

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

ROBERT HOLMAN,

Plaintiff,

v.

THOMAS J. VILSACK, in his official capacity as
Secretary of the United States Department of
Agriculture, et al.,

Defendants.

No. 1:21-cv-01085-STA-jay

**THE NATIONAL BLACK FARMERS ASSOCIATION AND
THE ASSOCIATION OF AMERICAN INDIAN FARMERS’
CONDITIONAL MOTION FOR LEAVE TO INTERVENE AS DEFENDANTS**

The National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) hereby file this Conditional Motion for Leave to Intervene as Defendants in this action (the “Conditional Motion”). Because, at present, NBFA and AAIF share the same ultimate objective as the Government in defending the law challenged in this action, the organizations expressly request that the Court defer consideration of the Conditional Motion until future developments in this lawsuit indicate that the organizations’ interests diverge from the Government’s. This approach balances NBFA and AAIF’s interests in timely filing their application to intervene, while also accounting for how merits arguments have yet to be developed due to the litigation’s early stage.¹

Pursuant to Federal Rule of Civil Procedure 24, this Conditional Motion is accompanied

¹ See *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Engs.*, 101 F.3d 503, 509 (7th Cir. 1996) (“The proper way to handle such an eventuality [where the government’s representation of interest may turn inadequate at some future point] [is] to file at the outset of the case a standby or conditional application for leave to intervene and ask the district court to defer consideration of the question of adequacy . . .”).

by (1) a Memorandum of Law in Support; and (2) NBFA and AAIF's Proposed Answer to Plaintiff's Complaint.

Plaintiff's counsel opposes this Conditional Motion. Defendants' counsel have indicated that they do not oppose conditional intervention, and do not believe that the interests of the Government diverge with those of the conditional intervenors.

Dated: June 24, 2021

Respectfully submitted,

PUBLIC JUSTICE, P.C.

/s/ Randolph T. Chen

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*Counsel for the National Black Farmers
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CERTIFICATE OF CONSULTATION

Pursuant to LR 7.2, I certify that I conferred with counsel for Plaintiff and Defendants and was unable to reach accord on the action requested by this Conditional Motion.

Following consultation by email, Plaintiff's counsel stated in a June 8, 2021 email that he opposes the Conditional Motion.

Following consultation by email, Defendants' counsel stated in a June 17, 2021 email that Defendants have indicated that they do not oppose conditional intervention, and do not believe that the interests of the Government diverge with those of the conditional intervenors.

/s/ Randolph T. Chen

Randolph T. Chen

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was filed via the court's CM/ECF system on June 24, 2021, which will serve all counsel of record.

/s/ Randolph T. Chen _____

Randolph T. Chen

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
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ROBERT HOLMAN,

Plaintiff,

v.

THOMAS J. VILSACK, in his official capacity as
Secretary of the United States Department of
Agriculture, et al.,

Defendants.

No. 1:21-cv-01085-STA-jay

**MEMORANDUM OF LAW IN SUPPORT OF THE NATIONAL BLACK FARMERS
ASSOCIATION AND THE ASSOCIATION OF AMERICAN INDIAN FARMERS’
CONDITIONAL MOTION FOR LEAVE TO INTERVENE AS DEFENDANTS**

The National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) file this Conditional Motion to Intervene as Defendants in this action. NBFA and AAIF request that the Court defer consideration on the Conditional Motion until future developments in this case indicate that the organizations’ interests diverge from the Government’s.

This approach seeks to balance requirements for intervention set out in Federal Rule of Civil Procedure 24. NBFA and AAIF have an interest in timely filing this application to intervene and defend the laws this action seeks to enjoin—which confers financial benefits on many of their members. At the same time, the conditional nature of this request recognizes the early stage of this litigation, where merits arguments and the adequacy of the Government’s defense have yet to be fully developed.

Accordingly, this Memorandum is structured as follows. First, it provides the authority for NBFA and AAIF’s filing of a Conditional Motion. Second, it provides factual background regarding NBFA and AAIF’s purpose and membership. Third, it argues why NBFA and AAIF meet the factors required for intervention that can be ascertained at this time.

AUTHORITY FOR CONDITIONAL APPLICATION FOR INTERVENTION

NBFA and AAIF file this Conditional Motion pursuant to the approach set out by the Seventh Circuit in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 101 F.3d 503 (7th Cir. 1996). In *Army Corps*, a plaintiff sued to challenge a federal agency’s denial of a water permit, and a citizens’ group moved to intervene to defend the agency’s decision. *Id.* at 504. The Seventh Circuit denied the request because the putative-intervenor and the agency shared the interest of defending the permitting decision and thus, “adequacy of representation [was] presumed,” as the government is presumed to represent the interests of the public at large. *Id.* at 508. However, the court was also “sympathetic to the aspiring intervenor’s concern that at some future point in this litigation, the government’s representation of their interest may turn inadequate yet it would be too late to do anything about it.” *Id.* For example, the court provided a hypothetical where the Government declined to appeal an unfavorable decision—at which point its representation of the putative-intervenor’s interests “could well be thought inadequate.” *Id.* The court thus set out the following solution:

The proper way to handle such an eventuality is for the would-be intervenor, when as here no present inadequacy of representation can be shown, to file at the outset of the case a standby or conditional application for leave to intervene and ask the district court to defer consideration of the question of adequacy of representation until the applicant is prepared to demonstrate inadequacy.

