

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

ADAM P. FAUST, et al.,

*Plaintiffs,*

v.

THOMAS J. VILSACK, et al.,

*Defendants,*

Case No. 1:21-CV-00548-WCG

**THE NATIONAL BLACK FARMERS ASSOCIATION AND  
THE ASSOCIATION OF AMERICAN INDIAN FARMERS’  
UNOPPOSED MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN  
OPPOSITION TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

The National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) move for leave to submit the enclosed brief as *amicus curiae* in opposition to Plaintiffs’ motion for preliminary injunction in the above-captioned case. Plaintiffs’ motion seeks to enjoin provisions of the American Rescue Plan Act that provide loan forgiveness to socially disadvantaged farmers and ranchers who have direct farm loans with the United States Department of Agriculture (USDA) or have loans guaranteed by USDA.

NBFA and AAIF are non-profit, membership-based organizations that advocate for the interests of Black and Native American farmers, respectively. NBFA and AAIF have a direct interest in opposing Plaintiffs’ motion because their members are eligible for the law’s loan forgiveness provisions and would thus be harmed should the Court enjoin the law.

NBFA and AAIF therefore request leave to submit the enclosed four-page amicus brief focused on the Court’s balancing of the equities in considering Plaintiffs’ motion. This brief provides the Court with the unique perspectives of socially disadvantaged farmers who stand to

benefit from the challenged laws and would be harmed by Plaintiffs' request—and whose voices are not currently before the Court. The participation of an *amicus* in a proceeding lies in the broad discretion of the district court. *Clay v. Scibana*, 2004 WL 2110745, at \*1 (W.D. Wis. Sept. 20, 2004).

Counsel for *amicus* has conferenced with both Plaintiffs' and Defendant's counsel regarding the filing of their *amicus* brief and both do not oppose the filing of this *amicus* brief.

The proposed amicus brief begins on the following page.

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**PROPOSED AMICUS BRIEF OF THE NATIONAL BLACK FARMERS ASSOCIATION  
AND THE ASSOCIATION OF AMERICAN INDIAN FARMERS IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

The National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) are non-profit, membership-based organizations that advocate for the interests of Black and Native American farmers and ranchers, respectively. Exh. 1, Decl. of J. Boyd (“J. Boyd Decl.”) ¶ 3; Exh. 2, Decl. of K. Boyd (“K. Boyd Decl.”) ¶ 3. NBFA and AAIF have a substantial interest in this case because they have both advocated at length for the debt relief provisions in Section 1005 of the American Rescue Plan Act (the “Act”) that Plaintiffs seek to preliminarily enjoin, and because many of their members are eligible for the law’s loan forgiveness provisions. *See* Boyd. Decl. ¶ 5; K. Boyd Decl. ¶¶ 7-8. NBFA and AAIF submit this *amicus* brief to ensure that the voices of the farmers and ranchers who are actually affected by Section 1005 are heard as the Court balances the equities and the public interest in entertaining Plaintiffs’ request to enjoin the law nationwide. Those interests tilt the balance decidedly against granting the extraordinary relief requested.

Whether to grant a preliminary injunction is “often dependent as much on the equities of a given case as the substance of the legal issues it presents.” *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). This requires a court “to explore the relative harms to applicant and respondent, as well as the interests of the public at large.” *Id.*

Therefore, in considering Plaintiffs’ request, the Court must weigh how an injunction would impact the socially disadvantaged farmers and ranchers who relied on the Government’s representation that they would receive loan relief. NBFA and AAIF’s members establish that financially vulnerable farmers and ranchers made plans based on their expectation that they would receive debt forgiveness based on the Government’s legislation. Thus, in the event of an

injunction, unlike Plaintiffs, they would suffer real and palpable harms, tilting the balancing decidedly against such relief.

