 124 Stat. 2085, 2113 (2010) (changing the statute of limitations to five years).

In 1998, Congress responded to the farmers' predicament by lifting the time bar for farmers who had made timely efforts to seek administrative redress for credit discrimination but were stymied by the dysfunction at USDA. *See* 7 U.S.C. § 2279 note (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, § 741, 112 Stat. 2681) ("Appropriations Act"). The Appropriations Act tolled the statute of limitations for two years after its passage—from October 1998 to October 2000— for people who (1) alleged non-employment-related discrimination by USDA occurring between January 1, 1981, and

December 31, 1996, and (2) had filed a complaint with USDA before July 1, 1997. A farmer who complained to USDA in 1983, when OCREA broke down, could have had valid claims based on discrimination as far back as 1981, which presumably accounts for Congress's choice of that year as the beginning of the statutory date range. By confining the Act's beneficiaries to people who had sought to complain to USDA during a period when the Department systematically failed to process farmers' discrimination claims, Congress limited its legislative fix to claimants blocked by OCREA's dysfunction. It did not more broadly waive the statute of limitations for all farmers who suffered discrimination in the 1981 to 1996 statutory period.

USDA has resolved the discrimination lawsuits of each of the four groups of farmers. For each group, the only farmers permitted to participate in the claims-resolution processes established in response to these cases were those who had, before the suits were filed, complained in some manner of USDA's discrimination. Framework for Hispanic or Female Farmers' Claims Process ¶¶ VIII.A, VIII.B, VIII.C.1.g, *Love*, No. 1:00-cv-02502 (D.D.C. Jan. 20, 2012), ECF No. 155-1 ("*Garcia/Love* Framework"); *Keepseagle*, No. 1:99-cv-03119, 2001 WL 34676944, at *6 (D.D.C. Dec. 12, 2001); *Pigford I*, 185 F.R.D. at 92.

USDA settled with the class of Black Farmers first, in 1999, in *Pigford I*. 185 F.R.D. 82. The court approved the creation of a two-track dispute resolution mechanism for distributing proceeds to

claimants. Under that process, claimants with less documentary evidence of discrimination received capped payments, while claimants with more documentary evidence could seek to prove and recover actual damages. *Pigford I*, 185 F.R.D. at 95-97.

The process established in *Pigford I* became a template for the other cases. Next, USDA settled a class action suit with Native American farmers. *See Keepseagle*, No. 1:99-cv03119, 2012 WL 13098692, at *1 (D.D.C. Dec. 28, 2012). Similar lawsuits by Hispanic and female farmers followed, but did not result in class-wide settlements because neither case was certified as a class action. *Garcia v. Johanns*, 444 F.3d 625 (D.C. Cir. 2006) (Hispanic farmers); *Love v. Johanns*, 439 F.3d 723 (D.C. Cir. 2006) (female farmers). Instead, USDA voluntarily created a joint claims process for both Hispanic and female farmers. *See Garcia/Love* Framework. Claimants who wished to recover under the *Garcia/Love* Framework agreed, in the claim packets they submitted, to release their individual claims against USDA. *See id.* ¶ *5*; Settlement Agreement, *Love*, No. 1:00-cv-02502 (D.D.C. Feb. 3, 2017), ECF No. 2751.

As described above, Congress did not toll all claims of discrimination arising between 1981 and 1996—only those of farmers who also brought a complaint of discrimination by July 1, 1997. *See Pigford I*, 185 F.R.D. at 92-93, 100. The plaintiffs here have neither shown nor alleged that they made a credit discrimination complaint to the government

at any time, much less by the deadline, as they would have had to do to qualify as *Pigford I* class members.

B.

This case addresses whether the plaintiff black farmers who, again, did not file claims in *Pigford I*, may now participate in the *Garcia/Love* Framework established to compensate farmers discriminated against because of their sex or Hispanic ethnicity. The plaintiffs are the Black Farmers and Agriculturalists Association, Inc. (BFAA), which describes itself as "a not[-]for-profit organization created for the specific purpose of responding to the issues and concerns of black farmers in the United States and abroad," Appellants' Br. 4, and the estates of three now-deceased black male farmers (the individual plaintiffs), which allege that USDA discriminated against the farmers in lending programs during the 1980s. The individual plaintiffs' current challenge to their exclusion from the *Garcia/Love* Framework is pressed by the farmers' children and grandchildren, who are also members of plaintiff BFAA.

In 2013, after the *Pigford* process had closed, plaintiff BFAA unsuccessfully sought to intervene in *Garcia and Love* to assert, among other claims, that its members were entitled under the Equal Protection and Due Process Clauses to participate in the *Garcia/Love* Framework. *Garcia*, 304 F.R.D. 77, 81 (D.D.C. 2014), *aff'd*, No. 14-5175, 2014 WL 6725751 (D.C. Cir. Nov. 18, 2014); Love, 304 F.R.D.