Id. at 509 (emphasis added).

NBFA and AAIF are in a similar posture. They presently share the same objective as the Government in defending the laws challenged by this action—but it remains possible that at some future point, the Government’s handling of this litigation may turn inadequate. NBFA and AAIF thus file this Conditional Motion pursuant to the approach set out in *Army Corps* and expressly request the Court defer consideration on the motion until future developments in this lawsuit demonstrate that the organizations’ interests diverge from the Government’s.

FACTUAL AND PROCEDURAL BACKGROUND

This case challenges a section of the American Rescue Plan Act of 2021 (the “Act”), a broad piece of legislation aimed at remedying the devastating effects of the COVID-19 pandemic by providing \$1.9 trillion in financial relief to American individuals and industries who have been harmed by the ongoing health crisis. *See* The White House, *Am. Rescue Plan*, <https://www.whitehouse.gov/american-rescue-plan/>. The Act includes approximately \$10.4 billion in funding aimed to strengthen the agricultural and food supply chain, and includes provisions funding the purchase and distribution of agricultural commodities and providing grants to rural communities to fund programs related to healthcare and nutrition. *See What’s in the Am. Rescue Plan Act of 2021 for Ag.?* Am. Farm Bureau Fed. (Mar. 8, 2021), <https://www.fb.org/market-intel/whats-in-the-american-rescue-plan-act-of-2021-for-agriculture>.

This case takes aim Section 1005, which provides financial relief to “socially disadvantaged farmers and ranchers.” Section 1005 provides loan forgiveness, authorizing the U.S. Department of Agriculture (“USDA”) to “provide a payment in an amount up to 120 percent of the outstanding indebtedness of each socially disadvantaged farmer or rancher” on direct farm loans made by USDA and on farm loans guaranteed by USDA. Section 1005(a)(2). Plaintiff alleges that Section 1005’s “use of race discrimination as a tool to end ‘systemic racism’ is patently unconstitutional.” Compl., Dkt. No. 1, ¶ 13. Plaintiff requests that the Court declare the law unconstitutional and “[e]nter an order permanently enjoining Defendants from applying racial classifications when determining eligibility for loan modifications and payments under Section 1005.” *Id.* at 17.

NBFA and AAIF are non-profit, membership-based organizations dedicated to advancing the interests of Black and Native American farmers, respectively. Exh. 1, Decl. of John Boyd, Jr.

(“J. Boyd Decl.”) ¶¶ 3-4; Exh. 2, Decl. of Kara Boyd (“K. Boyd Decl.”) ¶¶ 3-4. NBFA has a national membership of over 116,000 members, comprised largely of Black farmers and ranchers and those members direct the organization’s actions by voting on agenda items and resolutions at annual meetings. J. Boyd Decl. ¶ 3. AAIF has a national membership of over 350 members, comprised largely of Native American farmers and ranchers. K. Boyd Decl. ¶ 3. AAIF’s activities are directed by its members through regional representatives, who vote on their constituent members’ behalf to determine the organization’s agenda. *Id.* ¶ 4.

NBFA’s mission is to advocate for the interests of Black farmers and ranchers—which has included improving Black farmers and ranchers’ access to public and private loans, as well as education regarding civil rights and land retention. J. Boyd Decl. ¶ 4. NBFA President John Boyd, Jr. has advocated on the specific issue of debt relief for the organization’s members for decades and has testified before Congress on the issue. *Id.* ¶ 5. NBFA has members who are eligible for Section 1005’s loan forgiveness provisions. Exh. 3, Decl. of Shade Mitchell Lewis (“Lewis Decl.”) ¶ 9; Exh. 4, Decl. of Ivan Isidore Williams (“Williams Decl.”) ¶ 9.

AAIF’s mission is to advocate for the interests of Native American farmers and ranchers. K. Boyd Decl. ¶ 5. AAIF advances its mission by promoting investment in Native American farmers and ranchers, as well as providing them with outreach, advocacy, and technical assistance. *Id.* AAIF President Kara Boyd has specifically advocated on the Act’s debt forgiveness provisions, directly engaging with federal legislators to express the organization’s support for the legislation and building support for the legislation by networking with other groups that advocate for the interests of Native American farmers. *Id.* ¶ 7. AAIF is aware that it has members who are eligible for Section 1005’s loan forgiveness provisions. *See id.* ¶ 8.

