

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

SCOTT WYNN, an individual,

Plaintiff,

v.

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

Defendants.

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

**DEFENDANTS' MOTION FOR AN EXTENSION OF
DISCOVERY DEADLINE**

Defendants respectfully request that the Court extend the deadline to complete discovery in this case by one month, to January 3, 2022. Plaintiff's discovery requests have far exceeded Plaintiff's earlier representations to the Court about the scope of discovery he intended to seek in pursuing his facial challenge to an Act of Congress. These extensive discovery requests have exceeded Defendants' capacity to process and respond to those requests. Defendants are cognizant of this Court's previously stated reluctance to extend the deadlines in this case, and do not lightly make this request. But Plaintiff's extensive discovery requests have imposed a considerable burden on the Government and additional time is necessary to permit Defendants to comply with those requests. Defendants have already produced the documents referenced in their briefings. Defendants are now working diligently to review and process more than

15,000 additional documents for possible production, but technical and personnel limitations will prevent Defendants from completing that review and subsequent production to Plaintiff by the current December 3, 2021, deadline for the close of discovery. In addition, Plaintiff has now noticed a 30(b)(6) deposition on eleven broad topics, and the parties require additional time to complete the meet-and-confer process to appropriately narrow those topics and to identify and adequately prepare one or more designees to testify on those topics. Good cause thus supports this extension request. Plaintiff opposes the relief sought herein.

On June 22, 2021, Plaintiff told this Court it did “not oppose consolidating the hearing on the motion for preliminary injunction and the hearing on the merits,” indicating he did not believe he required additional factual development. ECF No. 40. A week later, Plaintiff reiterated this point when seeking an expedited briefing schedule, telling the Court that he “believes many of the key facts in this case will be undisputed” and that he “does not anticipate extensive discovery.” ECF 42. A month after that, in opposing Defendants’ motion to stay these proceedings pending the outcome of a related class action, Plaintiff reiterated that he “does not anticipate extensive discovery.” ECF No. 49.

But the discovery Plaintiff has sought is indeed “extensive,” and it has severely strained Government resources to respond. Before counting subparts, Plaintiff has served 25 interrogatories—the maximum allowed under the federal rules, *see* Fed. R. Civ. P. 33(a)(1). Plaintiff has served 26 requests for admission. And, of particular significance for purposes of this motion, Plaintiff has served fourteen broad requests

for production, many of which are facially unlimited as to time period and include plenary requests for “all documents, including communications” that “concern[]” numerous general topics. *See, e.g.*, RFP Nos. 4, 5, 6, 8, 11. Even after narrowing some of these requests through negotiation, it is presently not feasible for Defendants to complete review and production of the necessary documents, while also responding to Plaintiff’s other discovery requests, under the current deadlines. In addition, Plaintiff has just noticed a Rule 30(b)(6) deposition on eleven topics, ostensibly to take place on November 22, 2021—just ten calendar days from now.

Defendants have worked diligently to complete their discovery obligations in this case. After being served with the requests for production, USDA personnel identified appropriate custodians and began the process—complicated by the limits of the technology supporting USDA’s IT infrastructure—of collecting documents from them. These efforts unfolded simultaneous to agency personnel compiling and providing information to respond to Plaintiff’s Interrogatories and Plaintiff’s Requests for Admission, as well as compiling and providing information to Defendants’ expert, *see, e.g.*, ECF No. 67-1 (Decl. of Gianna Short).

Nonetheless, an extension of the discovery deadlines is necessary. As of this filing, there are 14 business days before the close of discovery, and there remain more than 15,000 documents to review for responsiveness and privilege. Given technical limitations and resource constraints in government e-discovery tools, Defendants anticipate that all review must be completed no later than November 26, the day after the Thanksgiving holiday, in order for the documents to be processed and produced

by December 3, 2021. USDA currently has twelve personnel assigned to assist in the task. Even so, Defendants do not believe it is feasible for this team to complete the first level of review—setting aside the ordinary second-level review by litigation counsel—within the remaining timeframe.

