№. 25-1369

In The Supreme Court of the United States

BLACK FARMERS AND AGRICULTURALISTS ASSOCIATION, INC., ET AL.,
Petitioners

v.

BROOKE L. ROLLINS, SECRETARY OF AGRICULTURE, ET AL.,
Respondents.

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

PETITION FOR REHEARING

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RULE 29.6 STATEMENT

Petitioner Black Farmers and Agriculturalists Association, Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

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PETITION FOR REHEARING

Pursuant to Rule 44.2, petitioners respectfully petition for rehearing of the Court's order of October 5, 2026, denying their petition for a writ of certiorari. The petition was filed on March 6, 2026. The Solicitor General waived a response on July 2, 2026, and the Court denied review without requesting one.

The Sixth Circuit held, over a partial dissent, that the Department of Agriculture must reject applications submitted on behalf of farmers who were already deceased when the applications were filed. Congress appropriated $2.2 billion "to provide 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," in amounts "determined to be appropriate based on any consequences experienced from the discrimination." American Rescue Plan Act of 2021 (ARPA) § 1006(e), as amended by Inflation Reduction Act of 2022, Pub. L. No. 117 169, § 22007, 136 Stat. 1818, 2021-23 (7 U.S.C. § 2279 note). The panel nevertheless concluded that "[m]oney . . . cannot 'assist[]' a deceased farmer" and treated the exclusion as statutorily compelled. Black Farmers &

Agriculturalists Ass'n v. Rollins, 154 F.4th 473 (6th Cir. 2025), Pet. App. G 7-8, G 11-12.

Rehearing is warranted on both grounds that Rule 44.2 allows. The first is intervening circumstances. Since the petition was filed, the Department has terminated 49 of the 50 awards under a Section 22007 funded land-access program, citing "agency priorities"; a federal district court has preliminarily set aside 24 of those terminations as likely contrary to statute, and the D.C. Circuit has declined to stay that ruling. The day after this Court denied review, the same district court issued a further opinion examining amended Section 1006 against its predecessor. The second is authorities not previously presented: the statute's own history and usage, and the Department's published treatment of applicants who die after filing, show that the word "assistance" does not compel the exclusion. These grounds are substantial because the panel's judgment rests entirely on the contrary premise. Having deemed the exclusion compelled by statute, the panel never reviewed it as an agency choice under the APA. If that premise fails, such review is required; without it, the decision below will be the last word for the families of farmers who did not live to apply.

GROUNDS FOR REHEARING

I. After the petition was filed, the Department acted under Section 22007 in ways that undercut the premise that the exclusion is statutorily compelled.

Section 22007 amended ARPA § 1006 to fund, alongside the discrimination assistance in subsection (e), "LAND LOSS ASSISTANCE" in subsection (b): grants and loans "to improve land access (including heirs' property and fractionated land issues) for underserved farmers, ranchers, and forest landowners." 136 Stat. 2022. On or about March 23, 2026, the Department terminated 49 of the 50 awards under its Increasing Land, Capital, and Market Access Program, a program that began under ARPA § 1006 and that Section 22007 funded. Urban Sustainability Directors Network v. U.S. Department of Agriculture, No. 25 cv 1775 (BAH), Mem. Op. 5, 20 (D.D.C. June 30, 2026) (ECF No. 81). The termination letters declared that each award "no longer effectuates the program goals or agency priorities" and condemned the awards as "discriminatory preferences" and "wasteful spending"; the Department's National Appeals Division then

ruled the terminations "not appealable." Id. at 6. On June 30, 2026, the district court preliminarily vacated 24 of the terminations as "likely contrary to statute." Id. at 36. On September 29, 2026, the D.C. Circuit denied a stay pending appeal, concluding that the government had "not demonstrated a likelihood of success on the merits." Order, No. 26 5264 (D.C. Cir. Sept. 29, 2026).

After this Court denied certiorari, the district court issued a further opinion. Urban Sustainability Directors Network, Mem. Op. 31-38 (D.D.C. Oct. 6, 2026) (ECF No. 116). In denying dismissal of the Land Access Program plaintiffs' contrary-to-law claim, the court examined amended Section 1006 against its predecessor and related provisions. That decision concerns a different program and does not resolve DFAP estate eligibility. Its analysis nevertheless illustrates the relevance of statutory history and context to the meaning of "assistance" under the amended provision. See Part II.A, infra.

DFAP itself has wound down. On March 12, 2026, the Inspector General released the unredacted text of its audit of DFAP, reporting that "DFAP decisions are final with no right of appeal" and that, "[a]s of April 2025, more than $4.3 million of the DFAP funds remained unspent, excluding any funds

recovered." USDA Office of Inspector General, Audit Report 50601 0006 23, IRA-Discrimination Financial Assistance Program 4, 6 (Sept. 8, 2025) (unredacted version released Mar. 12, 2026). The Department has also reported that "[t]he IRA 22007 National Administrator system fully retired." USDA, 2027 Explanatory Notes: Farm Production and Conservation Business Center 25 17.