Thus, this suit has the potential to undo NBFA and AAIF's dogged advocacy, leave their members in debt from which Congress intended them to be freed, and prevent them from receiving additional financial support that was designed to remedy a long history of discrimination that has already cost NBFA and AAIF's members greatly. To protect those interests, NBFA and AAIF file this conditional motion to intervene under Federal Rules of Civil Procedure 24(a) and (b).

ARGUMENT

I. Intervention As of Right

Federal Rule of Civil Procedure 24(a)(2) provides: "On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

The Sixth Circuit has elaborated that Rule 24(a)(2) intervention must be allowed where four elements are established: "(1) timeliness of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) impairment of the applicant's ability to protect that interest in the absence of intervention, and (4) inadequate representation of that interest by parties already before the court." *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997). An intervenor under Rule 24(a)(2) only must meet the requirements of Article III standing "if the intervenor wishes to pursue relief" distinct from the existing parties. *See Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1648 (2017).

A. NBFA and AAIF have Article III standing.

To the extent it will prove necessary for intervention, NBFA and AAIF have standing. Under the associational standing doctrine, membership organizations like NBFA and AAIF may

sue to redress its members' injuries when: (1) its members have standing to sue in their own right, (2) the interest it seeks to protect is 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. *Am. Canoe Ass'n, Inc. v. City of Louisa Water & Sewer Comm'n*, 389 F.3d 536, 540 (6th Cir. 2004).

NBFA and AAIF's members have standing because they stand to receive financial benefits from the law this action seeks to enjoin—and therefore “face a palpable economic injury that is sufficient to provide the basis for standing.” *Cherry Hill Vineyards, LLC v. Lilly*, 553 F.3d 423, 430 (6th Cir. 2008) (after state agency declined to appeal district court ruling invalidating state law, trade association whose members economically benefited from the law had standing to intervene and appeal the ruling). Protecting this interest has been and remains core to NBFA and AAIF's missions. J. Boyd Decl. ¶¶ 4-9; K. Boyd Decl. ¶ 5-6. And defending the constitutionality of this law also does not require the individual participation of any of NBFA and AAIF's members. *Neighborhood Action Coalition v. City of Canton, Ohio*, 882 F.2d 1012 (6th Cir. 1989) (injunctive relief “would not require participation by the individual members because any injunctive relief granted would inure to the benefit of all members of the association actually injured”). Therefore, NBFA and AAIF have Article III standing to participate in this action.

B. The Conditional Motion is timely.

To determine whether NBFA and AAIF's motion is timely, the Sixth Circuit considers the following factors: (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably

should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention. *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990). Applications to intervene filed before the start of discovery are generally considered to be timely. *See, e.g., Friends of Tims Ford v. Tenn. Valley Auth.*, 2007 WL 9723139, at *4 (E.D. Tenn. July 5, 2007) (motion to intervene “filed before significant discovery could begin” was timely); *Jansen*, 904 F.2d at 341 (motion to intervene filed at period where “only half of the 12 month discovery period had elapsed” was timely).

Here, this Conditional Motion is timely under all five factors. First, this suit is in its early stages and discovery has not yet commenced. Second, NBFA and AAIF seek to intervene for the valid purpose of defending a law that confers financial entitlements upon their members. Third, NBFA and AAIF have promptly filed this Conditional Motion a mere three weeks after learning of their interest in this case through reading Plaintiff’s Complaint that was filed on June 2, 2021. Fourth, filing at this very early stage of the litigation where Defendant has yet to file a responsive pleading and no discovery has been conducted is also exceedingly unlikely to prejudice any party. Finally, NBFA and AAIF are unaware of any “unusual circumstances” that would counsel against intervention.

C. NBFA and AAIF have a sufficient interest in this case.

The Sixth Circuit has adopted a “rather expansive notion of the interest sufficient to invoke intervention of right” and “reject[ed] the notion that Rule 24(a)(2) requires a specific legal or equitable interest.” *Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999). “The inquiry into the substantiality of the claimed interest is necessarily fact-specific.” *Id.* In *Grutter*, a plaintiff challenged a university’s race-conscious admissions policy; minority students and a nonprofit dedicated to “preserv[ing] opportunities in higher education for African-American and Latino/a students” then sought to intervene. *Id.* at 397. The court held that the students and the nonprofit

had a “substantial legal interest” in the case because they “enunciated a specific interest in the subject matter of this case, namely their interest in gaining admission to the University.” *Id.*

Much like in *Grutter*, NBFA and AAIF’s members have a specific interest in the subject matter of this case because this action seeks to enjoin laws that confer upon them direct financial entitlements. *E.g.*, Lewis Decl. ¶ 9; Williams Decl. ¶ 9; K. Boyd Decl. ¶ 7. Indeed, this interest is notably more substantial than that in *Grutter* because it is provided for by statute and thus is a legally protected interest. NBFA and AAIF thus possess a sufficient interest in this case to justify intervention.