Moreover, additional time is necessary if Plaintiff insists on taking a 30(b)(6) deposition. Plaintiff's notice identifies eleven topics for a deposition he wishes to conduct in 10 days. Many of the topics are very general and not described with sufficient particularity to enable Defendants to reasonably prepare a witness to testify to them. While Defendants are optimistic that the parties will be able to reach a reasonable agreement on topics and timing, sufficient time is necessary to permit the meet-and-confer process to unfold. With just 14 business days until the close of discovery, and the Thanksgiving holiday, there is currently not sufficient time for the parties to appropriately define the topics and for Defendants to then identify and reasonably prepare one or more witnesses to testify on behalf of the agency. Indeed, under Plaintiff's proposed schedule, the deposition would take place before Defendants have an adequate chance to complete their ongoing review of the relevant documents and produce those documents to Plaintiff. Such a schedule is not only inefficient but also limits the utility of the Rule 30(b)(6) deposition for Plaintiff and Defendants alike.

Defendants do not believe that the one month extension sought in this motion will prejudice Plaintiff, especially in light of the preliminary injunction entered by this Court and similar orders entered by other courts. Plaintiff's challenge is a facial attack

on an Act of Congress; as Plaintiff has noted repeatedly, the fundamental facts are not in dispute. Defendants seriously doubt that the additional materials to be produced contain any evidence of any significant value, and believe that Plaintiff will be able to prepare a dispositive motion without the material. Nonetheless, Defendants have no objection to the Court's extending briefing deadlines in this case by whatever length it determines just and appropriate, and does not believe that Plaintiff will be prejudiced by a modest delay in briefing this matter.¹

¹ Also pending before the Court is Defendants' motion to stay proceedings in this case pending final judgment in *Miller v. Vilsack*. Defendants maintain that a stay is appropriate to eliminate the risk of conflicting judgments, to reduce the burden on the litigants and the judicial system of parallel proceedings, and to avoid the anomalous circumstance of Plaintiff's own claims proceeding simultaneously in multiple fora.

Dated: November 12, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

LESLEY FARBY
Assistant Branch Director
Civil Division, Federal Programs Branch

/s/ Michael F. Knapp
EMILY SUE NEWTON (VA Bar No. 80745)
Senior Trial Counsel
KYLA M. SNOW (Ohio Bar No. 96662)
MICHAEL F. KNAPP (Cal. Bar No. 314104)
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
Tel: (202) 514-2071 / Fax: (202) 616-8460
michael.f.knapp@usdoj.gov

Counsel for Defendants

Certificate of Service

I hereby certify that on November 12, 2021, a copy of the foregoing motion was filed electronically via the Court's ECF system, which effects service on counsel of record.

/s/ Michael F. Knapp
MICHAEL F. KNAPP
U.S. Department of Justice

Exhibit 1

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

SCOTT WYNN, an individual,

Civil Action

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

Plaintiff,

v.

TOM VILSACK, in his official capacity as
U.S. Secretary of Agriculture; ZACH
DUCHENEAUX, in his official capacity
as Administrator, Farm Service Agency,

Defendants.

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

PROPOUNDING PARTY: Plaintiff Scott Wynn

RESPONDING PARTIES: Defendants Tom Vilsack and Zach
Ducheneaux, in their official
capacities

SET NUMBER: One

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Scott Wynn propounds this First Set of Requests for Production of Documents to Defendants in the above-captioned action.

Defendants should direct service of their answers to Plaintiff, through Plaintiff's counsel:

Wencong Fa
Pacific Legal Foundation
930 G St
Sacramento, California 95814
Email: WFa@pacificlegal.org

INSTRUCTIONS

1. Plaintiff Scott Wynn hereby requests that Defendants provide counsel for Plaintiff with copies of the documents described in the following requests for production, or afford counsel for Plaintiff the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph, or otherwise reproduce said documents.

2. For each Request, your response must either be to produce responsive documents or state an objection to the Request, including all reasons for the objection. An objection to only part of a Request must specify which part is objected to, and you should produce responsive documents to every other part of the Request. **If you object to a Request or part of a Request, please specify whether any documents are being withheld on the basis of the objection.**

3. If Defendants assert a claim of privilege as to any documents sought by these Requests, for each privileged document, state the following:

- a. The type of privilege being asserted;
- b. The identity of any person who created, made, received, or is in possession of the document;

- c. A description of the document sufficient to enable Plaintiff to assess the claim; and
- d. The basis upon which the document is asserted to be privileged from production.

4. In responding to these Requests, please provide all relevant information within Defendants' possession, custody, and/or control.

5. Defendants are under a duty to seasonably amend and/or supplement a prior response if Defendants obtains information upon the basis of which: (a) Defendants know that the answer was incomplete or incorrect when made; or (b) Defendants know that the answer, though complete and correct when made, is no longer complete and correct.