85, 88 (D.D.C. 2014), *aff'd*, No. 14-5185, 2014 WL 6725758 (D.C. Cir. Nov. 18, 2014). The court denied intervention because, as relevant here, BFAA lacked standing to press its constitutional challenges. *Garcia*, 304 F.R.D. at 82. In the meantime, the three individual plaintiffs submitted claims to the *Garcia/Love* Framework. They received denials explaining: "To participate in this Process, you must be either Hispanic/Latino or female. . . . [Y]ou indicated that you are an African American male." J.A. 57, 64, 72.

BFAA and the individual plaintiffs then brought this putative class action against USDA and Epiq. They alleged that USDA and Epiq violated their Fifth Amendment due process and equal protection rights, as well as Title VI of the Civil Rights Act of 1964, by excluding them from the *Garcia/Love* Framework because of their race and sex.

The district court granted USDA's motion to dismiss the constitutional claims. It held that issue preclusion barred BFAA from relitigating its standing, because the *Garcia/Love* court had already decided the question. *Estate of Boyland v. Young*, 242 F. Supp. 3d 24, at 30 (D.D.C. 2017); *see also Garcia*, 304 F.R.D. at 82; *Love*, 304 F.R.D. at 90. The individual plaintiffs also lacked standing for much the same reason the *Garcia/Love* court had given for denying BFAA's standing: their lack of opportunity to present their discrimination claims was not fairly traceable to the *Garcia/Love* Framework, but to their

own failure to file timely claims for compensation under the *Pigford* settlement. The court dismissed the Title VI claim against Epiq on the ground that the *Garcia/Love* Framework was not a "program or activity" within the meaning of Title VI, and that Epiq had not received "federal financial assistance," a prerequisite to the statute's applicability.

II.

We review de novo the district court's dismissal for lack of standing, *Young Am.'s Found. v. Gates*, 573 F.3d 797, 799 (D.C. Cir. 2009), and for failure to state a claim on the merits, *Hispanic Affairs Project v. Acosta*, 901 F.3d 378, 385 (D.C. Cir. 2018). The plaintiffs bear the burden of establishing our jurisdiction, including the elements of standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). The requirements of Article III standing are injury in fact, causation, and redressability. *Id*. at 560-61. Injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical." *Id*. at 560 (internal quotation marks and citations omitted). The injury must also be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Id*. (internal quotation marks and alterations omitted). Finally, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id*. at 561 (internal quotation marks omitted).

Plaintiffs lack standing to sue USDA and Epiq for excluding them from the *Garcia/Love* Framework, because they have failed to show that the court could redress any injury they claim from that exclusion.

For purposes of analyzing plaintiffs' standing, we make the requisite assumption that they would prevail on the merits of their claim that, in excluding them from the *Garcia/Love* Framework, USDA and Epiq impermissibly discriminated against them because of their race and sex. Whether a plaintiff has a legally protected interest that supports standing does not require that he show he will succeed on the merits; if it did, every merits loss would amount to a lack of standing. Instead, "when considering whether a plaintiff has Article III standing, a federal court must assume, *arguendo*, the merits of his or her legal claim." *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007) (*citing Warth v. Seldin*, 422 U.S. 490, 501-02 (1975)); *see also Campbell v. Clinton*, 203 F.3d 19, 23 (D.C. Cir. 2000) (warning against "conflat[ing] standing with the merits").

Even assuming plaintiffs here would prevail on their challenge to their exclusion from the Framework, their injury is not redressable because they lack live credit discrimination claims to present there. The district court accepted the plaintiffs' description of their injury as "the loss of the 'opportunity . . . to present a meritorious claim for discrimination against'" USDA challenging past

credit discrimination, as do we. *Estate of Boyland*, 242 F. Supp. 3d at 31 (quoting Compl. ¶¶ 74, 83, 90). That loss of opportunity cannot be redressed by opening the Framework to plaintiffs, because any credit discrimination claims they once had under ECOA have been extinguished, as explained below.

Plaintiffs argue that accounting for this fact in our standing analysis impermissibly folds the merits of their case into standing, but that is not so. Plaintiffs see error only by mistaking what it means to assume, in analyzing standing, that they will prevail on the merits. We must provisionally treat the conduct plaintiffs challenge as in fact unlawful, but we do not assume away other, unchallenged constraints—whether of fact or law. Here, plaintiffs take aim at the limitation of the *Garcia/Love* Framework to victims of discrimination based on sex or Hispanic ethnicity. But they raise no claim against the Framework's limitation to farmers who unsuccessfully sought redress of credit discrimination from USDA before 1997.[2] That criterion, wholly

---

[2] Their only hint in that direction falls wide of the mark. They allege that "any socially disadvantaged farmer or rancher who had not filed a meritorious claim for relief against USDA" is still entitled to do so "under § 14011" of the Food, Conservation, and Energy Act of 2008. J.A. 19. But section 14011 by its terms establishes no such right. That provision says that "[i]t is the sense of Congress that all pending claims and class actions brought against the Department of Agriculture by socially disadvantaged

apart from the Framework's challenged sex- or ethnicity-based limitation, is, whether by operation of preclusion or the statute of limitations, fatal to their current claim.