D. This case’s disposition may impair NBFA and AAIF’s interests.

The Sixth Circuit has held that “the possibility of adverse stare decisis effects provides intervenors with sufficient interest to join an action.” *Jansen*, 904 F.2d at 342. This is true here. An adverse resolution of this action would prevent NBFA and AAIF’s members from receiving the financial benefits conferred by the laws at issue in this case.

E. The Government’s representation may become inadequate at a future point.

Where a putative-intervenor and the Government share the same objective in defending a law, courts apply a presumption that the Government’s defense is adequate, *see id.* at 343; hence NBFA and AAIF have filed this motion to intervene on a conditional basis. However, this litigation is still at an early stage and merits arguments have yet to be fully developed. This presumption thus may well be overcome should the Government later advance arguments that demonstrate its interests diverge from NBFA and AAIF’s. For example, inadequacy of representation may be shown if the Government advances arguments that are adverse to NBFA and AAIF’s interests—such as through compromise positions that limit NBFA and AAIF’s members’ access to financial benefits conferred by the challenged statutes or by failing to document USDA’s history of discrimination. *See Grutter*, 188 F.3d at 401 (“We find persuasive [the intervenor’s] argument that

the University is unlikely to present evidence of past discrimination by the University itself or of the disparate impact of some current admissions criteria . . .”). Courts have also observed that the Government’s decision not to appeal an adverse ruling in the case “could well be thought inadequate.” *Army Corps*, 101 F.3d at 508.

Thus, should later developments in this action indicate that NBFA and AAIF’s interests diverge from the Government, the organizations will renew this motion and establish this inadequacy of representation factor, having already established the other factors above.

II. Permissive Intervention

NBFA and AAIF also meet the requirements of permissive intervention—but in the interests of judicial economy, they are also requesting the Court defer ruling on this issue so it can be evaluated alongside any renewed motion to intervene as of right.

Rule 24(b) allows a court to grant permissive intervention to a party who makes a timely motion and “has a claim or defense that shares with the main action a common question of law or fact.” The Sixth Circuit has explained that to intervene permissively, “a proposed intervenor must establish that the motion for intervention is timely and alleges at least one common question of law or fact.” *United States v. Mich.*, 424 F.3d 438, 445 (6th Cir. 2005). Once established, the district court “must then balance undue delay and prejudice to the original parties, if any, and any other relevant factors to determine whether, in the court’s discretion, intervention should be allowed.” *Id.*

As discussed above in Section I, this Conditional Motion is timely and thus will not impose delay or prejudice on any of the existing parties given the early stage of the litigation. NBFA and AAIF have also identified a common question of law in this case because they seek to intervene in order to defend the statute challenged by this lawsuit. *See Priorities USA v. Benson*, 448 F.

Supp. 3d 755, 763-64 (E.D. Mich. 2020) (state legislature seeking to intervene in lawsuit challenging state election law established common question of law because legislature sought “to protect its interests in the State’s election laws”).

For these reasons, NBFA and AAIF could ask the Court to exercise its discretion to allow for permissive intervention. However, because NBFA and AAIF may later seek to intervene as of right, they believe it is most appropriate for the Court to also defer ruling on permissive intervention until the organizations determine whether their Rule 24(a) motion will become ripe.

CONCLUSION

For the foregoing reasons, NBFA and AAIF respectfully request the Court docket their Conditional Motion for Leave to Intervene as Defendants and defer consideration on the motion pending future developments in this lawsuit.

Dated: July 24, 2021

Respectfully submitted,

PUBLIC JUSTICE, P.C.

/s/ Randolph T. Chen

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Indian Farmers*

EXHIBIT 1

DECLARATION OF JOHN BOYD, JR.

My name is John Boyd, Jr. I am over the age of 18 and fully competent to make this declaration.

1. I am the Founder and President of the National Black Farmers Association (NBFA). I am authorized to speak about NBFA's activities as they relate to this matter.

2. I am a fourth-generation Black farmer who has been farming for over 38 years. I currently farm soybeans, corn, wheat, and hay; I also raise approximately 100 head of beef cattle on farms covering over 1,500 acres in Mecklenburg County, Virginia. I have been farming in Mecklenburg County since 1983.

3. NBFA is a non-profit, membership-based organization that represents the interests of Black farmers and ranchers. NBFA has over 116,000 members nationwide in 46 states, consisting largely of Black farmers and ranchers. NBFA members vote on the organization's agenda items and resolutions in annual meetings.

4. A core part of NBFA's mission is promoting education and advocacy regarding civil rights, land retention, access to public and private loans, education and agricultural training, and rural economic development for Black and other small farmers and ranchers.