These developments matter in three respects. First, they leave the question unreviewed as the program closes. The panel suggested that an heir might apply in his own right if discrimination against his predecessors also constituted discrimination against him personally. Pet. App. G 14-15. But the ordinary DFAP application process closed in January 2024, before the panel heard argument, Pet. App. B 2-3, and USDA reports that its administration system has been retired. The possibility that an heir might qualify independently does not resolve these petitioners' challenge to the exclusion of claims submitted for deceased farmers. Administrative finality and program closure do not themselves foreclose APA review.

Second, the developments bear on whether the exclusion rests on statutory command or agency policy. The Department persuaded the courts below

that the exclusion "comes from Congress's language in appropriating the funds, not from the USDA." Pet. App. B 16. Yet since the petition was filed it has canceled Section 22007 awards that no longer serve "agency priorities"-terminations that a federal court, as to 24 of them, has preliminarily found likely contrary to statute. And under the Department's own rules, its other assistance programs pay through the estates of deceased producers. See Part II.C, infra. If the word "assistance" permits payment through an estate in those programs, it cannot by itself forbid payment in Section 22007(e).

Third, the question remains live. The appropriation remains available until September 30, 2031, subject to subsection (g)'s limits on late disbursements and on the use of other funds. 136 Stat. 2023. The audit's April 2025 balance does not establish what remains today; the present availability of funds or other effective relief should be addressed in a response. And because DFAP was a single nationwide program with one application window and no administrative appeal, the absence of a circuit conflict reflects the program's design, not the question's importance.

II. Authorities not previously presented show that "assistance" does not compel the exclusion.

The principal authorities below-the original text of § 1006(b)(5) and ARPA's other uses of "financial assistance," the Department's published guidance on death after filing, and its estate-payment rules-were not presented in the certiorari petition. They are substantial because the panel resolved petitioners' APA challenge solely on its reading of "assistance," "obviating any need to address their numerous arguments under the arbitrary-and-capricious standard." Pet. App. G 11-12. Because the statutory question was pressed and passed upon below, petitioners may support it with new authorities. See Yee v. City of Escondido, 503 U.S. 519, 534 (1992).

A. The statute's history uses "financial assistance" for relief from past discrimination.

The panel treated Section 22007 as having "repealed and replaced" Section 1006, Pet. App. G 4, and questioned why "a definition that did not survive

from the previous enactment into the now-binding law should be given any weight," id. at G 12. Petitioners rely not on a definition but on Congress's usage. As originally enacted, § 1006(b)(5) directed "financial assistance to socially disadvantaged farmers, ranchers, or forest landowners that are former farm loan borrowers that suffered related adverse actions or past discrimination or bias in Department of Agriculture programs." Pub. L. No. 117 2, 135 Stat. 4, 14 (2021). Section 22007 amended that section "to read as follows," 136 Stat. 2021, while the next section repealed ARPA § 1005 outright, Pub. L. No. 117 169, § 22008, 136 Stat. 2023. The substituted text governs, and the former provision is not an independently surviving source of eligibility. But it is part of the amended section's history, and the amended text uses the term the same way. Subsection (e) measures awards by the "consequences experienced from the discrimination," and Congress titled subsection (b) "LAND LOSS ASSISTANCE" and directed it to "heirs' property and fractionated land issues"-problems that arise because land has passed from deceased owners to their heirs. 136 Stat. 2022-23. Section headings are "tools available for the resolution of a doubt" about a statute's meaning. Almendarez-Torres v. United States, 523 U.S. 224,

234 (1998) (citation omitted). The panel cited subsection (b) as evidence that Section 22007 is forward-looking, Pet. App. G 10; its text says otherwise. This context supports a remedial meaning, though it does not by itself establish that every estate is eligible.

Elsewhere in the same Act, Congress used "financial assistance" for payments that look entirely backward: "financial assistance . . . to meet disaster-related funeral expenses" arising from the pandemic, ARPA § 4006(a), 135 Stat. 79 (42 U.S.C. § 5174 note), and "financial assistance to eligible households" for "rental arrears" and "utilities and home energy costs arrears," ARPA § 3201(d)(1)(A)(i), 135 Stat. 54 (15 U.S.C. § 9058c). When Congress means assistance to be prospective, it says so. See 15 U.S.C. § 9058a(c)(2)(B)(i) ("financial assistance for prospective rent payments"). "[I]dentical words used in different parts of the same act are intended to have the same meaning." Gustafson v. Alloyd Co., 513 U.S. 561, 570 (1995) (citation omitted). These examples answer the panel's characterization of ARPA as addressing pandemic-related issues "on a uniformly forward-looking basis," Pet. App. G 10-11. Who may receive DFAP payments turns on subsection (e) as a whole, including its measure of

awards by past consequences-the "compensatory element" Judge White recognized. Pet. App. G 20.