NBFA member Ivan Isidore Williams, for instance, is a 60-year-old African-American farmer who grows soybeans and corn on over 65 acres in his hometown of Beulaville, NC (population 1,296)—where his family has farmed for generations. Exh. 3, Decl. of Ivan Isidore Williams (“Williams Decl.”) ¶ 1. Mr. Williams works second jobs to make ends meet and presently works a manufacturing job at a fiber optic plant. *Id.* ¶ 4. Mr. Williams took out a USDA loan around the year 2000 to purchase farm equipment and fund operating expenses for his farm. *Id.* ¶ 5. He has personally experienced racial discrimination from USDA representatives, who discouraged him in the past from applying for additional loans because of his outstanding balance—even though Mr. Williams is aware that white farmers in his area have routinely been able to take out additional USDA loans notwithstanding existing loan balances. *Id.* ¶ 8. Mr. Williams currently carries an outstanding balance on his loan and while he has generally made payments in a timely manner, he has been threatened with foreclosure by USDA when he has been late. *Id.* ¶ 7. Recently, Mr. Williams asked his local USDA representative about the Act’s loan forgiveness provisions—and the representative confirmed that his outstanding debt would be forgiven. *Id.* ¶ 10. As a result, Mr. Williams has looked forward to repurposing money that would have been used to make his annual loan payment on other important life expenses, such as his mortgage payment on his residential home. *Id.* ¶ 10.

NBFA member Shade Lewis is similarly situated. Mr. Lewis is a 30-year-old, first-generation African-American rancher who took out a USDA loan in 2014 to purchase a cattle farm in his hometown of La Grange, MO (population 958), where he currently raises between 100-200 heads of cattle on 100 acres of land. Exh. 4, Decl. of Shade Lewis (“Lewis Decl.”) ¶¶ 2-

3, 6. Mr. Lewis spent years building up his ranching experience and credit to pursue this goal. *Id.* ¶ 4. Like Mr. Williams, Mr. Lewis works a second job so he can maintain his ranch due to the unpredictability of the ranching business. *Id.* Despite these efforts, Mr. Lewis has been late on certain loan payments and as a result, he has also received warnings from USDA threatening foreclosure on his property. *Id.* ¶¶ 7, 9. When Mr. Lewis learned about the passage of Section 1005, he immediately accounted for how the law would affect his financial situation. *Id.* ¶ 10. For example, he invested time and effort exploring how loan forgiveness would allow debt he has incurred for purchasing livestock. *Id.* ¶ 10.

Plaintiffs' request for a nationwide injunction would therefore harm socially disadvantaged farmers and ranchers like Messrs. Williams and Lewis and undermine the expectations that the Government has established in the months following the Act's passage. Doing so at this moment is particularly disruptive given Section 1005 concerns farm loans. It is presently planting season in many parts of the country, during which farmers and ranchers must stretch their cash and credit in order to ensure their yields and income. *See Boyd Decl.* ¶ 7. Farmers and ranchers who have reasonably relied on the expectations of loan forgiveness set by the Government thus may have already made investments that would be undermined by any injunction.

On the other side of the ledger is an entirely hypothetical harm. Plaintiffs' purported harm assumes they are right on the merits and thus, they assume that the public is served because their argument vindicates their constitutional rights. For Plaintiffs, their thought exercise completes the balancing inquiry—but in reality, the Court must consider their request's effect on the lives of real farmers and ranchers who reasonably believed they could rely on enacted

Government programs. When those interests are considered, the equities strongly disfavor a preliminary injunction.

Date: June 10, 2021

Respectfully submitted,

PUBLIC JUSTICE, P.C.

/s/ Randolph T. Chen

Randolph T. Chen (D.C. Bar No. 1032644)

David Muraskin\* (D.C. Bar No. 1012451)

Jessica Culpepper\* (D.C. Bar No. 988976)

1620 L Street NW, Suite 630

Washington, D.C. 20036

Telephone: (202) 797-8600

Facsimile: (202) 232-7203

jculpepper@publicjustice.net

dmuraskin@publicjustice.net

rchen@publicjustice.net

*Counsel for the National Black Farmers  
Association and the Association of American  
Indian Farmers*

\* Application for Admission Pending