

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

Sid Miller, et al.,

Plaintiffs,

v.

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

Defendant.

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

**PLAINTIFFS' SUR-REPLY TO DEFENDANTS' REPLY BRIEF OF
JULY 6, 2021**

Racial discrimination by government officials inflicts injury in fact and irreparable harm *per se*. That remains true regardless of whether the discriminatory conduct involves the forgiveness of a loan or the mailing of a letter. Article III injury does not in any way turn on the magnitude of the harm. *See United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n.14 (1973) (“[A]n identifiable trifle is enough for standing” (citation and internal quotation marks omitted)). The government suggests that injury from a racially discriminatory mailing is insufficiently “concrete,”¹ but “harms specified by the Constitution itself” will always satisfy the concreteness requirement. *See TransUnion LLC v. Ramirez*, No. 20-297, slip op. at 9; *see also American Legion v. American Humanist Ass’n*, 139 S. Ct. 2067 (2019) (unwanted contact with a religious display sufficient to confer standing).

The government also notes that we did not specifically allege “harm” from the government’s preparatory steps in our previous filings,² but that is because we were

1. *See* Defs.’ Reply Br. (ECF No. 65) at 4.

2. *See* Defs.’ Reply Br. (ECF No. 65) at 2.

not aware that government would seek permission to take preparatory steps in response to a preliminary injunction. The injunction that we sought, however, encompasses *all* racially discriminatory conduct by government officials in the administration of the section 1005 program—because any form of racially discriminatory conduct will harm the class members and violate federal law. The injunction speaks for itself: The government may engage in preparatory steps so long as it is not “discriminating on account of race or ethnicity”³ in the preparatory steps that it undertakes.

Respectfully submitted.

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3. See Order (ECF No. 60) at 24.

CERTIFICATE OF SERVICE

I certify that on July 8, 2021, I served this document through CM/ECF upon:

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