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In The Supreme Court of the United States

BLACK FARMERS AND AGRICULTURALISTS ASSOCIATION, INC., THOMAS BURRELL, MARY FERGUSON, CLAUDETTE JACKSON, AND ALLIE TILLIS,
Petitioners

v.

BROOKE L. ROLLINS, SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE AND WILLIAM BEAM, ADMINISTRATOR FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE FARM SERVICE AGENCY,
Respondents.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI
with Appendix

Leo P. Ross
ATTORNEY AT LAW
915 S. High St
Columbus, Ohio 43206
leoross1977@gmail.com
614-316-9144
Counsel for Petitioner

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QUESTIONS PRESENTED

1. Whether the United States Department of Agriculture's ("USDA") policy, codified within USDA's Discrimination Financial Assistance Program ("DFAP"), that excludes applications for financial assistance submitted on behalf of the estates of deceased farmers for past USDA discrimination in farm lending programs ("Legacy claims"), violates Section 22007 of the Inflation Reduction Act of 2022, Pub. L. No. 117-169 (hereinafter "Section 22007, and IRA for "Inflation Reduction Act").

2. Whether the USDA policy of excluding Legacy Claims from DFAP violates the Administrative Procedure Act.

3. Whether the USDA policy of excluding Legacy Claims from DFAP violates 42 U.S.C. §§1981 or 1982.

4. Whether the USDA policy of excluding Legacy Claims from DFAP violates the Due Process Clause of the United States Constitution.

5. Whether the Circuit Court's analysis of USDA's DFAP policy of excluding Legacy Claims complied with Court's duty under Article III of the United States Constitution to exercise independent judgment as explained in Loper Bright Enterprises, et al. v. Raimando, 603 U.S. ___ 2024 144 S. Ct. 2244 (2024), to determine if USDA acted within its authority under §22007.

PARTIES

1. Petitioner, Black Farmers & Agriculturalists Association, Inc. (BFAA) is a not-for-profit organization created for the specific purpose of responding to issues and concerns of Black farmers and ranchers in the United States and abroad. Formed in 1997, the organization has a membership of more than one thousand five hundred (1,500) farmers nationwide, and 21 state chapters. BFAA monitored the conduct of the U.S. Department of Agriculture in the historic 1999 class action lawsuit, Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) (hereinafter "Pigford")[1].

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[1]The historical context that gives rise to this litigation and the need for BFAA was summarized by the district court in Pigford in its order approving settlement as follows:

> 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 1, 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

2. Petitioner, Thomas Burrell, is a farmer and President of BFAA. Mr. Burrell is representative of other BFAA members who have claims that meet Section 22007's eligibility criteria. BFAA has among its membership individuals with qualifying claims that must be asserted on behalf of decedents' estates. BFAA has persistently pursued relief from USDA for

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> 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."

Docket No. 232, p. 69.

BFAA's purpose is to assist Black farmers, many of whom are sharecroppers or descendants of sharecroppers, in connection with their understanding of and participation in USDA settlement processes as well as to seek prospective relief on their behalf, where appropriate.

racial discrimination on behalf of estates. For instance, the Estate of David Shelton, the Estate of Lee Sylvester Caldwell and the Estate of Earnest Lee Boyland. See, United States District Court, Case No. 15-cv-1112 (TSC).

3. Petitioners, Claudette Jackson, Mary Ferguson and Allie Tillis have suffered personal injury, the loss of inheritance, as a result of persistent USDA farm loan program racial discrimination. Their losses are directly traceable to USDA racial discrimination against their decedents, who lost land or were forced to discontinue farming thereby depriving these Petitioners of the opportunity to farm. These petitioners would have farmed but for USDA discrimination. Petitioner Tillis' father and grandmother had to curtail farming operations and sell land, needed to continue farming due to USDA discrimination in farm lending programs.

4. Respondent, Brooke L. Rollins, is the Secretary of Agriculture. She is responsible for leading the USDA, which includes the Farm Service Agency ("FSA"). Under Section 22007 of IRA. Respondent Rollins is required to provide debt relief to farmers

who experienced discrimination in farm lending programs prior to 2021.

5. Respondent William Beam is Administrator for USDA's FSA. In this role, Mr. Beam provides leadership and direction on agricultural policy, administering USDA farm loan programs, and managing conservation, commodity, disaster, and farm marketing programs through a national network of offices including offices in the Western District of Tennessee.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for Sixth Circuit that affirmed the Judgment of the United States District Court for the Western District of Tennessee dismissing Petitioners' Motion for an order enjoining the exclusion of Legacy Claims from the United States Department of Agriculture Discrimination Financial Assistance Program.

OPINIONS BELOW

January 9, 2024, Opinion of the Western District of Tennessee, denying Petitioners' Motion for a Preliminary Injunction and granting Respondents' Motion to Dismiss.

October 8, 2025, Opinion of the United States Court of Appeals for the Sixth Circuit affirming the January 9, 2024, Opinion of the United States District Court for the Western District of Tennessee.

December 8, 2025, Opinion of the United States Court of Appeals for the Sixth Circuit Denying Petitioners' Request for Rehearing and Rehearing En Banc of the October 8, 2025, Order.

JURISDICTION

The Opinion and Judgment of the United States Court of Appeals for the Sixth Circuit denying Rehearing and Rehearing En Banc was entered on December 8, 2025.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATUTES:

42 U.S.C. §1981

42 U.S.C. §1982

§1006 of the American Rescue Plan Act of 2021 (ARPA) Pub. L. 117-2, 135 Stat. 4 (2021)

Inflation Reduction Act ("IRA") Pub. L. 117-169 126 Stat. 1818 10, 11 Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, §721, 112 Stat. 2681.

Administrative Procedures Act, 5 U.S.C. §§551-559, 701-706

Due Process Clause of the Fifth Amendment

OTHER AUTHORITIES:

Fed. R. Civ. P. 12 (b)(6)

STATEMENT OF THE CASE

A) STATEMENT OF THE FACTS

Petitioners sought judicial review of final agency action by the United States Department of Agriculture in connection with implementation of Section 22007 of the Inflation Reduction Act (hereinafter "IRA") Pub. L. 1 17-169 136 Stat. 1818. The IRA was signed into law on August 16, 2022. The IRA provided $2.2 Billion dollars in financial assistance to farmers, ranchers and forest landowners who prior to January I, 2021, experienced discrimination in a USDA farm lending program. Following enactment of the IRA, USDA undertook measures to implement Section 22007. In that connection, USDA initially announced on July 7, 2023, that USDA had established a Discrimination Financial Assistance Program, (hereinafter "DFAP") to disburse the funds appropriated by Congress. Under DFAP, persons discriminated against in a USDA loan program prior to January I, 2021, were initially required to submit applications for financial assistance by October 31, 2023. On September 23, 2023, USDA extended the October 31, 2023 deadline until January 13, 2024.

Petitioners alleged the January 13, 2024 deadline was arbitrary and capricious, violative of Separation of Powers and Due Process for the reason Petitioners, with Legacy Claims, those being submitted on behalf of deceased farmers whose heirs had to obtain probate court or other judicial authority in order to apply, coupled with the complexity of the DFAP application rendered even the revised deadline both untenable and unlawful.

In past instances where USDA had provided financial assistance to farmers discriminated against by USDA, discrimination claimants were required to submit a mere three page application for relief financial assistance. The application window was open for significantly longer. See, ECF Docket No. 1-1, Page ID #18, for a copy of the relevant DFAP application. The DFAP application is 40 pages in length. The application window although extended, was for a mere 74 days. The January 13, 2024, extended deadline still did not allow sufficient time for Legacy claimants to apply, even if USDA would accept their applications, which it would not.

There is no authority in Section 22007 for this shortened application period. The shortened application window was unjustified as Congress stated in §22007 that funds are available for

financial assistance until September 30, 2031. Petitioners were aggrieved by the shortened application window, and the exclusion of legacy claims. The Circuit Court affirmed the district court's denial of relief to Petitioner's on grounds that §22007 required USDA to accept application on behalf of living farmers only, a conclusion unsupported by the text of §22007, and the basis for this Petition.

Under the Administrative Procedures Act, 5 U.S.C. §706(2) judges are required to decide all relevant questions of law, interpret Constitutional and statutory provisions and hold unlawful and set aside agency action that exceeds statutory authority. Instead of applying this Article III driven mandate, here the Circuit Court, without any statutory basis, deferred to an inferior but articulable policy preference of USDA, namely the exclusion of legacy claims from DFAP participation. The court justified this limited review of USDA's policy preference on grounds that the narrow standard of review established in Tennessee v. United States Department of Agriculture, Case No. 3:22-cv-257, 2023 WL 3048342 at 14(E.D. Tenn. March 29, 2023) required the court to uphold the USDA policy excluding legacy claims because the USDA the policy was reasonably discernable. See, ECF Docket No.

74, PAGE ID #741. The Circuit Court agreed with the district court conclusion that: "Under this narrow standard of review…an agency must examine the relevant data and articulate a satisfactory explanation for its action." This limited review resulted in a failure to consider historical precedents, context, legislative history or USDA's documented record of extensive past discrimination. Accordingly, the appellate court failed to perform its Article III role and basically merely deferred to the Agency policy.

The decisions of the district and circuit court should also be reversed for the reason the USDA rule excluding Legacy claims violates the APA, Section 22007, and the Constitution. The exclusion of Legacy claims perpetuates the consequences of Black farmers' inability to devise land lost through past USDA discrimination in lending. The DFAP policy of' excluding estates is arbitrary and capricious, rendering it due to be set aside under APA §706. The circuit court abandoned its duty under §706 of the Administrative Procedures Act to independently determine the law.

B) COURSE OF THE PROCEEDING

On October 16, 2023, Petitioners filed a consolidated putative class action against Respondents. (ECF Docket No. 41). On October 31, 2023, Petitioners filed a Corrected Second Motion for Preliminary Injunction (ECF Docket No. 54). Respondents' Consolidated Brief in Opposition to Petitioners' Second Motion for a Preliminary Injunction and in Support of Respondents' Cross-Motion to Dismiss (ECF Docket No. 64-1), was filed on November 11, 2023. Petitioners' Reply brief (ECF Docket No. 68) was filed on November 23, 2023, Respondents' Reply (ECF Docket No. 72) was filed on December 7, 2023.

On January 9, 2024, the district court denied Petitioners' Motion for Injunctive Relief and granted Respondents' Motion to Dismiss. ECF Docket No. 74. Petitioners' Notice of Appeal was filed on February 2, 2024. ECF Docket No. 76.

On October 8, 2025, the United States Court of Appeals for the Sixth Circuit affirmed the Decision of the District Court.

On December 8, 2025, the United States Court of Appeals denied Petitioners' Motion for Rehearing and Rehearing En Banc.

REASON FOR GRANTING THE PETITION

A. SECTION 22007 COMPENSATORY FRAMEWORK

This Petition should be granted, as was pointed out in the dissent from the Circuit Court majority opinion because the opinion failed to adequately address the fact that contrary to the majority opinion this term "assistance" within §22007 is measured by a distinctly compensatory framing, which rendered Legacy claims eligible. The dissent states:

> First, recovery under [§22007] is measured by the "consequences" flowing from past discrimination, a distinctly compensatory framing. This is in contrast to the majority's understanding that "assistance" connotes "something useful or necessary to achieving an end or completing an undertaking or effort"-i.e., a payment amount tied to the costs of that undertaking, not to the consequences of a past injury.
>
> Second, to the extent that we can consider the DFAP Guide-a document

> not in the record or, seemingly, even known to the parties-it, too, suggests a compensatory element. For example, it permits payment to former farmers and "Potential Producers." DFAP Guide at 10, 15 (noting that (1) the term "Farmers" "includes applicants who-at any point-owned or leased a farming[] operation"; and (2) the term "Potential Producers" "includes applicants who never owned or leased a farming[] operation" (first emphasis added)). These individuals would not receive assistance, at least not in connection with any current farming efforts.

See, Panel decision, p. 14.

There is no rational basis for DFAP to permit payments to former farmers and persons who "would have" farmed but for USDA malfeasance, and simultaneously deny eligibility, to heirs of farmers who where unable to farm or inherit land because of USDA racial discrimination against their immediate ancestors[2]. The Circuit decision side steps this issue

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[2]USDA's contention that Legacy Claims are not eligible to participate in the DFAP has no basis in Section 22007. There is no authority in Section 22007 for Respondents to exclude legacy

claims from DFAP participation. DFAP recognizes claims by entities suffering far more remote and less direct discrimination in USDA loan programs than legacy claimants. In point of fact, the DFAP Application recognizes the following. See, below for Application instructions.:

> 1. Step 1 - "About You" - ECF Docket No. 1-1, PageID #18
> "If you are/were a member of a business entity that participated in a USDA form loan program, you must also fill in Step 2, Part c…If you have a legal guardian, this part's identifying information refers to you (even if it is completed by the legal guardian); the legal (It appears that the DFAP application left out words in this section that should follow the words " the legal")
>
> 2. Step 3 - "Eligibility for this Program as a Farmer or Rancher"
> Fill out Part A, below if you have ever been a farmer or rancher
> Fill out Part B, below if you intended to become a farmer or rancher, but were unable to do so because you were discriminatorily denied access to a USDA farm loan program.
> See, ECF Docket No. 1-1, PageID #27.
>
> 3. Step 4 - Eligibility for this Program as a Borrower or Attempted Borrower in a USDA Loan Program.
> See, ECF Docket No. 101, PageID #33.

The upshot of this point is DFAP permitted applications on behalf of persons who would have farmed, but refused to accept applications for Legacy claimants, was would have farmed if USDA had not discriminated against their immediate ancestors.

by stating who qualifies as a farmer was not before the Court, when the DFAP application states persons who intended to become a farmer or rancher were eligible. See footnote 3. As the Dissent correctly points out USDA accepted applications from persons who are not farmers nonetheless excluded Legacy claims.