Plaintiffs read our decisions in *Campbell and Animal Legal Defense Fund, Inc. v. Glickman (ALDF)*, 154 F.3d 426 (D.C. Cir. 1998), as requiring us to accept their "legal theory" when we evaluate their standing. Appellants' Br. 22. But those cases stand for the narrower proposition that a "party need not prove that the . . . action it attacks is unlawful . . . in order to have standing to level that attack." *ALDF*, 154 F.3d at 441 (quoting *La. Energy & Power Auth. v. FERC*, 141 F.3d 364, 368 (D.C. Cir. 1998)). Thus, in *Campbell* we held that plaintiff members of Congress had not suffered the requisite individualized injury to support their legislative standing to seek a declaration that President Clinton violated the Constitution's War Powers Clause, even if he did in fact violate the Clause. 203 F.3d at 23-24.

---

farmers or ranchers . . . including Native American, Hispanic, and female farmers or ranchers, based on racial, ethnic, or gender discrimination in farm program participation should be resolved in an expeditious and just manner." Pub. L. 110-234, § 14011, 122 Stat. 923, 1448 (2008) (codified at 7 U.S.C. § 2279-2 note). It did not thereby revive untimely claims, but only referred to "*pending* claims and class actions," several of which had been filed but not yet settled when the bill was passed. *Id.* (emphasis added).

We did not rest on the legal conclusion that the President "did not take any actions that constitute 'war' in the constitutional sense," as "[t]hat analysis . . . conflate[d] standing with the merits." *Id.* at 23 (disavowing concurrence's reasoning to that effect). In analyzing standing, we had to assume that the President *had* violated the Constitution.

Even assuming the *Garcia/Love* Framework unlawfully discriminates, as the current complaint alleges, plaintiffs' injuries are not redressable. That holding is wholly consistent with *Campbell* and *ALDF*. The bar plaintiffs face is no knock against their equal protection and Title VI claims against USDA and Epiq. The problem, rather, is that plaintiffs have not alleged that they have any live credit discrimination claims to press in the Framework. Plaintiffs did not make a discrimination complaint before July 1997, and are thus barred by ECOA's statute of limitations. The district courts here and in *Garcia/Love* nevertheless treated the plaintiffs as *Pigford I* class members, who by definition did make a discrimination complaint by that deadline. *See Estate of Boyland*, 242 F. Supp. 3d at 31; *Garcia*, 304 F.R.D. at 81; *Love*, 304 F.R.D. at 88. Even if plaintiffs did make such a complaint, however, they are barred by the *Pigford I* consent decree. Plaintiffs have articulated a theory for opening the Framework, but they have no theory for resurrecting the underlying claims they wish to process there. What follows is a detailed explanation of why that is so.

Plaintiffs do not allege that they complained to USDA before July 1997, and, accepting that they did not do so, two obstacles prevent them from participating in the *Garcia/Lov*e Framework, over and above USDA and Epiq's alleged discrimination. One is statutory: Congress only revived ECOA claims for those farmers who made a prior discrimination complaint by July 1, 1997. Because the plaintiffs' claims were never revived, they are subject to ECOA's ordinary statute of limitations (which is now five years). That means that their credit discrimination claims, which allege discrimination in the 1980s, are time barred. The second obstacle is that the plaintiffs fail to meet the basic criteria for participation in the *Garcia/Love* Framework, race and sex aside, because the Framework requires claimants to have complained of discrimination by July 1997. *See* Status Report Ex. 20-21, *Love*, No. 1:00-cv-02502 (D.D.C. July 18, 2012), ECF No. 162-1; *Garcia/Love* Framework ¶¶ VIII.A, VIII.B, VIII.C.1.g. Indeed, the *Garcia/Love* Framework includes this requirement because it was a key parameter in Congress's resurrection of ECOA claims. Whatever form the obstacle takes, it prevents the plaintiffs from processing their claims through the Framework.