6. These Requests are continuing in nature and responses must be amended and/or supplemented as further information becomes available.

DEFINITIONS

1. "You" and "your" shall mean and refer to the Defendants to whom these requests for document production are directed.

2. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

3. "Document" means any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation, stored in any medium from which information can be obtained either directly or, if

necessary, after translation by the responding party into a reasonably usable form and includes all documents and electronically stored information as described in Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure. A draft or nonidentical copy is a separate document within the meaning of this term. A request for documents includes a request for electronically stored information including, but not limited to, emails, text messages, MS Teams messages, instant messaging, and Slack communications.

4. The term “person” is defined as any natural person or any business, legal or governmental entity, or association.

5. The term “concerning” means relating to, referring to, describing, evidencing, or constituting.

6. The term “farmer” refers to and includes both farmers and ranchers.

7. The term “Section 1005” refers to Section 1005 of the American Rescue Plan Act of 2021.

8. “USDA” means the United States Department of Agriculture, including its employees, officers, and agents.

9. “FSA” means the Farm Service Agency, including its employees, officers, and agents.

10. The term “socially disadvantaged” has the meaning given to “socially disadvantaged farmer and rancher” under Section 1005(b)(3) of the American Rescue Plan Act of 2021.

11. The term “socially disadvantaged provisions” means provisions of Section 1005 that limits the debt relief provided for in Section 1005 to “socially disadvantaged” farmers and ranchers. *See* § 1005(a)(2).

12. The terms “eligible farm loan” or “qualifying farm loan” has the meaning given to “farm loan” under Section 1005(b)(1) of the American Rescue Plan Act of 2021.

13. The terms “all,” “any,” and “each” shall both be construed as all and each.

14. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

15. The use of the singular form of any word includes the plural and vice versa.

16. Unless the context clearly requires otherwise, the use of any pronoun or gender-identified form of any word includes both the male and female genders.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Please produce or make available the following:

REQUEST FOR PRODUCTION NO. 1: All documents identified in Defendants’ Initial Disclosures.

REQUEST FOR PRODUCTION NO. 2: All documents identified in your response to **INTERROGATORY NO. 2.**

REQUEST FOR PRODUCTION NO. 3: All documents identified in your response to **INTERROGATORY NO. 4.**

REQUEST FOR PRODUCTION NO. 4: All documents, including communications, concerning any attempts to tailor the “socially disadvantaged” provisions of Section 1005 to further each interest you identify in your answer to **INTERROGATORY NO. 4.**

REQUEST FOR PRODUCTION NO. 5: All documents, including communications, concerning any race-neutral alternatives that were implemented or considered to further each interest you identify in your answer to **INTERROGATORY NO. 4.**

REQUEST FOR PRODUCTION NO. 6: All documents concerning how it is determined which groups are “socially disadvantaged groups” for purposes of Section 1005 and 7 U.S.C. 2279.

REQUEST FOR PRODUCTION NO. 7: All documents that were used or considered by FSA in making the determination in *Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)*, 86 Fed. Reg. 28,329 (May 26, 2021), that the following are “socially disadvantaged groups” for purposes of Section 1005: American Indians or

Alaskan Natives; Asians; Blacks or African Americans; Native Hawaiians or other Pacific Islanders; and Hispanics or Latinos.

REQUEST FOR PRODUCTION NO. 8: All documents, including any communications, concerning the consideration of any additional groups for inclusion as a “socially disadvantaged” group for purposes of Section 1005 or 7 U.S.C. 2279.

REQUEST FOR PRODUCTION NO. 9: Documents sufficient to show the demographics (including location, crops grown, age, race, and ethnicity) of all farmers and ranchers who hold a “qualifying loan” under Section 1005.

REQUEST FOR PRODUCTION NO. 10: Documents sufficient to show the demographics (including location, crops grown, age, race, and ethnicity) of all socially disadvantaged farmers and ranchers who hold a “qualifying loan” under Section 1005.

REQUEST FOR PRODUCTION NO. 11: All communications between USDA or FSA and any member of Congress or congressional staff, including the staff of any congressional committee, regarding the development of Section 1005 or any similar provision (including proposed Senate Bill 278).

DATED: August 11, 2021.