This Petition should also be granted because the Panel majority either failed to utilize or improperly employed traditional tools of statutory construction as explained recently in Loper Bright v. Raimando, 603 U.S. 369 (2024), in connection with interpretation of the term "financial assistance" within §22007 of the IRA. ThePanel decision's foundation is the flawed premise, that §22007 of the IRA repealed §1006 of the American Rescue Plan of 2021 ("ARPA") Pub. L. 117-2, 135 Stat. 4 (2021),this is incorrect. The express language within IRA Section 22007 clearly states it did not repeal §1006, it merely amended it. The Panel's analysis of §22007 proceeds from use of the tools of statutory construction germane to a statute that has been repealed, rather than use of the tools of statutory construction germane to a statute that has only

been amended, not repealed. By reason of the Panel treating §22007 as the successor to a repealed statute rather than an amended one, the Panel decision conflicts with the following binding authorities:

> 1. The decisions of the United States Supreme Court in Posada v. National City Bank, 296 U.S. 497 (1935); Morton v. Mancari, 417 U.S. 535 (1974); Epic Sys Corp. v. Lewis, 138 S. Ct. 1612 (2018); National Association of Home Building v. Defs. of Wildlife, 551 U.S. 644 (2007); which state that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute and that repeals by implication, the basic premise of the Panel decision, are disfavored. (Emphasis added.)[3]

[3]The Panel decision in this appeal begins with the erroneous statement "Section 22007 of the Inflation Reduction Act of 2022 repealed and replaced §1006 of the American Rescue Plan Act of 2021. Section §22007 states, "§1006 of the American Rescue Plan itself plain of 2021 (7 U.S.C. 2279) note; Pub. Law 117-2 is amended, not repealed as claimed in the Panel decision.

2. The Panel decision conflicts with this Court's Opinion in Jason Arangure v. Whitaker, 911 F.3d 333 (2018), that "Court's always have an emphatic duty to say what the law is citing Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). The Panel decision here Contrary to the approach suggested in Arangure, converts its authors into policy makers rather than expounders of the law as required by Arangure.

3. Rehearing and Rehearing en banc is appropriate here to examine the dissenting opinion view that §22007 has a compensatory framework and that DFAP eligibility should have been extended at a minimum to claims brought[4] on behalf of farmers who were alive when §22007 took effect.

In 2021, the COVID-19 pandemic prompted Congress to target farm-lending discrimination

[4]The term "Legacy Claim" is a claim advanced by an heir of a deceased farmer, on behalf of the decedent's estate.

through affirmative legislation. In the American Rescue Plan Act of 2021 ("ARPA"), Congress appropriated money to help "socially disadvantaged farmers" - a term the statue defined by using the farmer's or ethnicity. Pub. L. No. 117-2, tit. 1, subtitle A., §1006(b)(5), (c)(3), 135 Stat. 4, 14(2022); see, 7 U.S.C. 2279(a)(5). Due to this racial classification, §1005 of ARPA was expressly repealed by §22008 of the Inflation Reduction Act of 2022.[5] See, Holeman v. Vilsack, 117 F. 4th 906, 910 (6th Cir. 2024) (collecting cases). Contrary to the statement in the Panel decision however, Section 22007 of the Inflation Reduction Act of 2022 amended, but did not repeal §1006, a companion provision of the expressly repealed, §1005. Pub. L. No. 117-169, tit. II, subtitle C. §22007, 136 Stat. 1818, 2021-23 (2022). By important contrast, the IRA §22007 only amended Section 1005's companion provision, §1006, it did not repeal it as incorrectly stated by the Panel.

Prior to the amendment of §1006 by §22007, claims for financial assistance submitted on behalf of

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[5]Section 22008 of IRA states:

Section 22008 REPEAL OF FARM LOAN ASSISTANCE
Section 1005 of the American Rescue Plan Act of 2021 (7 USC 1921) note; Public Law 117-2) 6 repealed.

the estates of deceased Black farmers, "Legacy claims," were eligible for relief for financial injury caused by pervasive historic USDA discrimination in farm lending practices.[6] Section 22007 of the IRA amended the remedial legislation enacted by Congress in §1006 of the ARPA. Section 22007 states, the following, (note: it does not mention that it disqualified parties previously eligible under Section 1006 from eligibility under the amended statute):

> SEC. 22007. USDA ASSISTANCE AND SUPPORT FOR UNDERSERVED FARMERS, RANCHERS, AND FORESTERS.
>
> Section 1006 of the American Rescue Plan Act of 2021 (7 U.S.C. 2279 note; Public Law 117-2) is amended to read as follows:

[6]Section 1006 of the ARPA, provides in pertinent part:

"SEC. 1006.[7] USDA ASSISTANCE AND SUPPORT FOR UNDERSERVED FARMERS, RANCHERS, FORESTERS.

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[7]SEC. 1006. USDA ASSISTANCE AND SUPPORT FOR SOCIALLY DISADVANTAGED FARMERS, RANCHERS, FOREST LAND OWNERS AND OPERATORS, AND GROUPS.

(a) APPROPRIATION.-In addition to amounts otherwise available, there is appropriated to the Secretary of Agriculture for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,010,000,000, to remain available until expended, to carry out this section.

(b) ASSISTANCE.-The Secretary of Agriculture shall use the amounts made available pursuant to subsection (a) for purposes described in this subsection by-

(2) using not less than 5 percent of the total amount of funding provided under subsection (a) to provide grants and loans to improve land access for socially disadvantaged farmers, ranchers, or forest landowners, including issues related to heirs' property in a manner as determined by the Secretary; …

(2) SOCIALLY DISADVANTAGED FARMER, RANCHER, OR FOREST LANDOWNER.-The term "socially disadvantaged farmer, rancher, or forest landowner" means a farmer, rancher, or owner or operator of nonindustrial private forest land who is a member of a socially disadvantaged group.
(3) SOCIALLY DISADVANTAGED GROUP.-The term "socially disadvantaged group" has the meaning given the term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).

"(e) DISCRIMINATION FINANCIAL ASSISTANCE.-In addition to amounts otherwise available, there is appropriated to the Secretary of Agriculture for fiscal year 2022, to remain available until September 30, 2031, out of any money in the Treasury not otherwise appropriated, $2,200,000,000 for a program to provide financial assistance, including the cost of any financial assistance, to farmers, ranchers, or forest landowners determined to have experienced discrimination prior to January 1, 2021, in Department of Agriculture farm lending programs, under which the amount of financial assistance provided to a recipient may be not more than $500,000, as determined to be appropriate based on any consequences experienced from the discrimination, which program shall be administered through 1 or more qualified nongovernmental entities selected by the Secretary subject to standards set and enforced by the Secretary.

At no time has Congress ever enacted legislation that states persons eligible under Section 1006 of ARPA are not eligible under Section 22007 of the IRA. Following judicial challenges to ARPA's §§1005 and 1006's limitation of eligibility for financial assistance to socially disadvantaged farmers, which is a racially based classification, Congress expressly repealed §1005 in §22008 of the Inflation Reduction Act. Congress enacted §22007. Section 22007 merely amended §1006. The amendment did not exclude socially disadvantaged farmers or previously eligible entities such as decedent's estate from eligibility for financial assistance, Section 22007 expanded eligibility to include farmers from all racial groups for eligibility. It also created DFAP to administer the program and extended eligibility not only to farmers who experienced discrimination in a USDA lending program, but made persons who would have farmed, but for discrimination, eligible. Thus there is no requirement in §22007 that an applicant must presently be a farmer. This glaringly ignored point in the Panel decision is another reason for granting the Petition.

What is central to this Petition is §22007 should have been viewed by the Panel through the

historic prism of Congressional response to USDA discrimination, over time, not to the limited contemporary context into which it was placed by the Panel decision. The Panel decision's approach in this regard violated well settled principles of statutory construction, because it did not rely on the canon of construction for an amended statute and failed to consider relevant legislative history.

The challenges to §1006 were based on eligibility limitation to "socially disadvantaged farmers," a term that includes "Legacy claimants," claimants on behalf of the estate of deceased Black farmers. Section 22007 did not eliminate previously eligible claimants, it expanded eligibility to victims of past discrimination, regardless of race or ethnicity. The Panel decision concludes that previously eligible legacy applications are no longer eligible because §22007's use of the term "financial assistance" excludes from eligibility claims based on "backward-looking" discrimination committed against deceased farmers, because this relief is compensatory rather than assistance which connotes "forward-looking" relief. The Panel's conclusion is unsupportable because it was reached through a statutory interpretation process that ignored settled canons of statutory construction. Moreover, the Panel

failed to consider legislative intent in order to identify whether the term "financial assistance" has specialized meaning when it comes to Congressional response to the national disgraceful lending practices engaged in by USDA and their continuing impact on Black farmers and their families. See, Stephen Breyer, "On the Uses of Legislative History in Interpreting Statutes," 65 S. Cal L. Rev. 845 (1992): 1) to identify the reasonable purposes of the statute. See, Pierce v. Underwood, 487 U.S. 553 (1988) and In re. Arnold Print Works, Inc., 815 F.2d 165 (1st Cir. 1987), 2) to choose between reasonable interpretations of a politically controversial statute. See, Local Div. 589 v. Massachusetts, 666 F.2d 618 (1st. Cir. 1981); or 3) to determine if words in a statute have a "specialized meaning." See, In re. Arnold Print Works, Inc. 815 F. 2d 165 (1st. Cir. 1987). Interpretation of §22007 presented a case where legislative history should have been considered because the term "final assistance" should have been construed in the context of the purposes of §1006 of ARPA and the ongoing efforts of Congress to respond to decades of USDA unfairness in lending and the loss of Black-owned farm land due to USDA malfeasance.

The Panel's failure to correctly regard §22007 as an amendment to §1006 rather than a replacement caused the Panel to ignore important aspects of Congressional intent that make it clear §22007 was not intended to exclude §1006 eligible claimants, but instead to expand eligibility to claimants other than socially disadvantaged persons. The approach that should be taken when interpreting a statute that has been amended rather then repealed was not followed by the Panel which renders the Panel decision fallacious, policy making and rather than a statement of what the law is, a mere linguistic exercise, that should not be permitted to deny relief that Congress intended to accord to thousands of Black farmers,

B. REPEAL VERSUS AMENDMENT

It is undisputed that §22007 contains no words of repeal, as suggested by the Panel. The United States Supreme Court stated in Posadas v. National City Bank, 296 U.S. 497 (1931, the following concerning a statute's amendment versus repeal:

> The result of the authorities cited is that when an affirmative statute contains no expression of a purpose to repeal a prior law, it does not repeal it

unless the two acts are in irreconcilable conflict, or unless the [***356] later statute covers the whole ground occupied by the earlier and is clearly intended as a substitute for it, and the intention of the legislature to repeal must be clear and manifest."

The implication of which the cases speak must be a necessary implication. Wood v. United States, 16 Pet. 342, 362-363. It is not sufficient, as was said by Mr. Justice Story in that case, "to establish that subsequent laws cover some or even all of the cases provided for by [the prior act]; for they may be merely affirmative, or cumulative, or auxiliary." The question whether a statute is repealed by a later one containing no repealing clause, on the ground of repugnancy or substitution, is a question of legislative intent to be ascertained by the application of the accepted rules for ascertaining that intention. United States v. Claffin, 07 U.S. 546, 551; Eastern Extension Tel.

> Co. v. United [**353] States, 231 U.S. 326, 332. [*505] And, even in the face of a repealing clause, circumstances may justify the conclusion that a later act repeating provisions of an earlier one is a continuation, rather than an abrogation and reenactment, of the earlier act. Bear Lake Irrigation Co. v. Garland, 164 U.S. 1, 11-13.

There is nothing in §22007 that prevents it from being reconciled with §1006. Moreover, §22007 reflects Congressional will to continue its efforts to address USDA past discrimination in farm lending programs, not to disqualify previously eligible persons, such as legacy estate claimants. Socially disadvantaged farmers are still eligible for DFAP participation. Section 22007 merely expanded participation to any form of discrimination, not just socially disadvantaged parties.

Contrary to the rule in Posada, the Panel did not consider the legislative history of §1006. It improperly treated §1006 through it is irreconcilable with §22007. The subset of claimants previously eligible under §1006 remained eligible under §22007.

[I]t is a "cardinal rule of statutory construction . . . that repeals by implication are not favored." Posadas v. National City Bank, 296 U. S. 497, 296 U. S. 503 (1936); Wood v. United States, 16 Pet. 41 U. S. 342-343, 41 U. S. 363 (1842); Universal Interpretive Shuttle Corp. v. Washington [*550]Metropolitan Area Transit Comm'n, 393 U. S. 186, 393 U. S. 193 (1968).

This is a prototypical case where an adjudication of repeal by implication is not appropriate. The preference is a longstanding, important component of the Government's anti-discrimination program. ... Any perceived conflict is thus more apparent than real.

In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable. Georgia v. Pennsylvania

R. Co., 324 U. S. 439, 324 U. S. 456-457 (1945).

Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment. See, e.g., Bulova Watch Co. v. United States, 365 U. S. 753, 365 U. S. 758 (1961); Rodgers v. United States, 185 U. S. 83, 185 U. S. 87-89 (1902).

The courts are not at liberty to pick and choose among Congressional enactments, and when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective. "When there are two acts upon the same subject, the rule is to give effect to both if possible. . . . The intention of the legislature to repeal 'must be clear and manifest..'" United States v. Borden Co., 308 U. S. 188, 308 U. S. 198 (1939). In light of the factors indicating no repeal, we simply

> cannot conclude that Congress consciously abandoned its policy of furthering Indian self-government when it passed the 1972 amendments.

See, Morton v. Mancari, 417 U.S. 535 (1974).

> Under Epic Systems Corp. v. Lewis, 584 U.S. ___ 2018:
>
> > When confronted with two Acts of Congress allegedly touching on the same topic, this Court is not at "liberty to pick and choose among congressional enactments" and must instead strive "'to give effect to both.'" Morton v. Mancari, 417 U. S. 535, 551 (1974). A party seeking to suggest that two statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing "'a clearly expressed congressional intention'" that such a result should follow. Vimar Seguros y Reaseguros, S. A. v. M/V Sky Reefer, 515 U. S. 528, 533 (1995). The intention must be "'clear and manifest.'" Morton, supra, at 551. And in approaching a claimed conflict, we come

armed with the "stron[g] presum[ption]" that repeals by implication are "disfavored" and that "Congress will specifically address" preexisting law when it wishes to suspend its normal operations in a later statute. United States v. Fausto, 484 U. S. 439, 452, 453 (1988).

These rules exist for good reasons. Respect for Congress as drafter counsels against too easily finding irreconcilable conflicts in its work. More than that, respect for the separation of powers counsels restraint. Allowing judges to pick and choose between statutes risks transforming them from expounders of what the law is into policymakers choosing what the law should be. Our rules aiming for harmony over conflict in statutory interpretation grow from an appreciation that it's the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them.

In this case the Panel made no attempt to reconcile §1006 and §22007. This was a fatal error, the correction of which warrants granting this Petition.