If plaintiffs did complain of discrimination by July 1997, claim preclusion or the statute of limitations would bar their claims now. As for preclusion, if plaintiffs had made a preJuly 1997 race-based ECOA claim to USDA, they would have qualified as *Pigford I* class members; the *Pigford I*

complaint alleged precisely the same kind of racial discrimination as these plaintiffs' nested claims. *See* Seventh Am. Class Action Compl. 4-5, *Pigford v. Veneman*, No. 1:97-cv-1978 (D.D.C. Oct. 26, 1998), ECF No. 92. Plaintiffs do not allege that they opted out of *Pigford I*. If they did not, their claims are barred by the preclusive effects of the *Pigford I* consent decree, which included the following release:

> As provided by the ordinary standards governing the preclusive effects of consent decrees entered in class actions, all members of the class who do not opt out of this Consent Decree . . . and their heirs, administrators, successors, or assigns . . . hereby release and forever discharge the defendant and his administrators or successors, and any department, agency, or establishment of the defendant, and any officers, employees, agents, or successors of any such department, agency, or establishment . . . from—and are hereby themselves forever barred and precluded from prosecuting—any and all claims and/or causes of action which have been asserted in the Seventh Amended Complaint, or could have been asserted in that complaint at the time it was filed, on behalf of this class.

Consent Decree ¶ 18, Pigford, No. 1:97-cv-1978 (D.D.C. Apr. 14, 1999), ECF No. 167 ("Consent

Decree"). The court approved the decree, and it binds the class. *See Tritz v. U.S. Postal Serv.*, 721 F.3d 1133, 1141 (9th Cir. 2013) ("Courtapproved settlement agreements . . . have res judicata effect."); 21A Federal Procedure, Lawyers' Edition § 51:258 ("[A] consent judgment entered pursuant to a settlement agreement constitutes a final judgment on the merits in a res judicata analysis."); 18A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4443 (2d ed. 2002) (explaining that "settlement agreements and consent judgments ordinarily support claim preclusion").

The plaintiffs hypothesize that an African American female *Pigford I* class member who failed to present her credit discrimination claims in the *Pigford* process might nonetheless participate in the *Garcia/Love* Framework. They contend that must mean that *Pigford I* also lacks preclusive effect on the credit discrimination claims the individual plaintiffs seek to process as estates of African American male farmers. It does not. The *Garcia/Love* Framework only processes claims that USDA discriminated against claimants "due to their being Hispanic or female." *Garcia/Love* Framework ¶ I. An African American female farmer who failed to file a *Pigford* claim would have lost her opportunity to submit her race discrimination claims just as the plaintiffs here have. The *Garcia/Love* Framework would allow her recovery only for losses caused by sex discrimination, a type of discrimination not at issue in *Pigford* nor in any credit discrimination claims these plaintiffs may have had against USDA. Claim preclusion does not

prevent a plaintiff from asserting a ground of recovery that she could not have asserted in the earlier action. *See Littlejohn v. United States*, 321 F.3d 915, 920 (9th Cir. 2003). In *Stewart v. Rubin*, for example, the district court explained that a black female class member in a class action challenging racial discrimination "certainly would not be precluded by the Settlement Agreement" from separately litigating sex discrimination claims. 948 F. Supp. 1077, 1089 (D.D.C. 1996), *aff'd*, 124 F.3d 1309 (D.C. Cir. 1997).

Further, the *Pigford I* consent decree's release only precluded class members from litigating claims that were or could have been asserted in the operative complaint. Consent Decree ¶ 18. It is because *Pigford I* alleged race discrimination, not sex discrimination, that the black male plaintiffs are precluded even while a sex discrimination claim by the black female farmer in plaintiffs' example would not be. *See* 18A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4443 (2d ed. 2002) ("The basically contractual nature of consent judgments has led to general agreement that preclusive effects should be measured by the intent of the parties.").

Plaintiffs do not allege that they opted out of *Pigford* and timely filed their own suit, thereby avoiding *Pigford's* preclusive effect, but if they in fact did, they still fail because they map no route past ECOA's time bar. Even claims that were revived by Congress's tolling are by now time barred by the

revived claims' statute of limitations (which expired on October 21, 2000). Appropriations Act, Pub. L. No. 105-277, § 741, 112 Stat. 2681 (codified at 7 U.S.C. § 2279 notes).

In any of the scenarios in which the plaintiffs initially sought to complain to USDA of discrimination by July 1997, their claims have been extinguished.

To be clear, only the claims plaintiffs wish to present in the *Garcia/Love* Framework (the underlying claims of credit discrimination by USDA in the 1980s) are precluded or time barred. The claims they bring today under the Fifth Amendment and Title VI do not suffer those procedural defects. But the plaintiffs cannot end-run the procedural bars on their underlying credit discrimination claims by nesting them in new framework-discrimination claims not subject to those bars. Those bars operate independently from any potential discrimination by USDA and Epiq, and prevent us from redressing the plaintiffs' injury by offering them an "opportunity . . . to present a meritorious claim for discrimination against" USDA. Compl. ¶¶ 74, 83, 90.

Recognizing those barriers as a standing defect does not collapse all procedural bars into standing issues. If the plaintiffs here sidestepped all the frameworks and sued USDA directly for violating ECOA in the 1980s, the court would dismiss the case on grounds of claim preclusion or untimeliness, rather than standing. The plaintiffs have avoided

that fate by nesting procedurally barred claims in nonprocedurally barred claims, such that the claims they bring today cannot be dismissed for those reasons. Yet, because their underlying ECOA claims are procedurally barred, we cannot avoid the reality that, even if plaintiffs won an opportunity to present those claims in the Framework, they would be ineligible for redress and thereby lack standing to sue.