PACIFIC LEGAL FOUNDATION

Christina M. Martin
Fla. Bar No. 100760
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
Telephone: (561) 619-5000
Facsimile: (561) 619-5006
Email: CMartin@pacificlegal.org

s/ Wencong Fa
Wencong Fa*
Cal. Bar No. 301679
Lead Counsel
Daniel M. Ortner*
Cal. Bar No. 329866
930 G Street
Sacramento CA 95814
Email: WFa@pacificlegal.org
Email: DOrtner@pacificlegal.org

Glenn E. Roper*
Colo. Bar No. 38723
1745 Shea Center Dr., Suite 400
Highlands Ranch CO 80129
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
Email: GERoper@pacificlegal.org

Attorneys for Plaintiff

*Special admission

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2021, I served the foregoing PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS on counsel for the Defendants via electronic mail, per the agreement among counsel to accept service via email.

s/ Wencong Fa
Wencong Fa*
Cal. Bar No. 301679
Lead Counsel
* Special Admission

Exhibit 2

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

SCOTT WYNN, an individual,

Civil Action

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

Plaintiff,

v.

TOM VILSACK, in his official capacity as
U.S. Secretary of Agriculture; ZACH
DUCHENEAUX, in his official capacity
as Administrator, Farm Service Agency,

Defendants.

NOTICE OF RULE 30(b)(6) DEPOSITION

TO THE PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 30(b)(6), Plaintiff, by his counsel, will take the deposition of the United States Department of Agriculture employee(s) designated by the Department to testify on its behalf. By agreement of the parties, the deposition will be conducted via videoconference and recorded by stenographic means at November 22, 2021 at 11:00 a.m. EST. The deposition will continue from day to day until completed and shall be taken before a court reporter or other person duly authorized to administer oaths.

The matters examined will be:

1. The Government's purpose in providing debt relief to socially disadvantaged farmers pursuant to Section 1005.
2. The "history of discrimination against minority farmers in USDA loan (and other) programs." Defs' Resp. to Prelim. Inj. Mot., ECF No. 22 at 18.
3. The way in which Section 1005 "prevent[s] public funds from being allocated in a way that perpetuates the effects of discrimination." Defs' Resp. to Prelim. Inj. Mot., ECF No. 22 at 18.
4. The "inefficacy of the race-neutral alternatives that Congress used before enacting" Section 1005. Defs' Resp. to Prelim. Inj. Mot., ECF No. 22 at 31.
5. Purpose and implementation of farm loans eligible for debt relief under Section 1005, including Direct Farm Ownership Loans and Farm Operating Loans.
6. The USDA's definition of socially disadvantaged for purposes of providing debt relief pursuant to Section 1005.
7. Process by which farmers "could be considered for inclusion on a case-by-case basis by the Secretary in response to a written request." Defs' Resp. to Prelim. Inj. Mot. ECF No. 22 at 13.

8. Payments previously made to socially disadvantaged farmers in *Pigford*, *Pigford II*, *Keepseagle*, and as otherwise described in paragraphs 35–41 of Plaintiff’s Complaint and Defendants’ Answer in this case.

9. The implementation and operation of Section 1005, including as described in the Notice of Funds Availability. (Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA), 86 Fed. Reg. 28,329 (May 26, 2021))

10. The development and operation of COVID-19 pandemic relief programs for farmers and ranchers.

11. Defendants’ responses to Plaintiff’s discovery requests.

DATED: November 10, 2021.

Respectfully submitted,

PACIFIC LEGAL FOUNDATION

Christina M. Martin
Fla. Bar No. 100760
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
Telephone: (561) 691-5000
Facsimile: (916) 419-7747
Email: CMartin@pacificlegal.org

s/ Wencong Fa
Wencong Fa*
Cal. Bar No. 301679
Lead Counsel
Daniel M. Ortner*
Cal. Bar No. 329866
555 Capitol Mall, Suite 1290
Sacramento CA 95814
Email: WFa@pacificlegal.org
Email: DOrtner@pacificlegal.org

Glenn E. Roper*
Colo. Bar No. 38723
1745 Shea Center Dr., Suite 400
Highlands Ranch CO 80129

Telephone: (916) 419-7111

Facsimile: (916) 419-7747

Email: GERoper@pacificlegal.org

Attorneys for Plaintiff

*Special admission

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2021, the foregoing Notice of Rule 30(b)(6) Deposition was served on counsel for the Defendants via electronic mail, per the agreement among counsel to accept service via email.

s/ Wencong Fa
Wencong Fa*
Cal. Bar No. 301679
Lead Counsel
* Special Admission