C. CONGRESSIONAL RESPONSE TO USDA LENDING PROGRAM DISCRIMINATION - LEGISLATIVE HISTORY

To date, USDA has resolved the discrimination lawsuits of 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 VII.B, VIII.C.1 g. Love, No. 1:00-cv-02502 (D.D.C. Jan. 20, 2012), ECF Docket No. 155-1 ("Garcia/ Love Framework"); Keepseagle, No. 1:99-cv-03119, 2001 W1, 34676944, at *6 (D.D.C. Dec. 12, 2001); Pigford I, 185 F.R.D. at 92.

Despite the various efforts outlined above discrimination problems have continued to plague USDA's lending programs. As a result, Congress enacted a race-based discrimination loan-forgiveness

program in the American Rescue Plan of 2021 (ARPA).

The race-based criterion for relief under §1006 of the ARPA, was challenged in multiple cases that alleged that these racial classifications violated the Equal Protection Clause of the United States Constitution. The program was therefore revised. Section 1005 was repealed. Section 1006 was amended. The amendment of §1006 did not expressly exclude previously eligible participates, such as Legacy Claimants.

USDA agreed to provide approved claims with (a) compensatory Relief, (b) Injunctive Relieve and (c) Programmatic (Forward-looking-Relief), under the Pigford Consent Decree at ?9, ? 10 and 11 to all categories of claimants (farmers and non-farmers and theirs heirs who were discriminated against from January 1, 1981 through December 1996. Moreover, this consent decree was under 15 USC §1691 (Equal Credit Opportunity Act) and APA. Additionally, Congress passed legislation §741 that covered Housing Loan as provided by USAD under the Farmers Home Administration. And, Housing Loans were a part of the overall loan (Operating Loans, Land Ownership Loan, Emergency Loan, etc.).

Morton v Mancari, 417 U.S. 545. Holding that "Congress did not intend to repeal Indian preference, and the District Court erred in holding that it was repealed by the 1972 Act (417 U.S. 545-551." Moreover, it is worth noting that the provision under the Rescue Plan (Section 1006) was for USDA farmers who had outstanding debt (120%) forgiveness with USDA. Not farmers or potential farmers who were otherwise discriminated against by USDA as DFAP addressed. White farmers challenged the constitutionally of the debt forgiveness provision-not the discrimination component. Congress changed the bath-water, but, did not throw the baby out with it.

D. VIOLATION OF 42 U.S.C. §1982

The current USDA exclusion of legacy applications, perpetuates past discrimination. The United States Court of Appeals stated in Gerber v. Herskovitz, 14 F.4th 500 (6th Cir. 2021).

> 42 U.S.C. Sec. 1982. Section 1982 guarantees to all citizens the same rights "to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. § 1982. To violate the statute, the challenged action must impair a property interest, say by

> decreasing the value of the property or making it significantly more difficult to access. City of Memphis v. Greene, 451 U.S. 100, 122-24, 101 S. Ct. 1584, 67 L. Ed. 2d 769 (1981).

Here Petitioners' ancestors land was decreased in value by USDA's racially based loan denials. Moreover, the Petitioners' ancestors ability to bequeath land was also impaired because land was lost due to fraudulent race -based foreclosures facilitated by USDA to cause Black-owned farmload to be lost to farming competitors These USDA transgressions, which USDA has admitted and §22007 implicitly recognizes, are not subject to redress because of the irrational exclusion by USDA of legacy claims, which the Panel has endorsed on grounds the USDA past practices combined with the Panel's reading of Section 22007 do not violate Section 1982.

Other Courts have historically given broad deference to 42 U.S.C. §1982.

The Panel decision states that Petitioners' §1982 claim "seemingly assumes, without support, that every person who "inherits land from a discriminated against black farmer will also be

black." Opinion p. 11. This statement by the Panel improperly focuses solely upon the term in §1982 "inherit" and ignores the term "convey."

Section 1982 not only protects the right to inherit land, from a deceased Black farmer which heir admittedly may not always be to a Black, §1982 also protects the right of Black farmers to the "convey." land[8] Accordingly, contrary to the Panel decision statement, the Petitioners' 1982 claim is not undercut due to some heirs being non Blacks. All decedents of the estates at issue here deprived of an equal opportunity to "convey" land by devise are Black and entitled to 1982 protections. Again, however the Panel decision wrongfully concludes §1982 was supplanted by §22007. Again the Panel fails to employ the appropriate traditional tool of statutory construction by failing to reconcile §1982 and §22007.

The current USDA exclusion of legacy applications, perpetuates this past discrimination.

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[8]To pass or transmit the title to property from one to another; to transfer property or the title to property by deed or instrument under seal. To convey real estate is, by an appropriate instrument, to transfer the legal title to it from the present owner to another. Abendroth v. Greenwich, 29 Conn. 350. Convey relates properly to the disposition of real property, not to personal. Dickerman T. Abrahams, 21 Barb. (N. Y.) 551, 561.

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Here Respondents ancestors land was decreased in value by USDA's racially based loan denials. Moreover, the ancestors ability to bequeath land was also impaired. These USDA transgressions, which USDA has admitted and §22007 implicitly recognizes, are not subject to redress because of the irrational exclusion of legacy claims as described in the Declaration of Mr. Burrell, Ms. Jackson, Ms. Ferguson and Ms. Tillis as representatives of a putative class of aggrieved claimants.

USDA has offered no explanation for its perpetuation and its reliance on this historic discrimination in violation of 42 U.S.C. §1982.

The Circuit Court should have given broad construction to the scope of §1982 and its impermissible violation here.

Courts have historically given broad deference to 42 U.S.C. §1982. For instance in:

> United States v. Greer, 939 F.2d 1076, 1091 (5th Cir. [**6] 1991), aff'd en banc, 968 F.2d '433 (5th Cir. 1992), cert. denied, 113 S. Ct. 1390 (1993).
>
> Section 1982 protects the right of citizens to "hold" real and personal property. It states:
>
> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Section 1982 was enacted to enable Congress to enforce the Thirteenth Amendment, specifically to "prohibit all racial discrimination, private and public, in the sale and rental of property." Jones v. Alfred H. Mayer Co., 392 U.S. 409, 437, 20 L. Ed. 2d 1189, 88 S. Ct. 2186 (1968). In Jones, the court looked to the legislative history of Section 1982--the debates surrounding the Civil Rights Act of 1866--and explained that Section 1982 was intended to do more than destroy the discrimination embodied by the Black Codes: "It would affirmatively secure for all men, . . . the 'great fundamental rights." Id. at 432 (quoting Cong. Globe, 39th Cong., 1st Sess., 475). Included among these "basic civil rights" were the right to acquire property and the right "to go and come at pleasure." Id. In passing the Civil Rights Act of 1866, Congress assumed "that it was approving a comprehensive statute forbidding all racial discrimination

> affecting the basic civil rights enumerated in the Act." Id. at 435

See, United States v. Brewis, 49 F.3d 1162 (6th Cir. 1995).

42 U.S.C. § 1982 provides,

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

> Thus, just as 42 U.S.C. § 1981 requires that all citizens have an equal right to contract, 42 U.S.C. § 1982 mandates that all citizens have an equal right to hold and convey property. Both statutes, originally enacted as part of the Civil Rights Act of 1866, were intended to uproot the institution of slavery and to eradicate its badges and incidents. See Jones v. Alfred H. Mayer Co., 392 U.S. 409, 422-437, 88 S. Ct.

> 2186, 20 L. Ed. 2d 1189 (1968); Tillman v. Wheaton-Haven Recreation Assn., 410 U.S. 431, 439, 93 S. Ct. 1090, 35 L. Ed. 2d 403 (1973). And this identity of historical source and similarity of language and intent are particularly significant in view of the statement of the Supreme Court in Sullivan v. Little Hunting Park, supra, that
>
> "A narrow construction of the language of § 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded by Section 1 of the Civil Rights Act of 1866 . . . from which § 1982 was derived." Id. 396 U.S. at 237.

See, Winston v. Lear-Siegler, Inc., 558 F.2d 1266 (6th Cir. 1977).

The USDA exclusion of Legacy claims perpetuates past USDA's infringement upon the right to inherit and bequeath property. USDA has relied upon factors such as an alleged limited resource pool, to exclude legacy claims. In the face of perpetuating

racial discrimination in violation of 42 U.S.C. §1982, such a rule is arbitrary and capricious. USDA has offered no justification for this exclusion.

The DFAP process implemented by USDA relies on impermissible factors because it excludes applications merely because they are submitted on behalf of an estate. There is no permissible legisltative basis in §22007, 42 U.S.C. §1982 or in the Constitution upon which this exclusion may lawfully be based. Accordingly, the present DFAP rule on legacy claims fails the first arbitrary and capricious factor.

E. NO REASONABLE RELATIONSHIP TO STATUTORY PURPOSE

USDA has not articulated any relationship between the exclusion of estates and the purpose of §22007. Congress has clearly stated in the IRA, §22007 is designed to compensate for decades of racial discrimination in USDA farm lending programs. USDA discrimination was more insidious in the distant past then it has been recently. The Declaration of Allie Tillis attested to the historic nature of this racial discrimination. There is no relationship known to Petitioners between the ameliorative interests of §22007 and the USDA

imposed estate exclusion. This lack of a relationship is additional evidence of the arbitrary nature of the USDA rule, excluding estate claims.

a. The exclusion of heirs filing on behalf of deceased persons. Both Pigford I and II allowed for an heir to tile on behalf of decease claimants. See Exhibit A at Section 4 (For Decease Claimants . . .). https://www.blackfarmercase.com/documentskjaim%20form.pdf

b. Congress specifically instructed the USDA to allow claimants who were discriminated in obtaining a Housing Loan (15 U.S.C. Section 1691 (ECOA) from USDA[9] to be a party to the referenced settlements. See Exhibit B, Pub. Law 105-277, Section 741.

c. The Pigford I Consent Decree made provisions for Later Filers.

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[9]The term "USDA" shall include the United States Department of Agriculture and all of its agencies, instrumentalities, agents, officers, and employees, including, but not limited to the state and county committees which administer USDA credit programs, and their staffs. Consent Decree at 1(m).

d. Pigford I claimants had appeal rights.

e. Pigford I and II claimants were made aware of the dollar amount to receive if their claims were approved-to include tax benefits, debt relief and programmatic relief (Priority Consideration). Here, there is no specified minimum about of settlement. Both Pigford I and II provided either Track A ($50,000) or Tract B amounts. In re, provided either Tier I ($50,000) or Tier II amounts.

f. Both Pigford I and II were required to have an attorney sign off on the Claim Form. See, Goldberg v. Kelly, 397 U.S. 254 (1970) at 270 (...right to counsel).

g. Current Claimants are discouraged' from using associational help to assist with the filling out of Claim Form. See UAW v. Brock, 477 US 274 (1986) at 289-290. Moreover, the Pigford I Consent Decree expressly stated than USDA would work with

organizations' who were otherwise working with Black farmers.

h. Failure to give notice to know USDA applicant in previous lawsuits or previous and/or current USDA borrowers. See, declaration of Thomas Mason, Jr. (Mother Pearl Mason, deceased owing USDA for previous Operating Loans).

i. The substantial evidence standard appears more onerous than the preponderance standard.

USDA has not articulated in its administrative record or during any of the training sessions or seminars on DFAP grounds for the exclusion of estates. See, Declarations of Ferguson and Jackson. ECF Docket No. 29-1 and 29-2.

F. UNSUPPORTED BY ANY REASONING OR BASED ON SERIOUSLY FLAWED REASONING

The exclusion of estates and the failure to accord sufficient time for the probate process to occur, was not supported by any reasoning articulated at the seminars attended by Petitioners or in USDA's published guidance. It is illogical to purport to

provide an administrative remedy such as DFAP to compensate for historic lending discrimination and to then exclude the estates of the person most frequently denied relief racially discriminating on grounds, ex slaves and the ancestors of Petitioners. This flawed reasoning ties in closely with the failure of USDA to consider the key rationale for §22007's enactment, the correction of historic injustice by USDA upon Black farmers and their families.

G. INCONSISTENCY WITH PRIOR ACTIONS

In Pigford the application was a mere three pages. Although there was a fixed application deadline, an appeal process was provided for. See, Burrell Declaration. ECF Docket No. 28-1.

In this instance there is no appeal. This inconsistency has not been explained in any of the USDA guidelines or during seminars attended by BFAA members. See, Burrell, Jackson and Ferguson Declarations. Id.

H. FAILURE TO CONSIDER ALTERNATIVES

The administrative record in this matter does not indicate that USDA gave any consideration to permitting legacy applications, devising a simpler

application form or providing an appeal from the January 13, 2023, if warranted. This state of matters also reflets USDA's refusal to explain to applicants such as Ferguson and Jackson reasons their decedent's applications could not be accepted. See, ECF, Docket No. 29-1 and 29-2.

I. DISPROPORTIONATE SANCTIONS

The blanket preclusion of legacy claims without any opportunity to appeal or obtain an extension is not justified by any authority in §22007. USDA has unilaterally imposed bright line rules that have no basis in the enabling legislation, clearly violate precedent and most importantly perpetuate past racial discrimination in violation of 42 U.S.C. §1982.

J. SEPARATION OF POWERS

Section 22007 centralizes vast power in the hands of USDA, without the ordinary protections of due process, to decide the fate of farmers who have been victimized by discrimination.

No principle is more central to the design of the Constitution than the separation of powers. See,

Dayton Area Chamber of Commerce, et al. v. Xavier Becerra, S.D. Ohio Case No. 3:23-cv-00156.

Article I of the Constitution vests legislative Powers" in the "Congress of the United States." U.S. Const. Art. 1, § 1 . Article II vests the executive power -the power to implement the laws in the President. Article III vests the judicial power the power to interpret the laws in the courts.[10]

To protect that fundamental separation of powers, the Supreme Court has long distinguished between certain "important subjects, which must be entirely regulated by the legislature itself" and "those of less interest," as to which Congress may afford the executive branch discretion "to fill up the details." Wayman v Southard, 23 U.S. (10 Wheat.) 1, 42-43 (1825). Id.

The Supreme Court has accordingly invalidated statutes that confer "virtually unfettered" discretion on the executive branch to control broad swaths of the private economy. A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495,542 (1935) (invalidating delegation to create code of industrial conduct that fosters "fair competition"); see

[10]Any power exercised by USDA must come from the President or be specifically authorized by Congress.

also Panama Relining Co. Ryan, 293 U.S. 388 (1935) (invalidating delegation to ban petroleum shipments in excess of state production quotas).