Plaintiffs never explained why the consent decree or statute of limitations would not bar their claims. They simply describe the "legal theory of their case" as being "that the USDA's administrative claims process whereby Epiq, at the direction of and on behalf of the USDA, expressly excludes African-American males from participating based solely on their race and gender violates the Fifth Amendment, notwithstanding the *Pigford* consent decrees." Appellants' Br. 23. Even accepting that theory as true does not overcome the independent hurdles of the *Pigford* consent decree and ECOA's statute of limitations. Taking all the complaint's allegations as true, one of those hurdles necessarily blocks the way. The plaintiffs therefore lack standing because their injury is not redressable—even if they satisfy the other prongs of the standing test, and even if they are right on the merits that the *Garcia/Love* Framework violates the law.

Because the standing defect is dispositive, we need not consider the district court's holding that issue preclusion prevents BFAA (alone or in addition

to the individual plaintiffs) from relitigating its standing. We affirm the district court's decision dismissing the case in its entirety.

So ordered.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTATE OF EARNEST BOYLAND, *et al.*, Plaintiffs,	)	
v.	)	Case No. 15-cv-1112 (TSC)
MICHAEL YOUNG, Acting Secretary, U.S. Dep't of Agriculture, *et al.*, Defendants,	)	

MEMORANDUM OPINION

In this case brought under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Fifth Amendment of the U.S. Constitution, Plaintiffs allege that they have been discriminated against by Defendants U.S. Department of Agriculture ("USDA") and Epiq Class Action & Claims Solutions, Inc. in the denial of their administrative discrimination claims. Before the court are Defendants' motions to dismiss. (ECF Nos. 5, 18). For the reasons stated below, both motions are GRANTED.

I. BACKGROUND

Plaintiffs in this case are the estates of three Black farmers who seek compensation for past discrimination by the USDA, as well as the Black Farmers & Agriculturalists Association, Inc.

("BFAA"), an organization which advocates for redress of the USDA's past discrimination. (Compl. ¶ 1). This case relates to litigation that has been ongoing in some form for over twenty years. Following decades of discrimination by the USDA against Black farmers in the denial, delay, or frustration of their applications for farm loans or other benefit programs, the federal government entered into a class settlement consent decree. *See Pigford v. Glickman* ("*Pigford I*"), 185 F.R.D. 82 (D.D.C. 1999). Following this settlement, the USDA awarded over one billion dollars in compensation and relief to approximately 16,000 successful claimants. *In re Black Farmers Discrim. Litig.* ("*Pigford II*"), 856 F. Supp. 2d 1, 10–11 (D.D.C. 2011). Over 60,000 additional claimants sought compensation under the *Pigford I* consent decree but were denied because their claims were untimely. *Id.* at 11. After conducting hearings into the *Pigford I* settlement and claims process, Congress "resurrected the claims of those who had unsuccessfully petitioned the Arbitrator for permission to submit late claim packages" by passing the Food, Conservation, and Energy Act of 2008 ("2008 Farm Bill"). *Id.* Approximately 40,000 claimants filed complaints in this court following the 2008 Farm Bill, and their claims were consolidated into the *Pigford II* litigation. *Id.* at 13. In 2011, the court in that case approved an additional settlement consent decree, with a potential total payout of an additional one billion dollars. *See White v. Vilsack*, 80 F. Supp. 3d 123, 125 (D.D.C. 2015) (recounting *Pigford* history). Unlike in *Pigford I*, the class members in *Pigford II*

were not permitted to opt out, and the settlement terms were thus binding on all class members. *See id.* at 126.

During the same time period, the USDA was engaged in class action litigation with other plaintiffs who similarly alleged discrimination by the agency. Two lawsuits on behalf of Hispanic farmers and female farmers were brought in 2000, but the courts denied class certification in both cases. *See Garcia v. Johanns*, 444 F.3d 625 (D.C. Cir. 2006) (affirming denials). Following these denials of class certification, the USDA voluntarily created an alternative dispute resolution ("ADR") administrative claims process for Hispanic and female farmers to resolve their discrimination claims against the USDA. *See Love v. Vilsack*, 304 F.R.D. 85, 87 (D.D.C. 2014) (describing administrative process established by the USDA); *Garcia v. Vilsack*, 304 F.R.D. 77, 79 (D.D.C. 2014) (same). Participation in this administrative claims process was conditioned on dismissal of the farmer's discrimination claims against the USDA. Defendant Epiq was selected to be the claims administrator. (Compl. ¶¶ 4–6).

