

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

Sid Miller, et al.,

Plaintiffs,

v.

Case No. 4:21-cv-00595-O

Tom Vilsack, in his official capacity as
Secretary of Agriculture,

Defendant.

**MOTION TO AMEND PRELIMINARY-INJUNCTION ORDER OF
JULY 1, 2021**

On July 1, 2021, this Court entered an order that enjoins the defendants from:

from discriminating on account of race or ethnicity in administering section 1005 of the American Rescue Plan Act for any applicant who is a member of the Certified Classes. This prohibition encompasses: (a) considering or using an applicant Class Member's race or ethnicity as a criterion in determining whether that applicant will obtain loan assistance, forgiveness, or payments; and (b) considering or using any criterion that is intended to serve as a proxy for race or ethnicity in determining whether an applicant Class Member will obtain loan assistance, forgiveness, or payments.

Order (ECF No. 60) at 24. The plaintiffs respectfully ask the Court to amend its preliminary-injunction order to remove the word "applicant." The plaintiffs included the word "applicant" in the proposed order that they submitted to the Court on June 2, 2021 (ECF No. 18-8), because they were under the impression that farmers and ranchers were required to apply for loan forgiveness, just as restaurant owners were required to apply for relief from the Restaurant Revitalization Fund. The plaintiffs have since learned, based on the defendants' representations at the hearing of June

30, 2021, as well as the defendants' written representations, that there is no application process and that the Department of Agriculture intends to implement section 1005 by unilaterally forgiving loans and making payments to farmers and ranchers that it believes to be members of racial-minority groups. Because there is no current application process, there cannot be an "applicant" class member, and an injunction limited to the protection of "applicant" class members will not prevent the racially discriminatory behavior authorized by section 1005.

The plaintiffs respectfully propose that the Court amend its order to enjoin the defendants:

from discriminating on account of race or ethnicity in administering section 1005 of the American Rescue Plan Act ~~for any applicant~~ against anyone who is a member of the Certified Classes. This prohibition encompasses: (a) considering or using ~~an applicant~~ Class Member's race or ethnicity as a criterion in determining whether that applicant will obtain loan assistance, forgiveness, or payments; and (b) considering or using any criterion that is intended to serve as a proxy for race or ethnicity in determining whether ~~an applicant~~ Class Member will obtain loan assistance, forgiveness, or payments.

Respectfully submitted.

GENE P. HAMILTON
Virginia Bar No. 80434
Vice-President and General Counsel
America First Legal Foundation
300 Independence Avenue SE
Washington, DC 20003
(202) 964-3721
gene.hamilton@aflegal.org

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

H. DUSTIN FILLMORE III
Texas Bar No. 06996010
CHARLES W. FILLMORE
Texas Bar No. 00785861
The Fillmore Law Firm, LLP
201 Main Street, Suite 801
Fort Worth, Texas 76102

(817) 332-2351 (phone)
(817) 870-1859 (fax)
dusty@fillmorefirm.com
chad@fillmorefirm.com

Dated: July 5, 2021

*Counsel for Plaintiffs and
the Proposed Classes*

CERTIFICATE OF CONFERENCE

I certify that on July 5, 2021, I attempted to confer with Emily Sue Newton, counsel for the defendants, but I was unable to reach her and Ms. Newton did not respond to my e-mail and text messages before midnight, likely because July 5, 2021, is a federal holiday. Because this motion is relevant to the defendants' notice of July 1, 2021, which is currently pending before the Court, the plaintiffs thought it essential to file this motion before the end of the day.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
the Proposed Classes*

CERTIFICATE OF SERVICE

I certify that on July 5, 2021, I served this document through CM/ECF upon:

EMILY SUE NEWTON
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
(202) 305-8356 (phone)
(202) 616-8460 (fax)
emily.s.newton@usdoj.gov

Counsel for Defendants

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
the Proposed Classes*