In Schechter Poultry, the Court emphasized the lack of "judicial review to give assurance that the action of the commission is taken within its statutory authority" and the absence of "appropriate administrative procedure" to ensure due process. 295 U.S. at 533, 541 . In Panama Refining, the Court highlighted the failure to constrain the executive branch with any "standard or rule" of decision. 293 U.S. at 418. Id.

Under the Supreme Court's modern precedents, a statutory delegation is invalid if it fails to constrain the agency with an "'intelligible principle.'" Gundy v. United States, 139 S. Ct. 21 16, 2129 (2019) (plurality op.) (quoting J.W. Hampton, Jr, & Co. v. United States, 276 U.S. 394, 409 (1928)). This "intelligible principle" must at least be "sufficiently definite and precise to enable Congress, the courts and the public to ascertain whether the [agency] . . . has conformed" to Congress's direction. Yakus v. United States, 321 U.S. 414, 426 (1944).

Courts have also consistently recognized that "judicial review is a factor weighing in favor of upholding a statute against a nondelegation

challenge." United Stales v. Garfinkel, 29 F.3d 451, 458-59 (8th Cir. 1994) (quoting United States v. Bozarov, 974 F.2d 1037, 1042 (9th Cir. 1992)) (collecting cases). Similarly, "compliance with . . . requirements for notice and comment" enhances public accountability and thereby functions as a check on agency discretion. Id.; cf: Panama Ref Co., 293 U.S. at 415 (noting the importance of written findings).

There is no justification for USDA being permitted to arrogate until itself the powers to set a firm no extensions deadline policy, when under §22007 Congress has given USDA until September 30, 2031 to expend the funds appropriated for financial assistance.

The January 14, 2024 deadline violate separation of powers because it gave USDA total authority to set an arbitrary deadline.

K. DUE PROCESS

The United States Supreme Court has stated:

> The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous

> loss," Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, 341 U. S. 168 (1951) (Frankfurter, J., concurring), and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Accordingly, as we said in Cafeteria & Restaurant Workers Union v. McElroy, 367 U. S. 886, 367 U. S. 895 (1961), "consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved, as well as…

See, Goldberg v. Kelly, 397 U.S. 254 (1970).

Sixth Circuit has stated that… a procedural due process claim is instantly cognizable in federal court without requiring a final decision . . . from the responsible agency," because the "infirm process is an injury in itself" Nasierowski Bros. Inv Co. v. City of Sterling Heights, 949 F.2d 890, 894 (6th Cir. 1991) (cleaned up). Because Petitioners' members are "subject to the DFAP's allegedly unconstitutional process," which has already caused them to incur

significant injury, Petitioners have "demonstrated injury-in-fact." Rice v. Vill. of Johnstown, 30 F.4th 584, 591 (6th Cir. 2022).

Treating procedural due process and other facial constitutional claims as "instantly cognizable" makes sense because where procedures are constitutionally inadequate on their face, there is no justification to force a party to endure those procedures and wait to challenge their result. See, e.g., Seguin v City of Sterling Heights, 968 F.2d 584, 589-90 (6th Cir. 1992) ("Because the Petitioners are making a facial challenge to DFAP presentations, any procedural infirmity would not be cured by the subsequent application of the statute"); Axon Enter, Inc. v. FTC, 598 U.S. 175, 191-92 (2023) (recognizing that "subjection to an illegitimate proceeding" that violates the separation of powers is a "'here-and-now injury' that is "impossible to remedy once the proceeding is over" (quoting Seila Law LLC' v. Consumer Fin. Prot. Bureau, 140 S. Ct. 2183, 2196 (2020))); Lac Vieux Desert Band of Lake Superior Chippewa Indians v. Mich. Gaming Control Bd., 172 F.3d 397, 407 (6th Cir. 1999).

The Fifth Amendment's Due Process Clause prohibits the government from depriving a person of property without adhering to constitutionally

sufficient procedures. See, Ky. Dept. of Corr. V. Thompson, 490 U.S. 454, 460 (1989), notice and an opportunity to be heard.

The Due Process Clause requires notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552 (1965); see also, Mathews v. Eldridge, 424 U.S. 319, 333 (1976). Due process requires procedural protections to prevent, to the extent possible, an erroneous deprivation of property. See, Gilbert v. Homar, 520 U.S. 924, 930-32 (1997).

Section 22007, as implemented by USDA, gives affected farmers no opportunity to be heard concerning reasons an application can not be submitted by October 31, 2023.

BFAA member legacy claims required BFAA members to complete within the 116 day window a complex forty page application. In cases where the aggrieved farmer has died, USDA has stated heirs of these applicants must have written authority to pursue the decedent's claims. There was no authority in §22007 for such a draconian administrative deadline.

The Fifth Amendment of the United States Constitution protects individuals from deprivation by the federal government of "life, liberty, or property"

without "due process of law." U.S. CONST., amend. V. To demonstrate a strong likelihood of success on the merits of a constitutional challenge at the preliminary injunction stage, Appellants must demonstrate that "no set of circumstances exists under which [the Program] would be valid." U.S. v. Salerno, 481 U.S. 739, 745 (1987). So, to warrant injunctive relief, Petitioners had to show that no set of circumstances existed where the Program would be constitutionally valid under the Fifth Amendment Due Process Clause. Id There is no set of circumstances under which failure to even consider Legacy Class is valid.

L. REVIEW OF USDA ACTION - "ARBITRARY AND CAPRICIOUS" TEST

The principal statute authorities that govern USDA action in connection with implementation of §22007 are 5 U.S.C. §§ 701-706 which codify Section 10 of the Administrative Procedure Act under §702 a person suffering a legal wrong or who is adversely affected or aggrievedly agency action.

Judicial review was sought by Petitioners of USDA action which is final and for which there is no other adequate remedy. The appropriateness of review of this nature was recognized in Bennett v.

Spear, 520 U.S. 154, 177-78 (1997). The USDA actions complained of constituted the consummation of USDA's decision making. Legal consequences flow from USDA's action because assistance is only available in accordance with the terms complained of here by Petitioners.

The actions complained of by Petitioners were not authorized under §22007. The District Court had authority to review the measures complained under "the arbitrary, capricious, abuse of discretion" standard. See, Motor Vehicle Mrfs v. Association v. State Farmers Mmt. Auto Insurance Company, 463, U.S. 29 (1983).

Under the arbitrary and capricious test, the actions complained of by Petitioners should have been enjoined or at a minimum suspended temporarily.

Specifically USDA's actions should have been enjoined because:

1. USDA's application procedures relied on impermissible factors;

2. There was no reasonable relationship between the challenged factors and §22007;

3. The actions were not supported by reason;

4. USDA has failed to consider key aspects of the procedures enacted;

5. The procedures were inconsistent with prior USDA actions to address discrimination;

6. USDA did not considered alternative solutions;

7. USDA failed to respond to questions concerning the January 14, 2024 deadline; and

8. The Sanction for noncompliance was draconian.

See, Consolo v. Federal Maritime Commission, 383 U.S. 607 (1966).

M. RELIANCE ON IMPERMISSIBLE FACTORS

The USDA rule that that excludes Legacy Claims from DFAP eligibility denied equal rights to Appellants with respect to inheriting property in violation of 42 U.S.C. §1982.

Congress enacted §22007 to address long standing discrimination by USDA. Among the historic wrongs perpetuated by USDA and recognized in the Pigford litigation, was the intentional racially motivated denial of farm loans to Black Farmers. This intentional racial discrimination resulted not only in the loss of credit by the applicants, it also resulted in the denial of the right of the

discriminated against applicant's heirs to inherit, purchase, lease, sell, hold and convey real and personal property in violation of 42 U.S.C. §1982. In other words, but for USDA's racially specific discrimination against Blacks, many BFAA members, such as Ms. Ferguson and Ms. Jackson, as well as BFAA associates such as Ms. Tillis, these individuals would have the same right to inherit as White citizens whose forebearers were not denied USDA loans on the basis of race. See, ECF Docket No. 28-1

Here Petitioners 'ancestors land was decreased in value by USDA's racially based loan denials. Moreover, the ancestors ability to bequeath land was also impaired. These USDA transgressions, which USDA has admitted and §22007 implicitly recognizes, are not subject to redress because of the irrational exclusion of legacy claims as described in the Declaration of Mr. Burrell, Ms. Jackson, Ms. Ferguson and Ms. Tillis as representatives of a putative class of aggrieved claimants.

USDA has offered no explanation for its perpetuation and its reliance on this historic discrimination in violation of 42 U.S.C. §1982. The Circuit Court should have given broad construction to the scope of §1982 and its impermissible violation here. Courts have historically given broad deference

to 42 U.S.C. §1982. For instance in: United States v. Greer, 939 F.2d 1076, 1091 (5th Cir. [**6] 1991), aff'd en banc, 968 F.2d '433 (5th Cir. 1992), cert. denied, 113 S. Ct. 1390 (1993).

Section 1982 protects the right of citizens to "hold" real and personal property It states:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Section 1982 was enacted to enable Congress to enforce the Thirteenth Amendment, specifically to "prohibit all racial discrimination, private and public, in the sale and rental of property." Jones v. Alfred H. Mayer Co., 392 U.S. 409, 437, 20 L. Ed. 2d 1189, 88 S. Ct. 2186 (1968). In Jones, the court looked to the legislative history of Section 1982--the debates surrounding the Civil Rights Act of 1866--and explained that Section 1982 was intended to do more than destroy the discrimination embodied by the Black Codes: "It would affirmatively secure for all men, . . . the 'great fundamental rights." Id. at 432 (quoting Cong. Globe, 39th Cong., 1st Sess., 475). Included among these "basic civil rights" were the

right to acquire property and the right "to go and come at pleasure." Id. In passing the Civil Rights Act of 1866, Congress assumed "that it was approving a comprehensive statute forbidding all racial discrimination affecting the basic civil rights enumerated in the Act." Id. at 435. See, United States v. Brewis, 49 F.3d 1162 (6th Cir. 1995).

42 U.S.C. § 1982 provides,

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

Thus, just as 42 U.S.C. § 1981 requires that all citizens have an equal right to contract, 42 U.S.C. § 1982 mandates that all citizens have an equal right to hold and convey property. Both statutes, originally enacted as part of the Civil Rights Act of 1866, were intended to uproot the institution of slavery and to eradicate its badges and incidents. See Jones v. Alfred H. Mayer Co., 392 U.S. 409, 422-437, 88 S. Ct. 2186, 20 L. Ed. 2d 1189 (1968); Tillman v. Wheaton-Haven Recreation Assn., 410 U.S. 431, 439, 93 S. Ct. 1090, 35 L. Ed. 2d 403 (1973). And this identity of historical source and similarity of

language and intent are particularly significant in view of the statement of the Supreme Court in Sullivan v. Little Hunting Park, supra, that "A narrow construction of the language of § 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded by Section 1 of the Civil Rights Act of 1866 . . . from which § 1982 was derived." Id. 396 U.S. at 237. See, Winston v. Lear-Siegler, Inc., 558 F.2d 1266 (6th Cir. 1977).

The USDA exclusion of Legacy claims perpetuates past USDA's infringement upon the right to inherit and bequeath property. USDA has relied upon factors such as an alleged limited resource pool, to exclude legacy claims. In the face of perpetuating racial discrimination in violation of 42 U.S.C. §1982, such a rule is arbitrary and capricious. USDA has offered no justification for this exclusion and the Circuit Court basically ignored the §1982 claim.

CONCLUSION

For the above reasons it is respectfully requested that this Petition be granted.

March 6, 2026

Respectfully submitted,

s/Leo P. Ross

Leo P. Ross
ATTORNEY AT LAW
915 S. High St
Columbus, Ohio 43206
leoross1977@gmail.com
614-316-9144

APPENDIX

No. 20-3573

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

BLACK FARMERS & AGRICULTURALISTS ASSOCIATION, INC., and THOMAS BURRELL,

Plaintiffs

v. No. 2:23-cv-2527-SHL-cgc

THOMAS J. VILSACK, SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE and ZACH DUCHENEAUX, ADMINISTRATOR OF THE UNITED STATES DEPARTMENT OF AGRICULTURE FARM SERVICES

Defendants

ORDER DENYING AS MOOT MOTION FOR PRELIMINARY INJUNCTION AND GRANTING PLAINTIFFS' MOTION TO FILE AN AMENDED COMPLAINT

Before the Court is Plaintiffs Black Farmers and Agriculturists Association, Inc. ("BFAA") and Thomas Burrell's Amended Reply to Defendants' Brief in Opposition to Plaintiffs' Motion for

Preliminary Injunction and Motion to File an Amended Complaint. (ECF No. 38.)

The United States Department of Agriculture ("USDA") announced on July 7, 2023, that it had established a Discrimination Financial Assistance Program ("DFAP"). (ECF No. 3 at PagelD 87.) Under the DFAP, persons discriminated against in a USDA loan program before January 2021, were required to submit applications for financial assistance by October 31, 2023. ffih) Plaintiffs sought a preliminary injunction suspending the October 31, 2023 application deadline, arguing that the deadline is "arbitrary and capricious, violative of separation of powers and federal Due Process." (ECF No. 16 at PageID 136.) Defendants filed a Response on September 15, 2023. (ECF No. 31.)

On September 22, 2023, the USDA announced that the application deadline had been extended until January 13, 2024. (ECF No. 38 at PageID 311.) As a result, Plaintiffs filed the instant Reply, withdrawing the pending motions for a preliminary injunction. (Id.) At various times Plaintiffs have filed motions for and memorandums in support of preliminary injunctions and temporary restraining orders. (ECF Nos. 2, 3, 16, 21.) Based on Plaintiffs' representations, all motions for injunctive relief are DENIED as moot.

In their Reply, Plaintiffs also improperly included a Motion to File an Amended Complaint. (ECF No. 38.) Plaintiffs assert that, although Plaintiffs' request for immediate equitable relief is now moot, Defendants' Response to the Motion for a Preliminary Injunction raises new issues. (Id. at

PageID 311.) Specifically, Defendants contend that BFAA members with claims on behalf of decedent's estates are not eligible for DFAP relief. (Id.) Plaintiffs seek leave to file an amended complaint that addresses "whether the October 31, 2023 deadline was arbitrary and capricious, and Defendants' arguments that Plaintiffs are not eligible for DF AP relief." (Id. at PagelD 311-12.) Defendants do not oppose the motion. (IQ,_ at PagelD 314.)

Finding good cause, the motion is GRANTED. Plaintiffs are ORDERED to file their Amended Complaint by October 9, 2023.

IT IS SO ORDERED, this 28th day of September, 2023.