Plaintiffs in this case—the estates of Earnest Boyland, David Shelton, and Lee Sylvester Caldwell—allege that they faced discrimination by the USDA during the relevant time period underlying the *Pigford I* litigation but failed to submit claims under either the *Pigford I* or *Pigford II* consent decrees. (Compl. ¶¶ 66, 68 (Boyland), 82 (Shelton), 89 (Caldwell)). Instead, in March 2013 Plaintiffs attempted to file claims under the ADR process established to resolve claims brought by Hispanic and

female farmers, and their claims were denied because the claimants identified as Black male farmers, not Hispanic or female. (*Id*. ¶¶ 71–73 (Boyland), 78–79 (Shelton), 85–86 (Caldwell)). Plaintiffs, including BFAA, on behalf of themselves and all similarly situated individuals, brought this litigation alleging violations of their Fifth Amendment rights to due process and equal protection, as well as violations of Title VI. BFAA also attempted to intervene in the *Love* and *Garcia* cases to bring similar constitutional claims, but the court denied intervention. *See Love*, 304 F.R.D. at 89–92; *Garcia*, 304 F.R.D. at 81–85.

II. LEGAL STANDARD

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim tests the legal sufficiency of a complaint. *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is plausible when it alleges sufficient facts to permit the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Thus, although a plaintiff may survive a Rule 12(b)(6) motion even where "recovery is very remote and unlikely," the facts alleged in the complaint "must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007) (internal quotation marks omitted). Evaluating a 12(b)(6) motion is a "context-specific task that requires the reviewing court to draw on its

judicial experience and common sense." *Iqbal*, 556 U.S. at 679.

III. DISCUSSION

A. Title VI Claims

In Counts I through IV, Plaintiffs allege that Epiq's denials of their claims violated Title VI because its determinations that they were ineligible for compensation were impermissibly based on their race. (Compl. ¶¶ 48–91). Under Title VI, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Epiq argues that Plaintiffs' Title VI claims should be dismissed because (1) Title VI does not apply to the USDA's administrative claims process at issue here and (2) a Title VI claim cannot be brought against Epiq because it does not receive federal financial assistance.[1] The court agrees.

Title VI defines "program or activity" as the operations of a state or local government, a higher education institution, a local educational agency or school system, or corporations and other private entities "principally engaged in the business of

[1]Epiq additionally argues that Plaintiffs' Title VI claims should be dismissed because Title VI requires proof of intentional discrimination, which Plaintiffs have not sufficiently alleged, and Plaintiffs lack standing to challenge the USDA program because they were not the intended beneficiaries. Because the court concludes that Title VI does not apply to Epiq in its role as a claims administrator for the USDA, the court need not consider these alternative arguments.

providing education, health care, housing, social services, or parks and recreation." 42 U.S.C. § 2000d-4a(1)–(4). This statutory definition excludes federal agencies, and therefore it is well-recognized that Title VI does not reach "the operations of the federal government and its agencies." *DynaLantic Corp. v. U.S. Dep't of Defense*, 885 F. Supp. 2d 237, 291 (D.D.C. 2012); *see also Wise v. Glickman*, 257 F. Supp. 2d 123, 132 (D.D.C. 2003); *Williams v. Glickman*, 936 F. Supp. 1, 5 (D.D.C. 1996). In the court's view, USDA's voluntary ADR process for resolving discrimination claims brought by Hispanic or female farmers against USDA is not a "program or activity" under the statutory definition because it does not involve any of the listed entities and therefore falls outside the scope of Title VI's coverage. While USDA has contracted with Epiq — a private corporation — to process individuals' claims, Plaintiffs have not alleged any facts that Epiq is "principally engaged in the business of providing education, health care, housing, social services, or parks and recreation" in order to fall within the statutory definition for a covered "program or activity" under Title VI.

Even if Epiq were covered by the statutory definition, Plaintiffs must further allege that Epiq receives federal financial assistance to carry out its program or activity. 42 U.S.C. § 2000d. While the term "financial assistance" is not defined by the statute, under USDA's Title VI regulations, promulgated pursuant to 42 U.S.C. § 2000d-1, "financial assistance" is defined as

> (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease or furnishing of services to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

7 C.F.R. § 15.2(g). The parties provided the court with no cases from this Circuit analyzing the scope of the term "financial assistance" in Title VI, particularly in the context of contracts to perform services for the federal government, and this question appears to be unresolved by the D.C. Circuit. However, in analyzing the scope of the term "federal financial assistance" in an analogous provision of the Rehabilitation Act, 29 U.S.C. § 704,[2] other district

