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May 28, 2021

Via CM/ECF
Deborah S. Hunt
Clerk of Court
U.S. Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, OH 45202-3988

Re: *Antonio Vitolo, et al. v. Isabella Casillas Guzman*, Case No. 21-5517

Dear Ms. Hunt:

Pursuant to Rule 28(j), the Government submits the attached declaration filed yesterday evening in *Blessed Cajuns LLC v. Guzman*, No. 21-cv-557 (N.D. Tex.). Attachment 1. This declaration was prepared in part in response to assertions made in plaintiffs' May 26 letter to this Court. The Government also submits the attached materially similar declaration that it was preparing to file last night just before this Court issued its order granting plaintiffs' motion for preliminary injunction pending appeal. Attachment 2.

As explained in the attached declarations, plaintiffs' May 26 letter incorrectly characterized how SBA is now processing RRF applications. Priority applicants do not currently enjoy a "processing head start," Dkt. 20 at 2, because—consistent with the text of the American Rescue Plan Act—SBA stopped processing applications based on priority status even before this Court issued its order last night, *see* Attachment 2 ¶ 6. Instead, SBA has reordered its processing queue and is now working to process all pending applications in the order in which they were filed. *See* Attachment 2 ¶ 6. Thus, SBA is currently processing all applications in the order in which they were submitted, without regard to the applicants' sex or race. And with regard to plaintiffs' application in particular, as explained in earlier declarations SBA has set aside funds sufficient to cover plaintiffs' application. Consistent with the

Court's preliminary injunction, SBA will update this Court when a decision has been made whether plaintiffs' application is approved.

Sincerely,

/s/ Jack Starcher

Jack Starcher

Attorney for the Defendant-Appellee

Attachment 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BLESSED CAJUNS LLC, *et al.*,

Plaintiffs,

v.

ISABELLA CASILLAS GUZMAN, *et al.*,

Defendants.

Civil Action No. 4:21-cv-00677-O

DEFENDANTS' SUPPLEMENTAL NOTICE

Attached to this notice is the supplemental declaration of John A. Miller, Deputy Associate Administrator for Capital Access at the Small Business Administration. Defendants file this supplemental declaration in response to certain issues raised by the Appellants in *Vitolo v. Guzman*, Case No. 21-5517, Doc. 20 (6th Cir. May 26, 2021) after Mr. Miller filed his initial declaration in this matter, and also in Plaintiffs' reply, *see* ECF No. 12. Defendants do not object to Plaintiffs filing a response to this supplemental declaration.

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

LESLEY FARBY
Assistant Branch Director

/s/ Christopher D. Dodge
Christopher D. Dodge (MA No. 696172)
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Attorneys for Defendants

CERTIFICATE OF SERVICE

On May 27, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Christopher D. Dodge
Christopher D. Dodge
Trial Attorney
United States Department of Justice

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BLESSED CAJUNS LLC, *et al.*,

Plaintiffs,

v.

ISABELLA CASILLAS GUZMAN, *et al.*,

Defendants.

Case No. 4:21-00677-O

SUPPLEMENTAL DECLARATION OF JOHN A. MILLER

I, JOHN A. MILLER, hereby declare as follows:

1. I have worked at the United States Small Business Administration (“SBA”) for over twenty years. I currently hold the position of Deputy Associate Administrator for Capital Access. The Office of Capital Access is responsible for the operation development of policy for the SBA’s business loan programs authorized under the Small Business Act and the Restaurant Revitalization Fund (“RRF”) program authorized under the American Rescue Plan Act (“ARPA”), among others. I am the highest-ranking career official in the Office of Capital Access and am knowledgeable about the RRF program.

2. My supplemental declaration is intended to clarify the current operation of the RRF program in response to certain arguments raised by the appellants in *Vitolo v. Guzman*, Case No. 21-5517, Doc. 20 (6th Cir. May 26, 2021), and also by Plaintiffs in their reply in this case (ECF No. 12), which was filed after my initial declaration in this matter.