/s/Sheryl H. Lipman
SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT JUDGE

No. 20-3573

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

BLACK FARMERS & AGRICULTURALISTS ASSOCIATION, INC., et al,,

Plaintiffs

v. No. 2:23-cv-2527-SHL-cgc

THOMAS J. VILSACK, SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE, et al.,

Defendants

ORDER DENYING PLAINTIFFS' SECOND MOTION FOR A PRELIMINARY INJUNCTION AND GRANTING DEFENDANTS' MOTION TO DISMISS

Plaintiffs Black Farmers & Agriculturalists Association, Inc. ("BFAA"); Thomas Burrell; Mary Ferguson; Claudette Jackson; and Mauzie J. Furlow (collectively "Plaintiffs"), brought this consolidated proposed class action against Defendants Thomas J. Vilsack and Zach Ducheneaux (collectively "Defendants"). (ECF No. 41.) Before the Court are Plaintiffs' Corrected[] Second [] Motion for a

Preliminary Injunction (ECF No. 54), Defendants' Consolidated Brief in Opposition to Plaintiffs' Second Motion for a Preliminary Injunction and in Support of Defendants' Cross-Motion to Dismiss (ECF No. 64-1), Plaintiffs' Reply to Defendants' Consolidated Brief (ECF No. 68), and Defendants' Reply (ECF No. 72). For the following reasons, the Court DENIES Plaintiffs' Second Motion for a Preliminary Injunction and GRANTS Defendants' Motion to Dismiss.

BACKGROUND

Plaintiffs seek judicial review of a final agency action by the United States Department of Agriculture ("USDA") in connection with the implementation of Section 22007 of the Inflation Reduction Act ("IRA"). (ECF No. 41 at PageID 329.) The IRA made available $2.2 billion in financial assistance to farmers, ranchers, and forest landowners who experienced discrimination by a USDA farm-lending program before January 1, 2021. (Id.) The USDA announced on July 7, 2023, that it had established a Discrimination Financial Assistance Program ("DFAP"). (Id.) Under DFAP, people discriminated against in a USDA-loan program before January 2021 were initially required to submit applications for financial assistance by October 31, 2023. (Id.)

Plaintiffs sought a preliminary injunction suspending the October 31, 2023 application deadline, arguing that the deadline is "arbitrary and capricious, violative of separation of powers and federal Due Process." (ECF No. 16 at PageID 136.) On September 22, 2023, the USDA extended the

deadline until January 13, 2024. (ECF No. 38 at PageID 311.) As a result, Plaintiffs withdrew their motion. (Id.)

On October 31, 2023, Plaintiffs filed a second preliminary injunction motion to enjoin Defendants from enforcing the January 13, 2024 deadline, require Defendants to accept DFAP applications on behalf of decedent's estates ("Legacy Applications"), suspend the use of the "unduly complex application," and declare that the DFAP process must also apply to housing loans. (ECF No. 54 at PageID 457.) On November 13, 2023, Defendants responded to Plaintiffs' Motion and filed a Cross-Motion to Dismiss, asserting that the case must be dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). (ECF No. 64.)

ANALYSIS

I. Motion to Dismiss

Defendants seek dismissal under Rule 12(b)(l) and 12(b)(6). (ECF No. 64.) "When a defendant moves for a motion to dismiss under both Rule l 2(b)(1) and (b)(6), the court should consider the 12(b)(1) motion first because the 12(b)(6) motion is moot if subject matter jurisdiction does not exist." Damnjanovic v. United States Dep't of Air Force, 135 F. Supp. 3d 601, 604 (E.D. Mich. 2015). As explained below, Plaintiffs' claims regarding the deadline and complexity of the application are dismissed pursuant to Rule 12(b)(1) for lack of standing. The remaining claims are dismissed pursuant to Rule l 2(b)(6) for failure to state a claim.

A. Rule 12(b)1

1. Legal Standard

Defendants challenge Plaintiffs' standing to bring their claims, asserting this action must be dismissed for lack of subject matter jurisdiction under Rule l 2(b)(1). (ECF No. 64-1 at PageID 553.) A Rule 12(b)(1) motion can challenge lack of subject matter jurisdiction in two ways: a facial attack or a factual attack. Dayton Area Chamber of Comm. v. Becerra, No. 3:23-cv-156, 2023 WL 6378423, at *4 (S.D. Ohio, Sept. 29, 2023) (citing Abbott v. Mich., 474 F.3d 324, 328 (6th Cir. 2007)). "A facial attack on the subject-matter jurisdiction alleged in the complaint questions merely the sufficiency of the pleading." Id. (quoting Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co., 491 F.3d 320, 330 (6th Cir. 2007)). Where there is a facial attack on standing, the Court "must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." Parsons v. U.S. Dep't of Just., 801 F.3d 701, 710 (6th Cir. 2015) (quoting Warth v. Seldin, 422 U.S. 490, 501 (1975)). This "analysis must be confined to the four corners of the complaint." Id. at 706.

Conversely, a factual attack allows the court to consider evidence outside the pleadings and to "weigh evidence to confirm the existence of the factual predicates for subject-matter jurisdiction." Becerra, 2023 WL 6378423, at *4 (quoting Carrier Corp. v. Outokumpu Oyj, 673 F.3d 430,440 (6th Cir. 2012) (citations omitted)). A court may look to affidavits, and other materials in the record in determining whether plaintiffs have adequately demonstrated

standing. Warth, 422 U.S. at 501; see also Plunderbund Media, L.L.C. v. DeWine, 753 Fed. App'x 362, 366 (6th Cir. 2018) (authorizing a review of preliminary injunction documents, such as declarations).

It appears that Defendants rely on a factual attack, arguing that Plaintiffs have not identified a single BFAA member who faces a cognizable injury-in-fact as a result of the USDA-imposed deadline or challenged eligibility criteria. Therefore, in reviewing the issue of standing, the briefing on the Preliminary Injunction and the Motion to Dismiss, as well as Plaintiffs' supporting declarations, may all be considered.

2. Standing

Article III, Section 1, of the Constitution limits the jurisdiction of federal courts to hear only actual cases and controversies. Spokeo, Inc. v. Robins, 578 U.S. 330,337 (2016); Lyshe v. Levy, 854 F.3d 855, 857 (6th Cir. 2017). Standing is an indispensable part of the case or controversy requirement of Article III. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). Standing analysis "is particularly rigorous when reaching the merits of the dispute would force the Court to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." Parsons v. U.S. Dep't of Just., 801 F.3d 701, 710 (6th Cir. 2015) (internal citations and quotations omitted). "To have standing, a plaintiff must allege (1) an injury in fact (2) that's traceable to the defendant's conduct and (3) that the courts can redress." Gerber v. Herskovitz, 14 F.4th 500, 505 (6th Cir. 2021) (citing Lujan, 504 U.S. at 559-61).

The requirement that a plaintiff suffer an injury-in-fact is "the 'irreducible constitutional minimum' of standing." Ass'n of Am. Physicians & Surgeons v. U.S. Food and Drug Admin., 13 F.4th 531,538 (6th Cir. 2021) (quoting Lujan, 504 U.S. at 560). Associations, like the BFAA, have standing to sue on behalf of one or more of their members if those members have been injured, even if the association itself is not directly impacted by a defendant's actions. Waskul v. Washtenaw Cty. Cmty. Mental Health, 900 F.3d 250,253 (6th Cir. 2018). Thus, the association must identify at least one of its members who has standing. Ass'n of Am. Physicians & Surgeons, 13 F.4th at 543.

Plaintiffs' Second Motion for a Preliminary Injunction seeks to: 1) require Defendants to accept Legacy Applications, 2) apply the DFAP process to discrimination in housing loans, 3) enjoin Defendants from enforcing the January 13, 2024 deadline, and 4) suspend the use of the "unduly complex application." (ECF No. 54 at PageID 457.) To demonstrate Article III standing, Plaintiffs submitted declarations from the following individuals: I) Thomas Burrell (ECF No. 28-1); 2) Mary Ferguson (ECF No. 29-1); 3) Claudette Jackson (ECF No. 29-2)[1]; and Allie Tillis (ECF No. 54-1). Each of these individuals' standing is

[1]The declarations from Burrell, Ferguson, and Jackson were submitted in support of Plaintiffs' first Motion for Preliminary Injunction, and Plaintiffs incorporated them here by reference. Furlow is a named Plaintiff, but she did not submit a declaration.

considered before analyzing whether BFAA has associational standing.

As is explained below, Burrell and Tillis do not have standing to assert any claims, Ferguson and Jackson have standing to assert their Legacy Application claims, and Furlow has standing to bring her housing application claim.

a. Thomas Burrell

Burrell is a farmer and the president of the BFAA. (ECF No. 41 at PageID 340.) The Amended Complaint states that he "is a representative of other BFAA members who have had claims that meet Section 22007's eligibility criteria." (Id.) However, the Amended Complaint does not allege that Burrell is eligible for assistance or intends to file an application, but is unable to do so by the deadline. Burrell's declaration similarly does not provide any evidence that he was injured. Instead, he asserts that, in his capacity as BFAA president, "I have had personal involvement in the filing of multiple applications for financial assistance to remediate for racial discrimination by the [USDA] against BFAA members in connection with USDA farm lending programs." (Id.) Plaintiffs have not shown that Burrell has or will suffer an injury because of the January 13 deadline or any of the eligibility requirements. Therefore, he does not have standing to pursue these claims.

b. Mary Ferguson and Claudette Jackson

The Amended Complaint alleges that Plaintiffs Ferguson and Jackson both have claims on behalf of decedents. (ECF No. 41 at PageID 338.) According to

their nearly identical declarations, both are members of BFAA whose "[deceased] parents[] were farmers[] who experienced discrimination in a USDA farm loan program prior to January 1, 2021." (ECF No. 29-1 at PagelD 177; ECF No. 29-2 at PagelD 180.) Ferguson's declaration states that, before her father's death, he "was on two occasions denied financial assistance by the [USDA] in its loan programs. The denials were based on racial discrimination." (ECF No. 29-1 at PageID 177-78.) Jackson's deceased father similarly allegedly "experienced racial discrimination on numerous occasions in connection with USDA loan applications." (ECF No. 29-2 at PagelD 181.) Plaintiffs argue that both Jackson and Ferguson suffered injury because the DFAP application does not provide a method to file Legacy Applications. (ECF No. 68 at PagelD 682.)

Defendants contend that Jackson and Ferguson have not established that they would be eligible for DFAP, even if the program was expanded to allow Legacy Applications because they "simply assert, in conclusory (and virtually identical) language, that their relatives experienced discrimination, without explaining the nature or extent or the losses that this alleged discrimination caused." (ECF No. 64-1 at Paged 554.) According to Defendants, "[t]hese assertions do not establish that either would be eligible for the Program even if their challenges were successful, and so fail to establish that these policies injured them." (Id.)

Although the allegations regarding the discrimination that Jackson and Ferguson's relatives experienced are not particularly fleshed out, they are

sufficient to establish an injury at this stage. Because Jackson and Ferguson are prevented from seeking relief on behalf of their deceased relatives under DFAP's current policies prohibiting Legacy Applications, they have alleged an injury that is traceable to Defendants' conduct and redressable by the Court. Gerber v. Herskovitz, 14 F.4th at 505 (citing Lujan, 504 U.S. at 559-61). Jackson and Ferguson have established standing to challenge DFAP's policy on Legacy Applications.

However, neither Plaintiff has shown that the January 13 deadline would cause them injury. Both state in their declarations that the original October 31, 2023 deadline does not allow enough time for them to complete the probate process. (ECF No. 29-1 at PagelD 179; ECF No. 29-2 at PagelD 182.) However, Defendants point out that because DFAP does not accept Legacy Applications, there is no probate requirement. (ECF No. 64-1 at PageID 556.) If Plaintiffs are successful in their challenge to the prohibition of Legacy Applications, it does not necessarily follow that they would be injured by the means by which Legacy Applications would be considered. Rather, it is simply speculation that DFAP would require the probate process to be completed, which is insufficient to demonstrate standing. See Kanuszewski v. Mich. Dep't of Health & Hum. Servs., 927 F.3d 396,410 (6th Cir. 2019) ("'[M]ere[] speculat[ion] and ... assumptions about' how the government will operate one of its programs is not a sufficiently particularized harm to meet the injury-in-fact requirement.") Thus, neither Ferguson

nor Jackson have standing to challenge the January 13 deadline.

c. Mauzie Furlow

Mauzie Furlow is the only Plaintiff identified in the Amended Complaint who claims to have experienced discrimination when applying for a USDA housing loan. (ECF No. 41 at PageID 338.) Although the Amended Complaint includes few facts regarding this alleged discrimination, and Plaintiffs do not include a declaration from Furlow, the allegations in the Amended Complaint are sufficient to allege an injury in fact for standing purposes. Furlow has standing to challenge DFAP' s exclusion of housing loan applications.

d. Allie Tillis

In support of their Second Motion for Preliminary Injunction, Plaintiffs also submitted a declaration from Allie Tillis. (ECF No. 54-1.) Tillis challenges the timing and complexity of the DFAP application, as well as the exclusion of housing loans from the program. However, Tillis is not a Plaintiff in this case, nor is she a member of BFAA. (ECF No. 54 at PageID 475) (referring to Tillis as a BFAA "associate"). Because she is not a plaintiff in this case, she does not have individual standing; because she is not a member of BFAA, BFAA cannot rely on her to establish associational standing, as explained in more detail below. Ass'n of Am. Physicians & Surgeons, 13 F.4th at 543.

e. BFAA Associational Standing

BFAA asserts standing on behalf of its members, rather than based on injuries to itself as an

organization. Therefore, it must demonstrate that at least one of its members has suffered an injury-in-fact. Ass'n of Am. Physicians & Surgeons, 13 F.4th at 543. To establish associational standing, the association must show that "[1] its members would otherwise have standing to sue in their own right, [2] the interests at stake are germane to the organization's purpose, and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Waskul, 900 F.3d at 254-55 (citing Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333,343 (1977) (internal quotation marks omitted)). Defendants do not contest the second and third associational standing requirements for the purposes of this Motion.

As for the first requirement, as stated above, two BFAA members, Jackson and Ferguson, have standing to challenge DFAP's failure to consider Legacy Applications. Similarly, Furlow, a BFAA member, has standing to challenge the exclusion of housing loan applications. Therefore, BFAA has associational standing as to the Legacy Application and housing loan claims.