---

[2] The Rehabilitation Act states that "[n]o qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial

judges in this Circuit have concluded that the statute does not extend to entities receiving payments made by the federal government in exchange for services. *See Lee v. Corrections Corp. of Am.*, 61 F. Supp. 3d 139, 144 (D.D.C. 2014) ("Courts . . . have consistently construed 'Federal financial assistance' to mean the federal government's provision of a subsidy to an entity, not the federal government's compensation of an entity for services provided"); *Abdus-Sabur v. Hope Village, Inc.*, --- F. Supp. 3d ----, 2016 WL 7408833, at *4 (D.D.C. Dec. 22, 2016) (same). Other Circuits have similarly concluded that to establish "federal financial assistance," there must be some allegation or evidence that the private entity received a subsidy, not simply compensation. *See Jacobson v. Delta Airlines, Inc.*, 742 F.2d 1202, 1210 (9th Cir. 1984) ("It is thus clear that payments . . . constitute federal financial assistance if they include a subsidy but that they do not constitute such assistance if they are merely compensatory."); *DeVargas v. Mason & Hanger-Silas Mason Co.*, 911 F.2d 1377, 1382 (10th Cir. 1990) (same); *Shotz v. Am. Airlines, Inc.*, 420 F.3d 1332, 1335 (11th Cir. 2005) (same). Moreover, at least one district judge outside of this Circuit has extended this subsidy analysis to Title VI. *See Jarno v. Lewis*, 256 F. Supp. 2d 499, 504–05 (E.D. Va. 2003) ("[T]he term 'federal financial assistance' should be given its plain and ordinary meaning, that is, aid

---

assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." 29 U.S.C. § 704 (emphasis added).

provided to assist rather than to compensate for services rendered.").

Here, Plaintiffs do not allege any facts with respect to the relationship between Epiq and the USDA beyond stating that Epiq is "employed" as a claims administrator. (See Compl. ¶ 4 ("Defendants, USDA employed or caused to be employed Defendant, EPIQ a/k/a the claims administrator, to implement Defendant, USDA's unconstitutional claims procedure."), ¶ 54 ("Defendant, EPIQ acted within the scope of its employment by Defendant, USDA.")). While Plaintiffs allege in conclusory language that Epiq is a "direct recipient of federal funds" and "an entity receiving federal funds" (id. ¶¶ 5, 69), Plaintiffs have not alleged facts to establish that Epiq receives a subsidy, or anything other than mere compensation, for its services. Therefore, Plaintiffs have failed to plead sufficient facts to establish that the USDA's administrative process for resolving discrimination claims, administered by Epiq, is covered by Title VI, which is the necessary first step in alleging a Title VI violation. *See Lee*, 61 F. Supp. 3d at 144 (dismissing Rehabilitation Act claim because "plaintiff d[id] not allege that defendant receive[d] subsidies from the federal government" to establish it received financial assistance). Epiq's motion to dismiss is therefore GRANTED.

B. Constitutional Claim

Plaintiffs next allege in Count V of their Complaint that the USDA violated their Fifth Amendment equal protection and due process rights by establishing an administrative claims process that considers only discrimination claims brought by

Hispanic and female farmers.[3] (Compl. ¶¶ 92–117). The USDA argues that the issue of BFAA's standing to pursue this challenge has already been determined by another judge of this court, and therefore the doctrine of *res judicata* bars re-litigating the issue. The court agrees, and further concludes that the individual Plaintiffs' claims should also be dismissed for failure to establish that their alleged injuries are fairly traceable to the remedy they seek.

The doctrine of issue preclusion "bars parties from re-litigating any issue 'contested by the parties and submitted for judicial determination in [a] prior case' so long as 'the issue [was] actually and necessarily determined by a court of competent jurisdiction in that prior case' and 'preclusion in the second case [would] not work a basic unfairness to the party bound by the first determination." *Gov't of Rwanda v. Johnson*, 409 F.3d 368, 374 (D.C. Cir. 2005) (quoting *Yamaha Corp. of Am. v. United States*, 961 F.2d 245, 254 (D.C. Cir. 1992)). "Issue preclusion applies to threshold jurisdictional issues like

---

[3] It is unclear from Plaintiffs' Complaint whether their constitutional claims are also brought against Epiq. To the extent that they are, Epiq moves to dismiss these claims as well, on the basis that as a private non-governmental entity it may not be sued under the Constitution. Plaintiffs did not respond to Epiq's motion on these claims, and therefore conceded that these claims should be dismissed. *See, e.g., Satterlee v. Comm'r*, 195 F. Supp. 3d 327, 337–38 (D.D.C. 2016) (treating arguments in a motion to dismiss as conceded when plaintiffs failed to address those arguments). Therefore, without addressing the merits of Epiq's argument, the court will grant Epiq's motion to dismiss as to these claims.

standing as well as issues going to a case's merits." *Nat'l Ass'n of Home Builders v. EPA*, 786 F.3d 34, 41 (D.C. Cir. 2015).