5. As part of NBFA's mission and in my capacity as NBFA President, I have for decades advocated for legislation that provides loan forgiveness to Black farmers and ranchers. For example, on July 19, 2019, I testified before Congress on behalf of NBFA, where I described the United States Department of Agriculture's (USDA) history of racial discrimination and called on Congress to "set aside \$5 Billion to help address the needs of black and other small scale farmers."¹

¹ Testimony of J. Boyd (Appendix at 77, 79), U.S. House Hr'g re: *Promoting Econ. Growth: Exploring the Impact of Recent Trade Policies on the U.S. Econ.* (June 19, 2019), <https://www.congress.gov/116/chr/CHRG-116hhrg39451/CHRG-116hhrg39451.pdf>

6. NBFA has focused on the issue of loan forgiveness because it remedies how USDA has long discriminated against Black farmers and ranchers in the agency's lending practices. To provide just one example, USDA frequently imposed on Black farmers and ranchers various forms of supervised loan provisions that were rarely imposed on their white counterparts. These provisions restrict how the loan can be spent—for instance, by requiring certain purchases to be approved by a loan officer or limiting the suppliers from whom farm equipment and supplies could be purchased.

7. These provisions cause significant harm because they lead to frequent delays in the farmers' access to equipment and supplies. Agriculture is a time-sensitive industry—the planting season is narrow, and even minor delays can negatively impact a farmer's crop yields.

8. USDA's history of discrimination has disproportionately affected Black farmers and ranchers. Due in major part to discriminatory practices such as these, Black farmers and ranchers have faced distinct obstacles to paying off debts held by USDA. Accordingly, NBFA has made loan forgiveness a priority issue in its advocacy efforts.

9. I have personal experience with USDA's history of discrimination. When I first sought USDA loans to start my own farming business in the 1980s, I was myself subjected to a supervisory loan provision that required me to buy certain supplies from a specific supplier. I also experienced direct racial discrimination, where USDA representatives referred to me using racial slurs. In addition, at the time, Black farmers in my area seeking to apply for USDA loans could only obtain appointments with USDA representatives on a single day of the week, whereas white farmers were not subject to such restrictions.

10. NBFA's participation in this lawsuit is a key part of its mission to advocate for and defend programs that provide financial assistance and support to Black farmers and ranchers.

EXHIBIT 2

DECLARATION OF KARA BOYD

My name is Kara Boyd. I am over the age of 18 and fully competent to make this declaration.

1. I am the Founder and President of AAIF. I am authorized to speak about AAIF's activities relating to this matter.

2. I am a farmer and an enrolled member of the Lumbee Tribe of North Carolina. I co-manage 1,500 acres of a family farm that includes farmland in the towns of Boydton, Baskerville, and Bracey in southern Virginia. On these farms, I grow crops such as hemp and vegetables; I also raise swine, poultry, and goats.

3. AAIF is non-profit, membership-based organization that represents the interests of Native American farmers. AAIF has over 350 members nationwide, comprised mostly of Native American farmers and ranchers.

4. AAIF invites its members to vote on the organization's agenda items and resolutions in annual meetings. AAIF members are represented by regional representatives at these meetings, who vote on their constituent members' behalf.

5. AAIF's mission is focused on providing outreach, advocacy, and technical assistance to Native American farmers and ranchers. AAIF also seeks to promote investment in support of Native American farmers and ranchers.

6. AAIF's participation in this lawsuit is an integral part of its mission to advocate for and defend programs that provide financial assistance and support to Native American farmers and ranchers.

7. In my capacity as President of AAIF, I advocated to federal legislators in early 2021 in support of legislation that would provide loan forgiveness to Native American farmers

and ranchers. I also built support for this legislation by networking with other groups that advocate for the interests of Native American farmers.

8. I am aware that AAIF has members that are eligible for financial benefits under Sections 1005 and 1006 of the American Rescue Plan Act and that they would be injured should this lawsuit enjoin those laws.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 8, 2021



KARA BOYD
Founder & President
Association of American Indian Farmers

EXHIBIT 3

DECLARATION OF IVAN ISIDORE WILLIAMS

My name is Ivan Isidore Williams. I am over the age of 18 and fully competent to make this declaration.

1. I am an African-American farmer who is a member of the National Black Farmers Association (NBFA). I want the NBFA to represent my interests in this lawsuit.

2. I live in Beulaville, NC, where I was also born and raised. Beulaville is rural town of approximately 1,296 people in the southeastern part of North Carolina.

3. I operate a farm of over 65 acres in Beulaville, where I grow soybeans and corn. I own some of my land, and also lease a portion of my land. I am a third-generation farmer who has operated this farm for over 40 years. I am 60 years old.

4. In addition to farming, I typically work a second job to supplement my income. For example, I have worked at a textile plant performing manufacturing work and I have also worked as a meter reader at a utility company. I presently work a manufacturing job at a fiber optic plant.

5. Around the year 2000, I took out USDA loans in the amount of approximately \$40,000. I used the loans for operating expenses and purchasing farm equipment.

6. As of January 1, 2021, the outstanding balance on my loan was approximately \$12,000.

7. Generally, I have timely made my payments on my loan. However, I have also missed payments or been late on payments due to a variety of factors that affected my farming business, including drought, floods, or other difficulties harvesting my crop. When I have been late on my payments, I have received letters from USDA warning about potential foreclosure on my property.