3. In § 5003 of ARPA, Congress instructed SBA that “[d]uring the initial 21-day period in which the [SBA] awards grants under this subsection, the [SBA] shall prioritize awarding grants to eligible entities that are small business concerns” owned by certain kinds of business owners, as defined elsewhere in statute. *See* ARPA § 5003(c)(3)(A).

4. As I explained in my initial declaration, that 21 day period began on May 3, 2021 and concluded on May 24, 2021. *See* Miller Decl. ¶ 16.

5. Accordingly, SBA is no longer “prioritiz[ing] awarding grants to eligible entities” based on the priority preferences identified in the statute’s priority period section.

6. The challengers in the Sixth Circuit, and now Plaintiffs here, have alleged that SBA continues to afford a “processing head start [that] will continue to advantage applicants based on race.” *Vitolo*, Doc. 20 at 2. That is not accurate. At this time, because ARPA instructs SBA to prioritize “awarding grants to eligible entities” only during the “initial 21-day period,” SBA has stopped processing applicants solely based on priority status. Instead, SBA has reordered its processing queue based on the time that applicants submitted their applications. In other words, SBA is now processing all pending applications—both priority and non-priority—in the order in which they were filed.

7. To be clear, even under this process, RRF applications will not necessarily be approved and awarded in the order in which they are filed, for many reasons. Some applications are more complex and require greater time for review, while others may be missing required documentation or require follow up with the applicant, and for that reason a later-filed application may in some circumstances be approved and awarded before an earlier-filed, but more complicated or deficient, application. But, in compliance with ARPA, SBA is now processing applications based on the time they were filed, not based on the priority status of the applicant.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of May, 2021 in Washington, DC.

John A. Miller
Deputy Associate Administrator for Capital Access
U.S. Small Business Administration

Attachment 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ANTONIO VITOLO, et al.,)	
)	
Plaintiffs-Appellants,)	
v.)	No. 21-5517
)	
ISABELLA CASILLAS GUZMAN,)	
Administrator,)	
U.S. Small Business Administration,)	
)	
Defendant-Appellee.)	

SUPPLEMENTAL DECLARATION OF JOHN A. MILLER

I, JOHN A. MILLER, hereby declare as follows:

1. I have worked at the United States Small Business Administration (“SBA”) for over twenty years. I currently hold the position of Deputy Associate Administrator for Capital Access. The Office of Capital Access is responsible for the operation development of policy for the SBA’s business loan programs authorized under the Small Business Act and the Restaurant Revitalization Fund (“RRF”) program authorized under the American Rescue Plan Act (“ARPA”), among others. I am the highest-ranking career official in the Office of Capital Access and am knowledgeable about the RRF program.

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3. In § 5003 of ARPA, Congress instructed SBA that “[d]uring the initial 21-day period in which the [SBA] awards grants under this subsection, the [SBA] shall prioritize awarding grants to eligible entities that are small business concerns” owned by certain kinds of business owners, as defined elsewhere in statute. *See* ARPA § 5003(c)(3)(A).

4. As I explained in my May 26 declaration, that 21 day period began on May 3, 2021 and concluded on May 24, 2021. *See* May 26 Miller Decl. ¶ 12.

5. Accordingly, SBA is no longer “prioritiz[ing] awarding grants to eligible entities” based on the priority preferences identified in the statute’s priority period section.

6. The challengers in the Sixth Circuit have alleged that SBA continues to afford a “processing head start [that] will continue to advantage applicants based on race.” *Vitolo*, Doc. 20 at 2. That is not accurate. At this time, because ARPA instructs SBA to prioritize “awarding grants to eligible entities” only during the “initial 21-day period,” SBA has stopped processing applicants solely based on priority status. Instead, SBA has reordered its processing queue based on the time that applicants submitted their applications. In other words, SBA is now processing all pending applications—both priority and non-priority—in the order in which they were filed.

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Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of May, 2021 in Washington, DC.

JOHN MILLER Digitally signed by JOHN MILLER
Date: 2021.05.27 18:54:36 -04'00'

John A. Miller
Deputy Associate Administrator for Capital Access
U.S. Small Business Administration