In *Love* and *Garcia*, as here, BFAA sought a court order declaring that the Fifth Amendment's equal protection and due process protections "mandate[] that its members . . . [we]re entitled to file claims under the framework established for Hispanic and female farmers." *Garcia*, 304 F.R.D. at 81; *Love*, 304 F.R.D. at 88. The courts determined in both cases that BFAA "failed to demonstrate Article III standing to pursue" its constitutional claims. *Garcia*, 304 F.R.D. at 82–83; *Love*, 304 F.R.D. at 89–90. Specifically, the court noted that BFAA's members' purported injuries—i.e., the inability to have their claims adjudicated on the merits—were the direct result of *Pigford II's* bar on any future *Pigford* claims, and as a result BFAA failed to establish how these injuries were "fairly traceable" to the USDA's administrative claims process or how the requested relief—participation in that process despite their claims already being barred—would redress that injury. *See id.* BFAA raises the same claim and seeks the same remedy here. (*See* Compl. ¶¶ 92–117, Section VII). Because the issue of BFAA's Case standing to challenge the USDA's administrative claims process on these constitutional grounds has already been fairly litigated following BFAA's motions to intervene in Love and Garcia, the court finds that BFAA is barred from litigating that issue

here, and will therefore GRANT the USDA's motion as to BFAA.[4]

With regard to the remaining Plaintiffs, the court must also consider whether they have standing to pursue their claims. The court's power under Article III "exists only to redress or otherwise to protect against injury to the complaining party." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Plaintiffs bear the burden of establishing each element of Article III standing. *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Thus, Plaintiffs must show: "(1) an 'injury in fact' that is 'concrete and particularized' as well as 'actual or imminent'; (2) a 'causal connection' between the injury and the challenged conduct; and (3) a likelihood, as opposed to mere speculation, 'that the injury will be redressed by a favorable decision.'" *Ark Initiative v. Tidwell*, 749 F.3d 1071, 1075 (D.C. Cir. 2014) (quoting *Lujan*, 504 U.S. at 560–61). "The absence of any one of these

---

[4] Though the Boyland, Shelton, and Caldwell estates did not seek to intervene in *Love* or *Garcia*, the USDA still contends that issue preclusion bars their claims for the same reasons as BFAA's. The USDA argues that the individual Plaintiffs are organizational members of BFAA and are in privity with BFAA, and therefore should be bound by the same preclusive effect of the court's intervention rulings in those cases. Plaintiffs failed to respond to this argument in their Opposition, and the USDA argues in its Reply that the court should treat the issue as conceded. However, the court need not reach the issue of whether these Plaintiffs are in privity with BFAA, and will instead independently consider whether they have standing to pursue their claims here.

three elements defeats standing." *Newdow v. Roberts*, 603 F.3d 1002, 1010 (D.C. Cir. 2010).

Plaintiffs allege that they have been injured by the loss of the "opportunity [] to present a meritorious claim for discrimination against" the USDA. (Compl. ¶¶ 74 (Boyland), 83 (Shelton), 90 (Caldwell)). This injury must be "fairly traceable" to the USDA's allegedly unlawful conduct. *Nat'l Ass'n of Home Builders*, 667 F.3d at 11. The USDA argues that, as the court decided with respect to BFAA in *Love* and *Garcia*, Plaintiffs' injuries are "fairly traceable" only to their failure to participate in the *Pigford I* or *Pigford II* litigation, because under the binding terms of that settlement they are now unable to seek relief for injuries that might have been redressed by the *Pigford* consent decrees. Therefore, the USDA argues, Plaintiffs' injuries are not fairly traceable to its administrative claims process for Hispanic and female farmers. Because there is no causal connection between the Plaintiffs' alleged injuries and the USDA's claims process, the USDA further argues that these injuries are unlikely to be redressed by a favorable decision in this litigation.

In response, Plaintiffs contend that *Pigford I* does not preclude their discrimination claims, as Congress in the 2008 Farm Bill revived the *Pigford* claims of those individuals who failed to file timely claims. However, Plaintiffs have stated in their Complaint that they did not participate in either the *Pigford I* or *Pigford II* litigation, and so it is not clear to the court, and Plaintiffs offer no guidance, as to why the 2008 Farm Bill is relevant to the question of whether Plaintiffs here may still bring discrimination

claims against the USDA. It appears to the court that Plaintiffs' claims regarding past discrimination by the USDA are barred by the *Pigford* consent decrees, and the 2008 Farm Bill offers no help to Plaintiffs here. Plaintiffs have not alleged how their inability to now pursue claims for past discrimination as a result of *Pigford II* are traceable to the USDA's administrative claims process for Hispanic or female farmers, or how their requested relief—an order requiring participation in that claims process—would redress their injuries. As a result, the court concludes that Plaintiffs have failed to establish the necessary elements of Article III standing. The court will therefore GRANT the USDA's motion to dismiss the individual Plaintiffs' constitutional claims.

IV. CONCLUSION

For the foregoing reasons, EPIQ's motion to dismiss is GRANTED, and the USDA's motion to dismiss is also GRANTED.

Date: March 16, 2017

Tanya S. Chutkan

TANYA S. CHUTKAN
United States District Judge