8. I believe I have experienced racial discrimination from USDA representatives. For example, in the past, I have attempted to take out additional USDA loans to operate my farm and upgrade my equipment. However, USDA representatives discouraged me from applying for additional loans by telling me I would be ineligible because I already had existing USDA loans. To my knowledge, white farmers in my area have routinely been able to take out additional USDA loans even though they similarly have existing USDA loan balances.

9. I believe I am eligible for loan forgiveness under Section 1005 of the American Rescue Plan Act because I am a socially disadvantaged farmer who has an outstanding balance on a loan with USDA.

10. In fact, last month, I received a letter from USDA regarding the issue of loan forgiveness. I then followed up regarding the issue with my local USDA representative, and he informed me that my outstanding balance would be forgiven. When I found out that my loan was going to be forgiven, I looked forward to repurposing money that I would have used to make my annual loan payment toward other important life expenses, such as the mortgage payment on my residential home.

11. If Section 1005 is enjoined, I would therefore suffer injury.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 06-08-2021

By: 
IVAN ISIDORE WILLIAMS

EXHIBIT 4

DECLARATION OF SHADE MARSHALL LEWIS

My name is Shade Marshall Lewis. I am over the age of 18 and fully competent to make this declaration.

1. I am an African-American rancher who is a member of the National Black Farmers Association (NBFA). I want the NBFA to represent my interests in this lawsuit.

2. I live in La Grange, MO, a rural town of 958 people in northeast Missouri. I was born and raised in La Grange.

3. I own and operate a cattle farm in La Grange, where I raise between 100-200 heads of cattle on over 100 acres of land. I have operated my cattle farm since 2014.

4. In addition to my job as a rancher, I also work a second job conducting maintenance on power transmission lines. I work a second job for financial stability, as the cattle farming business can be unpredictable and vary significantly from year-to-year.

5. I am 30 years old and a first-generation rancher. Prior to starting my own cattle farm, I spent years building up my ranching experience, as well as the credit necessary to purchase property for a cattle farm. I believe everyone deserves a fair chance at farming, especially beginning farmers.

6. In 2014, I was able to take out a USDA loan for \$300,000. I used this loan to buy the property for my cattle farm.

7. As of January 1, 2021, the outstanding balance on my loan was approximately \$197,000.

8. My loan has an annual payment term and I have made many payments. However, due to fluctuations in the cattle farming business from year-to-year, I have also missed annual

payments on my loan. As a result of being late on my loan payments, I have received warnings from USDA threatening foreclosure on my property.

9. I believe I am eligible for loan forgiveness under Section 1005 of the American Rescue Plan Act because I am a socially disadvantaged rancher who has an outstanding balance on a direct farm loan with USDA.

10. After learning about the passage of Section 1005, I factored the law’s debt forgiveness provision into my business plans. For example, I explored how receiving this loan forgiveness would enable me to pay down other loans I have taken out to purchase livestock.

11. Thus, if Section 1005 is enjoined, I would suffer injury.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in La Grange, MO.

6/8/2021

Date: _____

DocuSigned by:



6E7CD79EC5F3463...

By: _____

SHADE MARSHALL LEWIS

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

ROBERT HOLMAN,

Plaintiff,

v.

THOMAS J. VILSACK, in his official capacity as
Secretary of the United States Department of
Agriculture, et al.,

Defendants,

No. 1:21-cv-01085-STA-jay

**[PROPOSED] ANSWER TO PLAINTIFF'S COMPLAINT BY
[PROPOSED] DEFENDANT-INTERVENORS THE NATIONAL BLACK FARMERS
ASSOCIATION AND THE ASSOCIATION OF AMERICAN INDIAN FARMERS**

Proposed Defendant-Intervenors the National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) answer Plaintiff's Complaint as follows:

Plaintiff's preliminary statement states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff's legal conclusions. To the extent Plaintiff's preliminary statement includes allegations of fact, NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of those factual allegations.

INTRODUCTION

1. Paragraph 1 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff's argument and/or characterization regarding how the referenced authorities are applicable to the legal questions at issue in this action.

2. Paragraph 2 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff's argument and/or characterization regarding how the referenced authorities are applicable to the legal questions at issue in this action.

3. Paragraph 3 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

4. NBFA and AAIF admit the allegations in Paragraph 4 of the Complaint that the Act allots funds for debt relief to "socially disadvantaged" farmers and ranchers, but deny the allegation that relief is available "only for those of particular races."

5. Paragraph 5 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff's characterization of the referenced statute.

6. NBFA and AAIF admit the allegations in Paragraph 6 of the Complaint.

7. NBFA and AAIF admit the allegations in Paragraph 7 of the Complaint.

8. Paragraph 8 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

9. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 9 of the Complaint.

10. Paragraph 10 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

11. NBFA and AAIF admit the allegation in Paragraph 11 of the Complaint that Defendants are responsible for administering Section 1005's loan forgiveness program, but deny

Plaintiff's allegations and characterizations regarding the purpose of the program and that the program is "race-based."