However, Plaintiffs offer no BFAA member who has standing to challenge the January 13 deadline or the complexity of the application. Burrell does not have standing to pursue any claims because he does not intend to file an application. Tillis is not a member of BFAA, thus BFAA cannot rely on her declaration to establish associational standing. The only specific allegations regarding Furlow in the Amended Complaint concern housing loan

applications and she did not submit a declaration. Neither Jackson nor Ferguson refer to the complexity of the application in their declarations, and, as stated above, they do not have standing to challenge the January 13 deadline. Thus, the BFAA only has standing to pursue the Legacy Application and the housing loan claims.

As a result, Plaintiffs' claims regarding the application complexity and deadline are dismissed for lack of standing pursuant to Rule 12(b)(1). Given this result, only the Legacy Application and housing loan claims are analyzed under Rule 12(b)(6).

B. Rule 12(b)6

1, Legal Standard

Defendants also argue that the case should be dismissed for failure to state a claim under Rule 12(b)(6). (ECF No. 64-1 at PageID 557.) A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The complaint must contain sufficient facts to "state a claim to relief that is plausible on its face," meaning it includes "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556, 570 (2007)). The complaint need not set forth "detailed factual allegations," but it must include more than "labels and conclusions," "a formulaic recitation of the elements of a cause of action," and "'naked assertion[s]' devoid of 'further factual enhancement.'" Id. (citing Twombly, 550 U.S. at 555, 557).

Federal Rule of Civil Procedure 12(b)(6) allows the Court to dismiss a complaint for failure to comply with the requirements of Rule 8(a)(2). Fed. R. Civ. P. 12(b)(6). When considering a l 2(b)(6) motion, the Court must accept all factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. Adkisson v. Jacobs Eng'g Grp., Inc., 790 F.3d 641, 647 (6th Cir. 2015) (internal citation omitted).

2. Failure to Present Claims to Agency

As an initial matter, Defendants argue that Plaintiffs' claims should be dismissed because Plaintiffs failed to raise their specific arguments before the USDA. (ECF No. 64-1 at PageID 557.) Plaintiffs counter by arguing that "Jackson and Ferguson attended multiple USDA DFAP workshops and informed USDA officials of their desire to file on behalf of their descendants." (ECF No. 68 at PageID 687.) Plaintiffs also suggest that previous litigation between BFAA and the USDA "concerning the interests of Black decedent[]s who lost farm land as a direct result of the USDA" should have put the agency on notice. (Id.)

"The administrative waiver doctrine, commonly referred to as issue exhaustion, provides that it is inappropriate for courts reviewing agency decisions to consider arguments not raised before the administrative agency involved." Coal. for Gov't Procurement v. Fed. Prison Indus., 365 F.3d 435, 461-62 (6th Cir. 2004); see also United States v. L.A. Tucker Truck Lines, Inc., 344 U.S. 33, 37 (1952) ("Simple fairness ... requires as a general rule that

courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice."); Michigan Dep't of Env't Quality v. Browner, 230 F.3d 181, 183 n.1 (6th Cir. 2000) (concluding that issues not raised during the agency's notice and comment period were waived for purposes of appellate review). However, the Supreme Court has limited the application of the administrative waiver doctrine to three scenarios: 1) a statutorily-imposed issue exhaustion requirement, 2) an issue exhaustion requirement imposed by an agency's regulations, and 3) a judicially-imposed issue exhaustion requirement. Coal. for Gov't Procurement, 365 F.3d at 462-63 (citing Sims v. Apfel, 530 U.S. 103, 107-09 (2000).

There is no issue exhaustion requirement in either the IRA's organic statute or its regulations. Thus, the Court turns to whether a judicially-imposed issue exhaustion requirement is appropriate. Coal. for Gov't Procurement, 365 F.3d at 463 (citing Sims, 530 U.S. at 107-09).

A court should impose an issue exhaustion requirement when the administrative proceeding is similar to traditional litigation-"that is, [where] the proceeding before the administrative agency is sufficiently 'adversarial,' as opposed to 'inquisitorial.'" Id. at 643 (quoting Sims, 530 U.S. at 109-10) ("[T]he desirability of a court imposing a requirement of issue exhaustion depends on the degree to which the analogy to normal adversarial litigation applies in a particular administrative proceeding."). Although the USDA "provided an exhaustive public process before

establishing the conditions of the Program," (ECF No. 64-1 at PageID 557) that process is not adversarial. See Notice of Request for Public Comment, 87 Fed. Reg. 62,359 (Oct. 14, 2022). In its Notice of Request for Public Comment, the USDA states: "To help us design and implement policy to best provide the direct support called for by this provision, USDA is seeking input from the public to ensure that relevant information is considered." Id. Through this process, the USDA is seeking information to shape its policy. There is nothing in this process that can reasonably be defined as adversarial.

Although Plaintiffs do not contend that they participated in the notice and comment process, because that process is non-adversarial, this failure does not warrant a judicially-imposed issue exhaustion requirement. Therefore, Defendants' Motion to Dismiss based on Plaintiffs' failure to present their claims to the agency is DENIED.

3. Failure to State a Claim

In the alternative, Defendants argue that Plaintiffs' claims should be dismissed for failure to state a claim. In their Amended Complaint, Plaintiffs allege that DFAP's exclusion of Legacy Claims and housing loans violates the Administrative Procedure Act ("APA"), separation of powers, and Due Process. (ECF No. 41 at PageID 343-44, 347-48.) Each argument is addressed below.

a. APA

In their Amended Complaint, Plaintiffs assert that the ineligibility of Legacy Applications and housing loans is arbitrary and capricious under the APA. The APA states that, when reviewing agency

actions, "[t]he reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706. "Under what [the Supreme Court has] called this 'narrow' standard ofreview, ... an agency [must] 'examine the relevant data and articulate a satisfactory explanation for its action.'" Tennessee v. United States Dep't of Agric., No. 3:22-cv-257, 2023 WL 3048342, at *14 (E.D. Tenn. Mar. 29, 2023) (quoting F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 513 (2009). But "a court is not to substitute its judgment for that of the agency and should uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." Fox Television Stations, Inc., 556 U.S. at 513-14 (quoting Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc., 419 U.S. 281,286 (1974) (internal quotations omitted)).

As Defendants point out, the ineligibility of Legacy Applications and housing loans comes from Congress's language in appropriating the funds, not from the USDA. (ECF No. 64-1.) Section 22007 of the IRA states that Congress appropriated funds "for a program to provide financial assistance, including the cost of any financial assistance, to farmers, ranchers, or forest landowners determined to have experienced discrimination prior to January 1, 2021, in Department of Agriculture farm lending programs." Pub. L. No. 117-169, § 22007, 136 Stat. 1818, 2023 (2022).

The plain language of Section 22007 makes clear that it is designed to provide financial assistance to claimants who have experienced

discrimination; it does not permit claims on behalf of others, including estates. Moreover, the word "assistance" means "[t]he act of helping or aiding." Assistance, Black's Law Dictionary (11th Ed. 2019). The use of the word assistance, rather than compensation, supports the idea that the funding was intended to provide prospective relief for living farmers, rather than to compensate the families of deceased ones.

In addition, as for the housing loan program, the IRA specifically refers to "farm lending programs," not housing lending programs or USDA lending programs generally. Pub. L. No. 117-169, § 22007, 136 Stat. 1818, 2023 (2022). Because "an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate," the USDA's exclusion of Legacy Applications and housing loans when implementing the statute is proper. Util. Air Regul. Grp. v. EPA, 573 U.S. 302,328 (2014). Thus, the Motion to Dismiss Plaintiffs' APA Claim is GRANTED.[2]

b. Separation of Powers

Plaintiffs also argue that the USDA's exclusion of Legacy Applications and housing loans violates separation of powers because "[t]here is no justification for USDA being permitted to arrogate

[2] Plaintiffs also argue that not allowing Legacy Claims conflicts with 42 U.S.C. § 1982, which states, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." DFAP does not violate or affect this right.

unto itself the powers to ... limit relief to living [Farm Service Agency] applicants." (ECF No. 41 at PageID 346.) Plaintiffs contend that the USDA's exclusion of Legacy Applications and housing loans violates the nondelegation doctrine because it constituted an exercise of legislative power for which Congress failed to prescribe an intelligible principle to govern the agency's discretion.

"The nondelegation doctrine bars Congress from transferring its legislative power to another branch of Government." Gundy v. United States, 139 S. Ct. 2116, 2121 (2019). However, "a statutory delegation is constitutional as long as Congress 'lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform.'" Id. at 2123.

As stated above, the USDA's exclusion of Legacy Applications and home loans is based on the plain language of Section 22007. Because the USDA's implementation of the program is consistent with the plain language of the statute, it does not violate the nondelegation doctrine. See United States Dep't of Agric., 2023 WL 3048342, at *25. As a result, the Motion to Dismiss Plaintiffs' Separation of Powers claim is GRANTED.

c. Due Process

Finally, Plaintiffs assert in their Amended Complaint that the exclusion of Legacy Applications and home loans violates the Fifth Amendment because the USDA is depriving applicants of property without adhering to constitutionally sufficient procedures. (ECF No. 41 at PageID 347.)

The Fifth Amendment prohibits the government from depriving an individual of "property without due process of law." A government benefit is a property interest if there are "rules or mutually explicit understandings that support [a plaintiff's] claim of entitlement to" it. Kaplan v. Univ. of Louisville, 10 F.4th 569,577 (6th Cir. 2021) (quoting Perry v. Sindermann, 408 U.S. 593, 601 (1972)). "But neither a 'unilateral expectation' to enjoy the a11eged property interest nor an 'abstract need or desire for it' is enough." Id. (quoting Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972)).

As stated above, the USDA policy not to accept Legacy Applications and home loans complies with the IRA. Because Plaintiffs are not eligible for DFAP, they cannot establish a property interest of which they were deprived. Kaplan, 10 F.4th at 577. Therefore, the Motion to Dismiss Plaintiffs' Due Process claim is GRANTED.

II. Preliminary Injunction

There are four factors the Court must balance when assessing whether to issue extraordinary relief, here a preliminary injunction: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of the injunction." Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp., 511 F.3d 535, 542 (6th Cir. 2007). The Court is not required to explicitly consider each of these factors if one is dispositive. Id.

Although the party is not required to fully prove its case at this stage, it must show "more than a mere possibility of success." Id. at 543 (cleaned up).

Because Plaintiffs claims are dismissed under Rules 12(b)(1) and 12(b)(6), it follows that Plaintiffs do not have a strong likelihood of success on the merits. Thus, Plaintiffs' Motion for Preliminary Injunction is DENIED.

CONCLUSION

For the reasons set forth above, Court DENIES Plaintiffs' Second Motion for a Preliminary Injunction and GRANTS Defendants' Motion to Dismiss.

IT IS SO ORDERED, this 9th day of January, 2024.

/s/Sheryl H. Lipman
SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

BLACK FARMERS & AGRICULTURALISTS ASSOCIATION, INC., et al,,

Plaintiffs

v. No. 2:23-cv-2527-SHL-cgc

THOMAS J. VILSACK, SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE, et al.,

Defendants

JUDGMENT

JUDGMENT BY COURT. This action having come before the Court on Plaintiffs' Complaint (ECF No. 1), filed August 24, 2023,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that, in accordance with the Order Denying Plaintiffs' Second Motion for a Preliminary Injunction and Granting Defendants' Motion to Dismiss (ECF No. 74), filed January 9, 2024, all claims by Plaintiffs against Defendants are hereby DISMISSED WITH PREJUDICE.

APPROVED:

/s/Sheryl H. Lipman
SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT JUDGE

January 9, 2024
Date

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION AT MEMPHIS

BLACK FARMERS & AGRICULTURALISTS ASSOCIATION, INC., ET AL,,

Plaintiffs

v.

THE HONORABLE THOMAS J. VILSACK, ET AL.,

Defendants

CASE NO. 2:23-CV-2527

CHIEF JUDGE SHERYL LIPMAN

MAGISTRATE JUDGE CHARMAINE G. CLAXTON

NOTICE OF APPEAL

Notice is hereby given this 2nd day of February 2024, that Plaintiffs hereby appeal to the United States Court of Appeals for the Sixth Circuit from the Orders of this Court entered on: 1) January 9, 2024, ECF Docket No. 74; and 2) January 9, 2024, ECF Docket No. 75. Plaintiffs respectfully appeal both Orders.

/s/Percy Squire
Percy Squire (0022010)
Percy Squire Co., LLC
341 S. Third Street, Suite 10
Columbus, Ohio 43215
(614) 224-6528, Telephone
(614) 224-6529, Facsimile
psquire@sp-lawfirm.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via operation of the the Court's electronic mail filing February 2, 2024, counsel of record.

s/Percy Squire
Percy Squire, Esq. (0022010)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

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Defendants

ORDER DENYING PLAINTIFFS' MOTION FOR INJUNCTION PENDING APPEAL

Before the Court is Plaintiffs' Motion for Injunction Pending Appeal, filed August 14, 2024, over seven months after their request for a preliminary injunction had been denied. (ECF No. 78.) Defendants Thomas J. Vilsack and Zach Ducheneaux, in their official capacities, responded in opposition on August 28, 2024. (ECF No. 80.)

Plaintiffs argue that the Supreme Court's decision in Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244 (2024), changes the outcome of this Court's decision and warrants a stay. (ECF No. 78 at PageID 751, 754.) They assert that, in its decision,

the Court applied the standard that Loper Bright rejected. (Id. at PageID 754.)[1] Plaintiffs argue that they have met the requirements for an injunction pending appeal. (Id. at PageID 755.) Defendants counter that Loper Bright is inapplicable here and that Plaintiffs fail to meet the requirements for seeking injunction pending appeal. (ECF No. 80 at PageID 773-76.)

To be clear, the Supreme Court's ruling in Loper Bright does not impact this case. Loper Bright overruled Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), which had permitted courts to defer to agency interpretations of statutes when faced with statutory ambiguity. Loper Bright, 144 S. Ct. at 2273. But, in its opinion here, the Court did not use Chevron deference to defer to the USDA' s interpretations of Section 22007 of the Inflation Reduction Act when denying Plaintiffs' Second Motion for a Preliminary Injunction and granting Defendants' Motion to Dismiss. (See generally ECF No. 74.) Instead, the Court relied on "[t]he plain language of Section 22007" itself. (Id. at PageID 741.) This form of statutory interpretation is

[1] Plaintiffs also inappropriately requested injunctive relief from the Sixth Circuit. (ECF No. 81-1.) As the Circuit noted, absent extraordinary circumstances, seeking relief from the district court first is the appropriate avenue for plaintiffs under Federal Rule of Civil Procedure 8. (Id. at PageID 781.) Plaintiffs offered no justification for their lack of compliance with Rule 8. (Id.) The Circuit denied the motion for injunction pending appeal without prejudice. (Id. at PageID 782.)

outside of the scope of Loper Bright's ruling, and thus Plaintiffs' request for relief is meritless.[2]

Because Loper Bright had no impact on the previous ruling, Plaintiffs' Motion is DENIED.

