

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

SCOTT WYNN, an individual,

*Plaintiff,*

v.

TOM VILSACK, in his official capacity as  
Secretary of Agriculture, et al.,

*Defendants,*

No. 3:21-cv-00514-MMH-JRK

**MEMORANDUM OF LAW IN SUPPORT OF THE NATIONAL BLACK  
FARMERS ASSOCIATION AND THE ASSOCIATION OF AMERICAN  
INDIAN FARMERS' OPPOSED 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 (the “Conditional Motion”). It requests that the Court defer consideration until future developments in this lawsuit 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 at 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 seeks to join Section 1005 because he alleges that the law “violates the equal protection component of the Due Process Clause of the Fifth Amendment to the U.S. Constitution;” he also alleges that USDA’s implementation of the law violates the Administrative Procedure Act. Compl., Dkt. No. 1, ¶¶ 50-67.

NBFA and AAIF are non-profit, membership-based organizations dedicated to advancing the interests of Black and Native American farmers. 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 Ivan Isidore Williams (“Williams Decl.”) ¶ 9; Exh. 4, Decl. of Shade Mitchell Lewis (“Lewis 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 Eleventh Circuit has elaborated that Rule 24(a)(2) intervention must be allowed where: (1) the application is timely; (2) the applicant has an interest relating to the property or transaction which is the subject of the action; (3) the disposition of that case may impair or impede the applicant’s ability to protect that interest; and (4) the applicant’s interest is inadequately represented by the existing parties to the suit. *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989). An intervenor under Rule 24(a)(2) only “must meet the requirements of Article III if the intervenor wishes to pursue relief” distinct from the existing parties. *Town of Chester, N.Y. v. Laroe Ests., 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. *Arcia v. Fla. Sec. of State*, 772 F.3d 1335, 1342 (11th Cir. 2014).

NBFA and AAIF's members have standing because they stand to suffer injury, as this lawsuit challenges federal statutes that entitle them to financial benefits. *See Cooper v. Tex. Alcoholic Bev. Comm'n*, 820 F.3d 730, 737 (5th Cir. 2016) (liquor retailer association's members had standing to defend constitutionality of licensing law that benefited their business). In addition, 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. *Arcia*, 772 F.3d at 1342 (actions for declaratory and injunctive relief do not require participation of an organization's members). Therefore, NBFA and AAIF have Article III standing to participate in this action.

**B. The Motion Is Timely.**

To determine whether NBFA and AAIF's motion is timely, courts consider four factors: (1) the length of time between the proposed intervenor's learning of their interest and the motion to intervene; (2) the extent of prejudice to existing parties from allowing late intervention; (3) the extent of prejudice to the proposed intervenor if their motion is denied; and (4) any unusual circumstances. *Chiles*, 865 F.2d at 1213. Applications to intervene filed before the start of discovery are generally considered to be timely. *E.g., id.* (motion was timely when "filed only

seven months after . . . original complaint, three months after the government filed its motion to dismiss, and before any discovery had begun.”).

Here, this Motion is timely under all four factors. As to the first and second factors, NBFA and AAIF promptly filed this Motion less than a month after learning of their interest in this case through reading Plaintiffs’ Complaint that was filed on May 18, 2021. Filing at this very early stage of the litigation where no discovery has been conducted is also exceedingly unlikely to prejudice any party. As to the third factor, NBFA and AAIF would be severely prejudiced if denied the opportunity to intervene because the litigation seeks to undo their advocacy and remove financial benefits to their members. As to the final factor, NBFA and AAIF are unaware of any “unusual circumstances” that would counsel against intervention.

**C. NBFA and AAIF Possess an Interest Related to the Controversy in This Case.**

To determine whether an intervenor has a sufficient interest related to the controversy, the inquiry is whether the interest is “direct, substantial, and legally protectable.” *United States v. S. Fla. Water Mgmt. District*, 922 F.2d 704, 707 (11th Cir. 1991) (internal alterations omitted). As discussed above, NBFA and AAIF’s members have a legally protectible interest related to this case because they stand to be directly affected by this lawsuit that seeks to enjoin a law that entitles them to financial benefits. *See id.* (agricultural organizations had sufficient

interest to intervene in suit seeking to restrict state water management agency's operations regarding water standards); *see also Wal-Mart Stores, Inc v. Tex. Alcoholic Bev. Comm'n*, 834 F.3d 562, 566 (5th Cir. 2016) (trade association had interest justifying intervention where it sought to defend law where its members were the "beneficiaries" of the regulations).

**D. The Disposition of This Case Will Impair NBFA and AAIF's Ability to Protect Their Interests.**

The Eleventh Circuit has held that "the potential *stare decisis* effect" of an adverse judgment constitutes a sufficient impairment to compel intervention. *Chiles*, 865 F.2d at 1214. 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 of NBFA and AAIF's Interests May Become Inadequate At a Future Point in This Litigation.**

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 Athens Lumber Co., Inc. v. FCC*, 690 F.2d 1364, 1366 (11th Cir. 1982); 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. Courts have also observed that when the Government declines to appeal an adverse ruling in the case, representation “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 AAIA 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)(1)(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.” District courts have broad discretion on

this issue and may permit intervention when both those requirements are met.

*Chiles*, 865 F.2d at 1213.

The first factor, as discussed above in Section II, is plainly met because the 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. As to the second factor, a common question of law exists where, as here, a proposed intervenor seeks to intervene in a lawsuit to defend a law that the intervenor was “actively involved” in the efforts to get the law passed. *E.g.*, *Vazzo v. City of Tampa*, 2018 WL 1629216, at \*4 (M.D. Fla. Mar. 15, 2018); J. Boyd Decl. ¶¶ 4-6 (testifying before Congress to call for loan forgiveness provisions); K. Boyd Decl. ¶ 7 (advocating to federal lawmakers in support of loan forgiveness legislation).

For these reasons, NFBA 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, the 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: June 15, 2021

Respectfully submitted,

**VARNELL & WARWICK, P.A.**

/s/ Janet R. Varnell

JANET R. VARNELL; FBN: 0071072

1101 E. CUMBERLAND AVE.

STE. 201H, #105

TAMPA, FL 33602

TELEPHONE: (352) 753-8600

FACSIMILE: (352) 504-3301

*jvarnell@varnellandwarwick.com*

**PUBLIC JUSTICE, P.C.**

/s/ Randolph T. Chen

Randolph T. Chen\*

David Muraskin\*

Jessica Culpepper\*

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*

\* Admitted *Pro Hac Vice*

**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."<sup>1</sup>

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<sup>1</sup> 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

  
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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  
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:



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By: \_\_\_\_\_

SHADE MARSHALL LEWIS