B. Death after filing does not defeat DFAP eligibility.

The panel declined to credit petitioners' observation about applicants who died after applying because it lacked support in the complaint or record. Pet. App. G 15-16. The Department's published guidance answers "No" to the question whether "an application [is] considered ineligible if the applicant died after submitting the application," and directs that "[i]f an applicant has died since submission, their family/estate should contact the DFAP Call Center . . . for further instructions." USDA, Discrimination Financial Assistance Program Frequently Asked Questions iii, FAQ 5a (added Apr. 23, 2024; updated Aug. 19, 2024). That establishes the announced policy, not that any particular estate received an award. The Treasury Department likewise advises that a DFAP "financial assistance payment" may relate to "a trade or business that is, or was, carried on," including where it was received "as compensation for lost income of a trade or business." IRS, Fact Sheet FS 2024 05, Q&A 3 (Feb.

2024). The panel itself consulted the program's Validation Review Guide, which Judge White noted was "not in the record or, seemingly, even known to the parties." Pet. App. G 20; see id. G 4, G 14-15, G 17. The FAQs are official published guidance of the same kind.

The relevant inconsistency concerns continued eligibility after a known death, not the Department's ability to predict one. The panel's observation that the Department could not "read the future," Pet. App. G 16, explains accepting an application while its maker lived; it does not explain why eligibility continues after death if assistance necessarily requires a living recipient. The government might defend a rule fixing eligibility at submission, but it would have to identify a statutory or administrative basis for that rule. The word "assistance" alone cannot explain both continued eligibility after filing and categorical ineligibility before filing.

That distinction matters to the disposition. Because the panel deemed the exclusion compelled by statute, it bypassed petitioners' arbitrary-and-capricious arguments. Pet. App. G 11-12. If the statute permits the Department to recognize an otherwise qualifying deceased farmer's claim through an authorized representative, the

exclusion must be reviewed as an administrative choice. See Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983). "[A]n order may not stand if the agency has misconceived the law." SEC v. Chenery Corp., 318 U.S. 80, 94 (1943). Further proceedings would address the agency's actual rationale and any preserved APA objections-not direct automatic payment to every estate.

Judge White would have held that claims for farmers who were alive when Section 22007 took effect on August 16, 2022, are eligible if they meet all other conditions. Pet. App. G 21. The Department's policy preserves eligibility after submission yet excludes a farmer who died after enactment but before the program was announced on July 7, 2023, id. B 2, without identifying a statutory basis for that line.

C. The Department's other assistance programs pay through estates.

The Department's regulations permit release of a payment to an executor or administrator, or to survivors in a stated order, when an otherwise

eligible person "dies before the payment is received," and allow a timely application to be filed after death "by a person legally authorized to act for the deceased," subject to program conditions and a separate release application. 7 C.F.R. §§ 707.3(a), 707.7. The Department applies that rule to "individuals that are eligible for program benefits [who] die prior to requesting program benefits." Farm Service Agency, Payment Eligibility: Deceased Person. The Emergency Relief Program, funded by the Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. No. 117 43, 135 Stat. 344 (2021), for crop losses in 2020 and 2021, and the Emergency Commodity Assistance Program, authorized by the American Relief Act, 2025, Pub. L. No. 118 158, 138 Stat. 1722 (2024), both issue payments to a deceased producer's estate. FSA Handbook 1 ERP 45 J; FSA Handbook 1 ECAP 24 C, at 2 2 (Amend. 1, Apr. 29, 2025). Congress, too, has directed regulations identifying when farm-commodity payments may issue in a deceased individual's name "in order to allow for the settlement of estates." 7 U.S.C. § 8786(a)(1).

These programs operate under different authorizing provisions, and the Farm Service Agency states that its deceased-person procedures do not

apply to DFAP because DFAP "is not an FSA program." Petitioners rely on them as contextual examples of assistance paid through an authorized representative, not as rules controlling DFAP. They show that the word "assistance" cannot by itself resolve the question; DFAP eligibility must turn on its own statutory text and a lawful implementation of that text.

III. The interests of justice warrant rehearing or, at a minimum, a response.

This Court has reconsidered denials of certiorari when "the interests of justice would make unfair the strict application of [its] rules." United States v. Ohio Power Co., 353 U.S. 98, 99 (1957) (per curiam); see Gondeck v. Pan American World Airways, Inc., 382 U.S. 25, 26-27 (1965) (per curiam) (granting rehearing and vacating an order denying certiorari). The Department's actions under Section 22007 since the petition was filed, the decisions those actions prompted, and the Department's published treatment of death after submission provide substantial grounds to reconsider whether the

categorical statutory holding should stand unreviewed as this nationwide program closes.

Under Rule 44.3, no petition for rehearing is granted without an opportunity to respond. Petitioners respectfully request a response addressing the Department's post-petition actions under Section 22007, the statutory basis for its distinction between death before and after submission, the treatment of farmers alive at enactment, and the present availability of funds or other effective relief.

CONCLUSION

The Court should grant rehearing, vacate its October 5, 2026 order denying certiorari, and grant the petition for a writ of certiorari. At a minimum, the Court should request a response under Rule 44.3 before disposing of this petition.

Respectfully submitted,

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October 2026

CERTIFICATE OF COUNSEL

As counsel of record for petitioners, I certify that this petition for rehearing is restricted to the grounds specified in Supreme Court Rule 44.2 and is presented in good faith and not for delay.

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