IT IS SO ORDERED, this 24th day of October, 2024.

/s/Sheryl H. Lipman
SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT JUDGE

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[2] Further, even if the Court had relied on Chevron deference, the Supreme Court did not intend for its decision in Loper Bright to be retroactive. 144 S. Ct. at 2273 (citing CBOCS West, Inc. v. Humphries, 553 U.S. 442, 457 (2008)) ("[W]e do not call into question prior cases that relied on the Chevron framework. The holdings of those cases that specific agency actions are lawful ... are still subject to statutory stare decisis despite our change in interpretive methodology."). This lack ofretroactivity also renders Plaintiffs' request for relief without merit.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No.24-5119

FILED
Oct 08, 2025
KELLY L. STEPHENS, Clerk,

BLACK FARMERS AND AGRICULTURALISTS ASSOCIATION, INC.; THOMAS BURRELL; MARY FERGUSON; CLAUDETTE JACKSON; MAUZIE FURLOW; ALLIE TILLIS,

Plaintiffs-Appellants,

v.

BROOKE ROLLINS, Secretary of the United States Department of Agriculture; ZACH DUCHENEAUX, Administrator for the United States Department of Agriculture's Farm Service Agency,

Defendants-Appellees.

Before: WHITE, READLER, and MATHIS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Western District of Tennessee at Memphis.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No.24-5119

BLACK FARMERS AND AGRICULTURALISTS ASSOCIATION, INC.; THOMAS BURRELL; MARY FERGUSON; CLAUDETTE JACKSON; MAUZIE FURLOW; ALLIE TILLIS,

Plaintiffs-Appellants,

v.

BROOKE ROLLINS, Secretary of the United States Department of Agriculture; ZACH DUCHENEAUX, Administrator for the United States Department of Agriculture's Farm Service Agency,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Tennessee at Memphis.
No. 2:23-cv-02527-Sheryl H. Lipman, District Judge.

Argued: January 30, 2025

Decided and Filed: October 8, 2025

Before: WHITE, READLER, and MATHIS, Circuit Judges.

COUNSEL

ARGUED: Percy Squire, PERCY SQUIRE, Columbus, Ohio, for Appellants. Jack Starcher, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellees. **ON BRIEF**: Percy Squire, PERCY SQUIRE, Columbus, Ohio, for Appellants. Charles W. Scarborough, Casen B. Ross, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellees.

READLER, J., delivered the opinion of the court in which MATHIS, J., concurred. WHITE, J. (pg. 14), delivered a separate opinion concurring in part and dissenting in part.

OPINION

READLER, Circuit Judge. The Black Farmers and Agriculturalists Association and several individual members (together "the Farmers") sued the U.S. Department of Agriculture, challenging the agency's policy of disallowing applications to one of its programs filed on behalf of deceased relatives, which the Farmers wished to do here. The district court dismissed their lawsuit, holding that the relevant statute required the USDA to accept applications from living farmers only. We agree, and thus affirm the district court.

I.

Recognizing the long history-legislative, legal, and otherwise-that precedes today's case, the following is a truncated version of those developments. Relevant then and now is the fact that the USDA's programmatic offerings include

initiatives that make loans available to farmers. At times, the agency has been accused of racial bias in its lending programs, including by black farmers. In the 1990s, a group of black farmers sued the USDA over these allegations. The agency settled, paying about 15,000 black farmers more than $1 billion. *Pigford v. Glickman* (*Pigford I*), 185 F.R.D. 82, 113 (D.D.C. 1999); Cong. Rsch. Serv., RS20430, *The Pigford Cases: USDA Settlements of Discrimination Suits by Black Farmers* 3, 6 (2013).

Concerns later arose that not all eligible farmers had been paid. So Congress created a cause of action allowing late-filing eligible farmers to revive their "*Pigford*" claims. Cong. Rsch. Serv., supra, at 7. These "*Pigford II*" claims were then consolidated and settled, with the USDA paying about 34,000 black farmers almost $1.25 billion, an amount Congress appropriated to fund the new settlement. *Id.* at 7-8 (citing *In re Black Farmers Discrimination Litig.* (*Pigford II*), 820 F. Supp. 2d 78 (D.D.C. 2011)).

In 2021, the COVID-19 pandemic prompted Congress to target farm-lending discrimination through affirmative legislation rather than in response to private lawsuits. In the American Rescue Plan Act of 2021, Congress appropriated money to help "socially disadvantaged farmers"-a term the statute defined by using the farmer's race. Pub. L. No. 117-2, tit. 1., subtitle A.,§ 1006(b)(5), (c)(3), 135 Stat. 4, 14 (2021); see 7 U.S.C. 2279(a)(5). Due to this racial classification, a parallel provision of the Act quickly fell to constitutional equal protection challenges, foreboding a similar fate for § 1006. *See*

Holman v. Vilsack, 117 F.4th 906, 910 (6th Cir. 2024) (collecting cases).

That brings us to the statute at issue here. Section 22007 of the Inflation Reduction Act of 2022 repealed and replaced § 1006 by using past discrimination, rather than race, as the key metric for award-eligibility purposes. Pub. L. No. 117-169, tit. II, subtitle C, § 22007, 136 Stat. 1818, 2021-23 (2022). Specifically, § 22007(e) appropriated $2.2 billion "to provide financial assistance ... to farmers ... determined to have experienced discrimination ... in [USDA] farm lending programs." *Id*. § 22007(e), 136 Stat. at 2023.

To disburse these funds, the USDA created the Discrimination Financial Assistance Program. The Program, in tum, established various eligibility criteria, one of which lies at the heart of this case: Applications "[r]eport[ing] only discrimination against an individual who was deceased at the time of the application" were deemed "facially ineligible." USDA, *DFAP Validation Review Guide (Version 1.12)*, at 8 (2024) [hereinafter *DFAP Guide*], https://perma.cc/K3L6-8MCS; *accord* First Am. Compl., R. 41 PageID 338.

This requirement excludes the "legacy claims" that the Farmers wish to file on behalf of their deceased ancestors who suffered USDA farm-lending discrimination. That prompted the Farmers to sue the USDA, seeking an injunction that would force the Program to accept legacy claims. The district court, however, denied the motion for a preliminary injunction and granted the government's motion to

dismiss under Federal Rule of Civil Procedure 12(b)(6). The Farmers appealed this decision.

Six months later, they also moved for an emergency injunction pending appeal, seeking to stop the USDA's processing of applications. *See* Fed. R. App. P. 8. A panel of our Court denied the motion without prejudice because the Farmers failed to show that the district court had denied their motion, as required by Federal Rule of Appellate Procedure 8. *See* Fed. R. App. P. 8(a)(l)(C), (2)(A)(i)-(ii). The district court subsequently did so, and the Farmers renewed their motion.

II.

We review the Rule l 2(b)(6) dismissal de novo, accepting the complaint's well-pleaded factual allegations as true and testing whether they support a plausible claim for relief. *See Darby v. Childvine, Inc.*, 964 F.3d 440,444 (6th Cir. 2020) (citing *Johnson v. Morales*, 946 F.3d 911, 917 (6th Cir. 2020); *Binno v. Am. Bar Ass'n*, 826 F.3d 338, 345-46 (6th Cir. 2016)). Because we affirm the district court's final judgment on the merits, we need not address the Farmers' parallel request for preliminary injunctive relief. *See Adams v. Baker*, 951 F.3d 428, 429 (6th Cir. 2020) (per curiam).

Before turning to those merits, we note that the only claim before us is the Farmers' challenge to the legacy-claim exclusion under both the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, and the Fifth Amendment's Due Process Clause, U.S. CONST. amend. V. The Farmers forfeited the other issues they raised in district court-including their challenges to the application's

complexity and filing deadline, as well as to the USDA's refusal to accept applications based on housing loans-by not briefing them on appeal. *See Joseph Forrester Trucking v. Dir., Off of Workers' Comp. Programs*, 987 F.3d 581, 593 (6th Cir. 2021) (citing *Courser v. Allard*, 969 F.3d 604, 621 (6th Cir. 2020)).

A. The Farmers primarily challenge the USDA's exclusion of legacy claims under the APA, characterizing that decision as "arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A). But this attack puts the cart before the horse. That APA standard of review applies to an agency's policymaking choices, for example in rulemaking. *E.g., Motor Vehicles Mfrs. Ass'n of US., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41 (1983). When Congress delegates policymaking authority, we use arbitrary-and-capricious review to determine whether the agency engaged in "reasoned decisionmaking within th[e] boundaries" of the delegation. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263 (2024) (citation modified). But we cannot reach that issue without first undertaking a threshold task: We must "fix[] the boundaries of the delegated authority" by "independently interpret[ing] the statute." *Id.* (citation modified). In other words, before asking whether the USDA acted arbitrarily in deciding not to accept claims based on discrimination faced by deceased farmers, we must first determine whether Congress gave it discretion to accept those claims.

1. It did not, as § 22007(e)'s plain language shows. There, Congress instructed the USDA "to

provide financial assistance . . . to farmers ... determined to have experienced discrimination." § 22007(e). Unpacking that language, the deceased "farmers," at least as suggested by the complaint here, "experienced discrimination." *Id*.; *see* First Am. Compl., R. 41, PageID 340. That leaves the question whether an award under § 22007(e) would provide "assistance" to these farmers.

Finding no statutory definition for that term, we tum to the word's ordinary meaning. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). "Assistance" means "[t]he action of helping or aiding in an undertaking or necessity." *Assistance, I Oxford English Dictionary* 715 (2d ed. 1989); *accord Assistance, Black's Law Dictionary* (12th ed. 2024). "Help," in tum, means "[t]o furnish ... with what is serviceable to [one's] efforts or ... needs." *Help, 7 Oxford English Dictionary* 126 (2d ed. 1989); *see also Help*, Merriam-Webster (last visited Aug. 28, 2025) ("[T]o provide (someone) with something that is useful or necessary in achieving an end."). And to "aid" similarly means "to give ... support." *Aid, I Oxford English Dictionary* 273 (2d ed. 1989); *see also Aid*, Oxford English Dictionary Online (last visited Aug. 28, 2025) (adding "to relieve from difficulty or distress").

Taking all of this together, "assistance" seemingly has two meanings, one task-based and one need-based. When it comes to tasks, "assistance" is something useful or necessary to achieving an end or completing an undertaking or effort. In terms of need, "assistance" provides support or relief to someone in

a present state of difficulty, distress, or necessity. Crucial here is that each definition points to the present and future. Viewed in that light, "assistance" addresses help with either a yet-to-be-completed task or a yet-to-be-satisfied need.

With this understanding in mind, we agree with the USDA that the Program may not accept claims made on behalf of deceased farmers. The Program's "financial assistance," remember, must go "to [the] farmers" who "experienced discrimination." § 22007(e). For the Farmers' claims to qualify, the money would have to "assist[]" a deceased farmer who suffered discrimination. *Id*. That is impossible. It goes without saying that a deceased farmer is not engaged in an activity that money can help complete, nor does the farmer suffer any need that money can help relieve. Money, in short, cannot "assist[]" a deceased farmer. § 22007(e). Because deceased farmers do not satisfy this statutory requirement, the USDA was required to reject applications filed on behalf of that group.

Fairly read, the Farmers' claims are better understood to seek "compensation" for past harm to deceased farmers, not "assistance." To "compensate" means "[t]o counterbalance, make up for, [or] make amends for," *Compensate, 4 Oxford English Dictionary* 601 (2d ed. 1989), often by "mak[ing] an appropriate and usually counterbalancing payment" which, for example, "compensate[s] ... victims for their loss," *Compensate*, Merriam-Webster (emphasis omitted) (last visited Aug. 28, 2025). That describes what the Farmers seek here, as any payment to a now-deceased farmer's estate based on discrimination

suffered during the farmer's life would be solely for making amends for wrongs previously suffered, not for "assist[ing]" the farmer in the here and now.

On this point, we note that other courts to consider similar provisions have held that a grant of "financial assistance" contemplates the "provision of a subsidy to an entity, as opposed to providing compensation." *McMullen v. Wakulla Cnty. Bd. of Cnty. Comm 'rs*, 650 F. App'x 703, 707 (11th Cir. 2016) (per curiam) (citation modified); *see also Harpole v. Ark. Dep't of Hum. Servs.*, 820 F.2d 923, 928 (8th Cir. 1987) (noting that a statute written to "provide financial assistance" is not intended "as a means of seeking compensation" for past "injur[ies]"). We find this distinction persuasive. After all, Congress is seemingly well aware of the difference between "compensation" and "assistance," typically using the former term when it wishes to provide backward-looking payments to make up for past wrongs or pay existing debts, as legislative enactments from the recent and more distant past reflect. *See, e.g.*, One Big Beautiful Bill Act, Pub. L. No. 119-21, tit. X, pt. II, subtitle C, § 100201, 139 Stat. 72, 394 (2025) (describing program of "compensation" for "radiation exposure" (citation modified)); Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, tit. III, § 316(a)(l), 130 Stat. 549, 584 (2016) (providing "compensation for actual, necessary services rendered"); Longshoremen's and Harbor Workers' Compensation Act, Pub. L. No. 69-803, ch. 509, § 8, 44 Stat. 1424, 1427 (1927) (providing "[c]ompensation for disability" caused by work as a longshoreman).

Take as an example Congress's response to the Japanese American internment saga. There, our nation's legislature designed a program to issue "appropriate compensation" for the "enormous damages" caused by past discrimination, 1988 Civil Liberties Act, Pub. L. No. 100-383, § 2(a)-(b), 102 Stat. 903, 904, and explicitly designated that such "payments" can be made on behalf of "deceased persons," *id*. § 105(a)(7), 102 Stat. at 907. "[W]here Congress knows how to say something but chooses not to, its silence is controlling." *In re Griffith*, 206 F.3d 1389, 1394 (11th Cir. 2000) (en bane) (citation modified); *see also Thompson v. United States*, 145 S. Ct. 821, 827 (2025) (similar). In sum, as the district court aptly stated, "[t]he use of the word assistance, rather than compensation, supports the idea that the funding was intended to provide prospective relief for living farmers, rather than to compensate the families of deceased ones." Order Den. Pls.' Second Mot. Prelim. Inj. and Granting Defs.' Mot. Dismiss, R.74, PageID 741.