12. Paragraph 12 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff's argument and/or characterization regarding how the referenced authorities are applicable to the legal questions at issue in this action.

13. Paragraph 13 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff's argument and/or characterization regarding how the referenced authorities are applicable to the legal questions at issue in this action and deny Plaintiff is legally entitled to his requested relief.

PARTIES

14. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 14 of the Complaint.

15. NBFA and AAIF admit the allegations in Paragraph 15 of the Complaint, with the exception of Plaintiff's allegation that "Under Section 1005 of APRA, Defendant Vilsack is required to provide debt relief to certain farmers based on race." This is a legal conclusion to which no response is required; to the extent a response is required, NBFA and AAIF deny this allegation.

16. NBFA and AAIF admit the allegations in Paragraph 16 of the Complaint, with the exception of Plaintiff's allegation that "Under Section 1005 of ARPA, FSA will provide debt relief to certain farmers with direct loans or USDA-backed loans based on race." This is a legal conclusion to which no response is required; to the extent a response is required, NBFA and AAIF deny this allegation.

JURISDICTION AND VENUE

17. NBFA and AAIF admit the allegations in Paragraph 17 of the Complaint.

18. NBFA and AAIF admit the allegations in Paragraph 18 of the Complaint that 28 U.S.C. §§ 1331 and 1343 provide federal question jurisdiction, but deny any suggestion that the Court has jurisdiction over this case.

19. NBFA and AAIF admit the allegations in Paragraph 19 of the Complaint.

20. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 20 of the Complaint.

Rob Holman is a rancher with outstanding debt on an FSA loan

21. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 21 of the Complaint.

22. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 22 of the Complaint.

23. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 23 of the Complaint.

24. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 24 of the Complaint.

25. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 25 of the Complaint.

26. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 26 of the Complaint.

27. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 27 of the Complaint.

28. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 28 of the Complaint.

29. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 29 of the Complaint.

30. Paragraph 30 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

31. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 31 of the Complaint.

President Biden signs the American Rescue Plan Act

32. NBFA and AAIF admit the allegations in Paragraph 32 of the Complaint.

33. NBFA and AAIF admit that Plaintiff's quotation of President Biden in Paragraph 33 of the Complaint is accurate, but deny Plaintiff's argument and/or characterization regarding how the quotation is applicable to the legal questions at issue in this action.

34. NBFA and AAIF admit the allegations in Paragraph 34 of the Complaint

35. NBFA and AAIF admit the allegations in Paragraph 35 of the Complaint.

36. NBFA and AAIF admit the allegations in Paragraph 36 of the Complaint.

37. NBFA and AAIF admit the allegations in Paragraph 37 of the Complaint, with the exception that NBFA and AAIF deny the allegations with respect to Section 1005(a)(3), as the quotation of Section 1005(a)(3) is inaccurate.

38. NBFA and AAIF admit the allegations in Paragraph 38 of the Complaint.

39. NBFA and AAIF admit the allegations in Paragraph 39 of the Complaint.

40. NBFA and AAIF admit that Paragraph 40 of the Complaint accurately quotes Defendant Vilsack, but deny Plaintiff's argument and/or characterization regarding how the quotation is applicable to the legal questions at issue in this action.

41. NBFA and AAIF admit that Paragraph 41 of the Complaint accurately quotes a blog post written by Defendant Ducheneaux, but deny Plaintiff's argument and/or characterization regarding how the quotation is applicable to the legal questions at issue in this action.

42. NBFA and AAIF admit that Paragraph 42 of the Complaint accurately quotes a blog post written by Defendant Ducheneaux, but deny Plaintiff's argument and/or characterization regarding how the quotation is applicable to the legal questions at issue in this action.

43. NBFA and AAIF admit that Paragraph 43 of the Complaint accurately quotes a blog post written by Defendant Ducheneaux, but deny Plaintiff's argument and/or characterization regarding how the quotation is applicable to the legal questions at issue in this action.

44. NBFA and AAIF admit that Paragraph 44 of the Complaint accurately quotes a USDA website, but deny Plaintiff's argument and/or characterization regarding how the quotation is applicable to the legal questions at issue in this action.

45. NBFA and AAIF deny the allegations in Paragraph 45 of the Complaint, with the exception of admitting that Paragraph 45 accurately quotes Defendant Vilsack. However, NBFA and AAIF deny Plaintiff's argument and/or characterization regarding how the quotation is applicable to the legal questions at issue in this action.

46. Paragraph 46 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

47. NBFA and AAIF admit that the allegations in Paragraph 47 of the Complaint accurately cite an FAQ published by USDA, but deny Plaintiff's argument and/or characterization regarding how the citation is applicable to the legal questions at issue in this case.

48. NBFA and AAIF admit that the allegations in Paragraph 48 of the Complaint accurately cite a website published by USDA, but deny Plaintiff's argument and/or characterization regarding how the citation is applicable to the legal questions at issue in this case.

49. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 49 of the Complaint.

50. NBFA and AAIF admit that the allegations in Paragraph 50 of the Complaint accurately cite an FAQ published by USDA, but deny Plaintiff's argument and/or characterization regarding how the citation is applicable to the legal questions at issue in this case.

51. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 51 of the Complaint.

52. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 52 of the Complaint.

53. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 53 of the Complaint.

54. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 54 of the Complaint.

55. NBFA and AAIF admit the allegations in Paragraph 55 of the Complaint.

56. NBFA and AAIF admit the allegations in Paragraph 56 of the complaint.

57. NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations in Paragraph 57 of the Complaint.

Injury to Rob Holman

58. Paragraph 58 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

59. Paragraph 59 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

60. Paragraph 60 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

61. Paragraph 61 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

62. Paragraph 62 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

63. Paragraph 63 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(Fifth Amendment of the United States Constitution)
(Equal Protection Violation)

64. Paragraph 64 of the Complaint “realleges and incorporates by reference the allegations set forth above as if fully set forth herein.” NBFA and AAIF thus likewise respond to this allegation by incorporating by reference the responses set forth above as if fully set forth herein.

65. Paragraph 65 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff’s argument and/or characterization regarding how the referenced authorities are applicable to the legal questions at issue in this action.

66. Paragraph 66 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff’s argument and/or characterization regarding how the referenced authorities are applicable to the legal questions at issue in this action.

67. Paragraph 67 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

68. NBFA and AAIF admit the allegations in Paragraph 68 of the Complaint.

69. Paragraph 69 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

70. Paragraph 70 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

71. Paragraph 71 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

72. Paragraph 72 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

73. Paragraph 73 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

74. Paragraph 74 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

SECOND CLAIM FOR RELIEF

(Fifth Amendment of the United States Constitution)

(Equal Protection Violation) (Illegally Allowing Future Eligibility)

75. Paragraph 75 of the Complaint “realleges and incorporates by reference the allegations set forth above as if fully set forth herein.” NBFA and AAIF thus likewise respond to this allegation by incorporating by reference the responses set forth above as if fully set forth herein.

76. Paragraph 76 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff’s argument and/or characterization regarding how the referenced statute is applicable to the legal questions at issue in this action.

77. Paragraph 77 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff’s argument and/or

characterization regarding how the referenced statute is applicable to the legal questions at issue in this action.

78. Paragraph 78 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff's argument and/or characterization regarding how the referenced citation is applicable to the legal questions at issue in this action.

79. Paragraph 79 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny the allegations.

80. Paragraph 80 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny Plaintiff's argument and/or characterization regarding how the referenced citation is applicable to the legal questions at issue in this action.

81. Paragraph 81 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

THIRD CLAIM FOR RELIEF
(Illegally Allowing Future Eligibility)

82. Paragraph 82 of the Complaint "realleges and incorporates by reference the allegations set forth above as if fully set forth herein." NBFA and AAIF thus likewise respond to this allegation by incorporating by reference the responses set forth above as if fully set forth herein.

83. Paragraph 83 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

84. Paragraph 84 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

85. Paragraph 85 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF lack sufficient knowledge or information to form a belief about the allegations.

86. The portion of the Complaint captioned “Relief Requested” consists of Plaintiff’s requested relief, to which no response is required. To the extent a response is required, NBFA and AAIF deny that Plaintiff is entitled to his requested relief, or any relief whatsoever.

AFFIRMATIVE DEFENSES

NBFA and AAIF hereby assert the following affirmative defenses to the causes of action made by Plaintiff in the Complaint, subject to their right to amend and assert other affirmative defenses as may become available during discovery in this action.

FIRST AFFIRMATIVE DEFENSE: LACK OF STANDING

This Court lacks subject matter jurisdiction over Plaintiff’s claims because he cannot show the injury necessary to establish standing in federal court.

SECOND AFFIRMATIVE DEFENSE: LACK OF RIPENESS

This Court lacks subject matter jurisdiction over Plaintiff’s claims because they are not ripe for review.

THIRD AFFIRMATIVE DEFENSE: FAILURE TO EXHAUST

Plaintiff’s claims are barred because he has failed to exhaust administrative remedies.

FOURTH AFFIRMATIVE DEFENSE: FAILURE TO STATE A CAUSE OF ACTION

Plaintiff's claims, as set forth in the Complaint, fail to state facts sufficient to constitute a cause of action against Defendants.

WHEREFORE, NBFA and AAIF respectfully request that the Court: (1) dismiss the Complaint with prejudice; (2) enter judgment in favor of NBFA and AAIF; and (3) grant such further relief as the Court deems just and proper.

Dated: July 24, 2021

Respectfully submitted,

PUBLIC JUSTICE, P.C.

/s/ Randolph T. Chen

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