The structure of § 22007 confirms as much. The other subsections of § 22007, it bears noting, also appropriate money for forward-looking purposes. *See* § 22007(a) ("[T]o provide outreach, mediation, financial training, ... and other technical assistance ...."); § 22007(b) ("[T]o improve land access ...."); § 22007(c) ("[T]o fund ... equity commissions "); § 22007(d) ("[T]o support and supplement agricultural research, education, and extension "). What is more, § 22007 had its genesis in a COVID-19-relief statute, which likewise addressed a wide range of pandemic-related issues on a uniformly

forward-looking basis. *See generally* Pub. L. No. 117-2, 135 Stat. 4.

Finally, comparison to the two *Pigford* class action settlements, which accepted claims from deceased farmers and which the Farmers cite as the measure of appropriate USDA action, only highlights the daylight between Congress's choice to grant "assistance" and the Farmers' desire to transform this appropriation into "compensation." In those class action settlements, the fundamental underlying claim was that "the government *had wronged* generations of African American farmers and must provide *compensation." Pigford I,* 185 F.R.D. at 101 (emphasis added). In other words, those farmers sought a backward-looking payment to make up for harm they suffered. Federal law, in tum, allowed the class action to include claims for compensatory damages brought by survivors of deceased farmers who suffered discrimination. *See Weatherford US., L.P. v. US. Dep't of Lab., Admin. Bd.*, 68 F.4th 1030, 1036-37 (6th Cir. 2023) (describing federal common law rule that "claims to compensate the plaintiff survive a party's death" (citation modified)). So it makes perfect sense that the USDA accepted claims from the survivors of the deceased *Pigford* farmers. But § 22007(e), by comparison, provides "assistance," not "compensation," and thus creates no cause of action that could survive the claimant's death.

Accordingly, the USDA, in this instance, could not have accepted claims made on behalf of deceased farmers. This resolves the Farmers' APA challenge, obviating any need to address their numerous

arguments under the arbitrary-and-capricious standard.

2. The Farmers seek to avoid the statute's text in many ways. Many of these arguments, it bears noting, emerged for the first time at oral argument. By failing to argue these points in their appellate briefing, the Farmers forfeited them. *See Joseph Forrester Trucking*, 987 F.3d at 593. But even if we excuse the forfeiture, none of these points changes our straightforward analysis.

a. First, the Farmers claim that "assistance" does not have its ordinary meaning. Instead, they argue that the previous enactment of § 1006 in the American Rescue Plan Act of 2021 purportedly defined "assistance" so broadly as to encompass grants to deceased farmers, a definition, the Farmers say, we should bring forward to inform our interpretation of§ 22007(e). First, it is unclear why a definition that did not survive from the previous enactment into the now-binding law should be given any weight. Normally we would read such an omission as demonstrating Congress's intent to disavow the prior definition, not embrace it. *See, e.g., Phillips v. Ct. of Common Pleas*, 668 F.3d 804, 810 (6th Cir. 2012) (noting that "courts operate on the assumption that Congress acts intentionally" when it "omits" "particular language" while "amend[ing]" a statute (citation modified)). But even putting that objection aside, § 1006 contained no definition of "assistance." The Farmers' argument appears to be premised on that statute's subsection heading: "ASSISTANCE." § 1006(b), 135 Stat. at 13. The heading, however, does not introduce a statutory

definition of the term "assistance"; instead, it merely introduces the list of assistance programs created under the statute. *Id*. Further inspection reveals that the heading serves simply to distinguish this list from subsections (a), which describes the "APPROPRIATION" that funds these programs, and (c), where Congress in fact did provide "DEFINITIONS"-and in doing so, it bears noting, conspicuously omitted one for "assistance." § 1006(a), (c), 135 Stat. at 13-14. In short, § 1006 does not define "assistance" any more than § 22007 does, leaving us to use the term's ordinary meaning. *See Taniguchi*, 566 U.S. at 566.

b. At oral argument, the Farmers provided their first explanation of how money can "assist" a deceased farmer. The money, the Farmers explained, "puts" the dead farmer's "heirs in position to benefit from the [farmer's] efforts," and thus "assist[s] the estates," which "would have been in a position to bequeath finances to their heirs" if they received the money. Oral Argument at 08:42-09:09. Even if this argument had been briefed, it would not go far. The Farmers seemingly envision the money "assisting" the estates bequeathed to the deceased farmer's heirs. Yet an estate is merely "[t]he property that one leaves after death." *Estate, Black's Law Dictionary* (12th ed. 2024). That collection of property is not itself a "farmer[]" who "experienced discrimination." § 22007(e). So even if a grant would assist an estate in some sense, that effect still falls outside the statute's instruction to assist "farmers" themselves. *Id*.

c. The Farmers also emphasize potential practical issues that might arise from interpreting "assistance" to exclude claims on behalf of deceased farmers. While those points may carry weight in the legislative setting, they are largely misplaced here. After all, on issues of statutory interpretation, "[e]ven the most formidable policy arguments cannot overcome a clear statutory directive," such as the one in§ 22007(e). *Badgerow v. Walters*, 142 S. Ct. 1310, 1321 (2022) (citation modified).

Even were we positioned to evaluate possible policy impacts tied to congressional action, the concerns raised might not pose much of a problem. Consider the purported unfairness in not accepting claims from a farmer whose operations are still affected by past discrimination against his deceased parents or grandparents. That the farmer cannot submit a claim on behalf of his deceased ancestors, however, does not mean he cannot file a claim for himself. For example, as the government conceded at oral argument, a farmer who is the "current holder" of a debt that resulted from alleged past discrimination may apply to the Program on that basis. *DFAP Guide, supra*, at 66; *see* Oral Argument at 15:50. This tracks our understanding of the statute: The farmer, now subject to the terms of a discriminatory loan, has himself "experienced discrimination" and is thus eligible for "assistance." § 22007(e). Or if, on the other hand, a loan was denied to the farmer's ancestors because of discrimination, the farmer seemingly could apply on his own behalf and explain in his application how discriminatory acts toward his predecessors also

constituted discrimination against him personally. *See DFAP Guide, supra*, at 66 (rejecting application when it "*only* asserts discrimination against an individual who is now deceased" (emphasis added)); Oral Argument at 16:16 (government conceding that "if they were able to file an application and explain how they themselves experienced discrimination, then they could do that"). In any event, even if some farmers fall in neither bucket and thus have no statutory claim available, that result is tied to Congress's design, a choice we may not second guess.

Nor does the Program's allegedly inconsistent decision to accept claims from "potential producers"-those who never farmed but merely intended to do so before farm-lending discrimination prevented it-convince us to read the statute any differently. That oddity, if true, arises from the USDA's interpretation of "farmers," which is not at issue in this case, rather than from our straightforward reading of "assistance." *See DFAP Guide, supra*, at 10 (justifying this choice based on the "the statutory reference to 'farmers'" because "would-be farmers" "demonstrate sufficient connection ... to farming ... to qualify for a loan"). In another case, we could debate whether this reading of "farmers" is correct. But here, it sheds no light on the meaning of "assistance."

Finally, the Farmers make hay over the fact that the Program accepted applications from living farmers who subsequently passed away while rejecting applications from farmers who were deceased when their application was submitted. That assertion, however, is not supported by any

allegations in the complaint or elsewhere in the record. Nor, in any event, does the argument make much sense. Barring an ability to read the future, on what basis should the USDA have rejected applications from farmers who were going to die *after* they applied? In the end, neither this nor any of these other alleged practical inconsistencies can overcome the statute's plain command. *See Badgerow*, 142 S. Ct. at 1321.

d. Falling short on the policy front, the Farmers tum to statutory purpose. To their minds, our reading contravenes Congress's intent "to compensate for decades of racial discrimination in USDA farm lending programs." Appellant Br. 26. What controls here, of course, is the text. And on that score, the lone purported purpose Congress revealed in enacting § 22007(e) was to provide "assistance," not "compensation." *See Arangure v. Whitaker*, 911 F.3d 333, 345 (6th Cir. 2018) ("Congress addresses [its] purposes by negotiating, crafting, and enacting statutory text."). The Farmers' speculation to the contrary cannot overcome the text's command.

Were we inclined to entertain the Farmers' purpose argument, it nonetheless runs contrary to the structure and background here. Recall that the rest of§ 22007 concerns forward-looking, pandemic-inspired assistance programs. And the backward-looking component of the farm-lending-discrimination problem has already been addressed by the two *Pigford* settlements, where Congress allocated more than $2 billion to settling the compensatory claims the Farmers now seek to re-litigate. *See* Cong. Rsch. Serv., *supra*, at

6-7. Indeed, many applications accepted under the Program were based on "the same discrimination during the same timeframe as successfully claimed in" the *Pigford* settlements. *DFAP Guide, supra*, at 17 (bold omitted). And more than $12 million was left unclaimed after *Pigford II*, suggesting that all claimants who could be compensated have been. *See Cy Pres Funds*, In Re Black Farmers Discrimination Litigation Settlement, https://www.blackfarmercase.com/CyPres.aspx (last visited Aug. 28, 2025); *see also In re Black Farmers Discrimination Litig.*, No. 08-0511, 2018 WL 6434766, at *1, *4 (D.D.C. Dec. 7, 2018) (describing dispute over *cy pres* distributions).

In sum, if one were looking for an overarching statutory purpose, as the Farmers ask us to do, the only one apparent from § 22007(e), its statutory context, or its history is to provide forward-looking help for pandemic-affected farmers-not, as the Farmers suggest, to provide backwards-looking compensation to farmers already compensated by the *Pigford* settlements.

e. The Farmers next invoke their statutory right to "inherit ... property" on the "same" basis as other "citizens of the United States." *See* 42 U.S.C. § 1982 ("All citizens of the United States shall have the same right ... as is enjoyed by white citizens ... to inherit ... real and personal property.") According to the Farmers, interpreting § 22007(e) in the manner we have violates § 1982 by denying the heirs of black farmers the right "to inherit" property on the same terms as the heirs of white farmers. 42 U.S.C. § 1982. Three problems with this assertion immediately come

to mind. One, the argument seemingly assumes, without support, that every person who "inherit[s]" land from a discriminated-against black farmer will also be black. *Id*. Two,§ 1982, like§ 22007(e), is merely a statute. A previous statutory enactment, no matter how revered, cannot supplant the will of a subsequent Congress, *see Fletcher v. Peck*, IO U.S. (6 Cranch) 87, 135 (1810), especially a statute that speaks more specifically to the situation at hand, *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("It is a commonplace of statutory construction that the specific governs the general." (citation modified)). So in the event of a conflict, § 22007(e) prevails.

Three, and more to the point, our reading of§ 22007(e) creates no conflict with § 1982. The latter statute is triggered only if government or private action at least "impair[s] a property interest." *Gerber v. Herskovitz*, 14 F.4th 500, 510 (6th Cir. 2021). To the Farmers' minds, the deceased-farmer exclusion does so by failing to redress prior USDA discrimination that reduced the value of their ancestors' land. But any "impair[ment]" complained of here derives from prior USDA actions, not from § 22007(e) or the USDA's implementation of it. In short, § 22007(e) impairs no one's right to inherit property.

f. Finally, in their motion for an injunction pending appeal, the Farmers cite *Loper Bright*, urging us to apply our independent judgment rather than deferring to the USDA's understanding of§ 22007(e). *See* 144 S. Ct. at 2273. But we have done just that, as *Loper Bright* commands.

B. Turning from the APA to the Constitution, the Farmers also claim that excluding their claims violated the Fifth Amendment's Due Process Clause. To show a violation of procedural due process, the Farmers must (1) identify a life, liberty, or property interest; (2) show that they have been deprived of that interest; and (3) explain why the process used in the deprivation was inadequate. *Fields v. Henry County*, 701 F.3d 180, 185 (6th Cir. 2012) (citing *Women's Med. Pro. Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006)). Beyond a few naked assertions of illegality, however, they do not even attempt to do so, once again forfeiting the point. *Buetenmiller v. Macomb Cnty. Jail*, 53 F.4th 939, 946 (6th Cir. 2022) ("In instances where issues are adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, we consider them forfeited." (citation modified)). And peeking at the unbriefed merits, it bears noting that the Farmers have no due-process-protected property interest in the "benefit" program created here, given that the governing statute, as explained above, affords them no "claim of entitlement to th[at] benefit." *Perry v. Sinderman*, 408 U.S. 593, 601 (1972). For both reasons, this claim likewise fails.

* * * * *

We affirm the district court's judgment and deny the motion for an injunction pending appeal as moot.

CONCURRENCE/ DISSENT

HELENE N. WHITE, Circuit Judge, concurring in part and dissenting in part.

I agree with portions of the majority's analysis but write separately to emphasize that there clearly is a compensatory element to Congress's choice of the term "assistance."

First, recovery under this provision is measured by the "consequences" flowing from past discrimination, a distinctly compensatory framing. This is in contrast to the majority's understanding that "assistance" connotes "something useful or necessary to achieving an end or completing an undertaking or effort"-i.e., a payment amount tied to the costs of that undertaking, not to the consequences of a past injury.

Second, to the extent that we can consider the *DFAP Guide-a* document not in the record or, seemingly, even known to the parties-it, too, suggests a compensatory element. For example, it permits payment to former farmers and "Potential Producers." *DFAP Guide* at 10, 15 (noting that (1) the term "Farmers" "includes applicants who-at any point-owned or leased a farming[] operation"; and (2) the term "Potential Producers" "includes applicants who never owned or leased a farming[] operation" (first emphasis added)). These individuals would not receive assistance, at least not in connection with any current farming efforts.

Still, I agree with the majority that the statute's use of "assistance" fairly contemplates that an applicant under § 22007(e) is capable of being

assisted; i.e., that the applicant is alive to receive the payment. For that reason, I would hold that legacy claims brought on behalf of farmers who were alive when the statute took effect should be eligible for recovery, assuming they meet all other conditions.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No.24-5119

FILED
Dec 08, 2025
KELLY L. STEPHENS, Clerk,

BLACK FARMERS AND AGRICULTURALISTS ASSOCIATION, INC.; THOMAS BURRELL; MARY FERGUSON; CLAUDETTE JACKSON; MAUZIE FURLOW; ALLIE TILLIS,

Plaintiffs-Appellants,

v. **ORDER**

BROOKE ROLLINS, Secretary of the United States Department of Agriculture; ZACH DUCHENEAUX, Administrator for the United States Department of Agriculture's Farm Service Agency,

Defendants-Appellees.

Before: WHITE, READLER, and MATHIS, Circuit Judges.

The court received a petition for rehearing en bane. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has

requested a vote on the suggestion for rehearing en bane.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk