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

SID MILLER, et al., on behalf of themselves and others similarly situated, Plaintiffs, v. THOMAS J. VILSACK, in his official capacity as Secretary of the U.S. Department of Agriculture, Defendant, and FEDERATION OF SOUTHERN COOPERATIVES/LAND ASSISTANCE FUND; NATIONAL BLACK FARMERS ASSOCIATION (NBFA); ASSOCIATION OF AMERICAN INDIAN FARMERS (AAIF), Intervenor-Defendants.	Case No. 4:21-CV-00595-O

UNOPPOSED MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN RESPONSE TO THE PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT ON BEHALF OF RURAL COALITION, THE INTERTRIBAL AGRICULTURE COUNCIL, NORTH CAROLINA ASSOCIATION OF BLACK LAWYERS LAND LOSS PREVENTION PROJECT, AMERICAN INDIAN MOTHERS, INC., BLACK FARMERS AND AGRICULTURALISTS ASSOCIATION, CALIFORNIA FARMLINK, COMMUNITY FARM ALLIANCE, CONCERNED CITIZENS OF TILLERY, COTTAGE HOUSE, INC., FAMILY FARM DEFENDERS, FARM AID, HEAL FOOD ALLIANCE, KANSAS BLACK FARMERS ASSOCIATION, NATIONAL FAMILY FARM COALITION, NATIONAL LATINO FARMERS AND RANCHERS TRADE ASSOCIATION, NATIONAL SUSTAINABLE AGRICULTURE COALITION, NATIONAL YOUNG FARMERS COALITION, OKLAHOMA BLACK HISTORICAL RESEARCH PROJECT, INC., OPERATION SPRING PLANT, INC., RURAL ADVANCEMENT FOUNDATION INTERNATIONAL-USA, RURAL ADVANCEMENT FUND OF THE NATIONAL SHARECROPPERS FUND, INC., STEWARD HOLDINGS, TEXAS COALITION OF RURAL LANDOWNERS, WORLD FARMERS, INC. AND WOMEN, FOOD, AND AGRICULTURE NETWORK

Rural Coalition, Intertribal Agriculture Council, North Carolina Association of Black Lawyers Land Loss Prevention Project, Rural Advancement Fund of the National Sharecroppers Fund, Inc., National Latino Farmers and Ranchers Trade Association, American Indian Mothers, Inc., Family Farm Defenders, Kansas Black Farmers Association, National Young Farmers Coalition, Oklahoma Black Historical Research Project, Inc., Operation Spring Plant, Inc., Texas Coalition of Rural Landowners, World Farmers, Inc., Farm Aid, HEAL Food Alliance, National Family Farm Coalition, Rural Advancement Foundation International-USA, National Sustainable Agriculture Coalition, California FarmLink, Community Farm Alliance, Women, Food, and Agriculture Network, Steward Holdings, Concerned Citizens of Tillery, Black Farmers and Agriculturalists Association, and Cottage House, Inc. respectfully request leave of this Court to submit their brief as amici curiae in response to the Parties' Cross Motions for Summary Judgment.

Amici curiae are farmers' organizations that work with, on behalf of, or represent socially disadvantaged farmers and ranchers who are eligible for debt relief under Section 1005 of the American Rescue Plan Act, and who would therefore be harmed should the Court rule that the law is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

For reasons explained in the accompanying brief, amici curiae urge the Court to deny Plaintiffs' motion for summary judgment and instead grant summary judgment in favor of the Federation of Southern Cooperatives/Land Assistance Fund ("Federation").

Additionally, should the Court rule that the law is unconstitutional, then the amici curiae would be harmed by the Defendant's proposed remedy of making debt relief available to those who claim to have been previously excluded under Section 1005. Similarly, should the Court rule that the law is unconstitutional, then the amici curiae would be harmed by Defendant-Intervenors

National Black Farmers Association/Association of American Indian Farmers' proposed remedy of striking down Section 1005 in its entirety.

Instead, amici curiae endorse the remedy proposed by the Federation. Should the Court conclude that a challenge to the USDA's interpretation of Section 1005 in the Notice of Funds Availability (NOFA) is properly before the Court, the constitutional defect, if any, is in the agency's interpretation, not in the statute. As such, amici curiae endorse the Federation's position that the proposed remedy should be directed at the NOFA, not the statute, which does not include racial classifications.

"An amicus brief should normally be allowed when a party is not represented competently . . . or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012) (citing *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997). "So courts should welcome amicus briefs for one simple reason: it is for the honor of a court of justice to avoid error in their judgments." *Lefebure v. D'Aquilla*, 15 F.4th 670, 675 (5th Cir. 2021) (internal quotations omitted) (citation omitted). Federal district courts possess the inherent authority to accept amicus briefs. *See In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006) ("[D]istrict courts possess the inherent authority to appoint 'friends of the court' to assist in their proceedings."); *U.S. v. State of La.*, 751 F. Supp. 608, 620 (E.D. La. 1990) ("Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case[.]").

DATE: July 25, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 25, 2022, I filed the foregoing document with the Clerk of Court for the U. S. District Court, Northern District of Texas. I hereby certify that I have served the document on all counsel and/or pro se parties of record by a manner authorized by Federal Rules of Civil Procedure 5 (b)(2).

/s/ Alexandra Jordan
Alexandra Jordan

EXHIBIT A

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

SID MILLER, et al., on behalf of themselves and others similarly situated, *Plaintiffs*, v. THOMAS J. VILSACK, in his official capacity as Secretary of the U.S. Department of Agriculture, *Defendant*, and FEDERATION OF SOUTHERN COOPERATIVES/LAND ASSISTANCE FUND; NATIONAL BLACK FARMERS ASSOCIATION (NBFA); ASSOCIATION OF AMERICAN INDIAN FARMERS (AAIF), *Intervenors-Defendants*.	Case No. 4:21-CV-00595-O

BRIEF OF AMICI CURIAE THE RURAL COALITION, THE INTERTRIBAL AGRICULTURE COUNCIL, NORTH CAROLINA ASSOCIATION OF BLACK LAWYERS LAND LOSS PREVENTION PROJECT, AMERICAN INDIAN MOTHERS, INC., BLACK FARMERS AND AGRICULTURALISTS ASSOCIATION, CALIFORNIA FARMLINK, COMMUNITY FARM ALLIANCE, CONCERNED CITIZENS OF TILLERY, COTTAGE HOUSE, INC., FAMILY FARM DEFENDERS, FARM AID, HEAL FOOD ALLIANCE, KANSAS BLACK FARMERS ASSOCIATION, NATIONAL FAMILY FARM COALITION, NATIONAL LATINO FARMERS AND RANCHERS TRADE ASSOCIATION, NATIONAL SUSTAINABLE AGRICULTURE COALITION, NATIONAL YOUNG FARMERS COALITION, OKLAHOMA BLACK HISTORICAL RESEARCH PROJECT, INC., OPERATION SPRING PLANT, INC., RURAL ADVANCEMENT FOUNDATION INTERNATIONAL-USA, RURAL ADVANCEMENT FUND OF THE NATIONAL SHARECROPPERS FUND, INC., STEWARD HOLDINGS, TEXAS COALITION OF RURAL LANDOWNERS, WORLD FARMERS, INC. AND WOMEN, FOOD, AND AGRICULTURE NETWORK IN RESPONSE TO THE PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT

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BRIEF STATEMENT OF AMICI CURIAE

Rural Coalition, Intertribal Agriculture Council, North Carolina Association of Black Lawyers Land Loss Prevention Project, Rural Advancement Fund of the National Sharecroppers Fund, Inc., National Latino Farmers and Ranchers Trade Association, American Indian Mothers, Inc., Family Farm Defenders, Kansas Black Farmers Association, National Young Farmers Coalition, Oklahoma Black Historical Research Project, Inc., Operation Spring Plant, Inc., Texas Coalition of Rural Landowners, World Farmers, Inc., Farm Aid, HEAL Food Alliance, National Family Farm Coalition, Rural Advancement Foundation International-USA, National Sustainable Agriculture Coalition, California FarmLink, Community Farm Alliance, Women, Food, and Agriculture Network, Steward Holdings, Concerned Citizens of Tillery, Black Farmers and Agriculturalists Association, and Cottage House, Inc., file this amicus brief in opposition to Plaintiffs' motion for summary judgment and in support of the motion for summary judgment filed by Defendant-Intervenor Federation of Southern Cooperatives/Land Assistance Fund (hereinafter, the "Federation").

Amici curiae are twenty-five farmers' organizations that work with, on behalf of, or represent socially disadvantaged farmers and ranchers who are eligible for emergency debt relief under Section 1005 of the American Rescue Plan Act, and who would therefore be harmed should the Court permanently enjoin the law.[1]

INTRODUCTION

Granting summary judgment in favor of the Plaintiffs in this case will unnecessarily deprive socially disadvantaged farmers and ranchers of debt relief, compounding harm from decades of racial discrimination and the COVID-19 crisis. The American Rescue Plan Act of 2021

[1] Interest statements for each amicus are contained in the Appendix to this brief.

(ARPA) was signed into law on March 11, 2021. Section 1005 of the ARPA directs the Secretary of 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 as of January 1, 2021, to pay off the loan directly or to the socially disadvantaged farmer or rancher (or a combination of both)," on certain loans made or guaranteed by the Secretary. Pub. L. No. 117-2, § 1005(a)(2), 135 Stat. 4 (2021). Congress recognized that socially disadvantaged farmers and ranchers were already operating at a disadvantage when the COVID-19 pandemic struck and needed immediate support. Accordingly, the legislation authorized USDA to spend "sums as may be necessary" to relieve certain debt burdens for socially disadvantaged producers. *Id.* § 1005(a)(1).

The ARPA defines "socially disadvantaged farmer or rancher" in terms of longstanding federal law, which describes such persons as "member[s] of a socially disadvantaged group . . . whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities." 7 U.S.C. § 2279(a)(5)–(6); *see* ARPA § 1005(b)(3). Nowhere does Section 1005 limit relief to a member of any specific racial or ethnic group, nor does it exclude anyone since their race.

In separate regulatory guidance, USDA stated that "[m]embers of socially disadvantaged groups include but are not limited to: American Indians or Alaskan Natives; Asians; Blacks or African Americans; Native Hawaiians or other Pacific Islanders; and Hispanics or Latinos." *See* Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA), 86 Fed. Reg. 28,329, 28,330 (May 26, 2021) (hereinafter, NOFA). The NOFA further states that USDA "will determine on a case-by-case basis whether additional groups qualify under this definition in response to a written request with supporting explanation." *Id.*

Plaintiffs self-identify as "white" farmers and ranchers. *See* Doc. 135 ¶¶ 4–7, 13–17. Plaintiffs do not allege membership in a socially disadvantaged group, and instead, identify as members of the racial group that has created and oppressed racial minorities. As discussed below, to construe the Fourteenth Amendment as it was originally intended, remedy past discrimination and prevent further harm, amici encourage this Court to grant summary judgment in favor of the Federation and deny Plaintiffs' motion for summary judgment.

ARGUMENT

The Fourteenth Amendment's Equal Protection Clause "was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color," *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 398 (1978) (Marshall, J., writing separately) (quoting *Railway Mail Assn. v. Corsi*, 326 U.S. 88, 94 (1945)), and to protect those persons "least well represented in the political process" from the prejudice and power of the majority. *Id.* at 361 (Brennan, J., concurring in part). The Clause also empowers Congress to "remedy the effects of that discrimination" prohibited by the Amendment. *Id.* at 398 (Marshall, J., writing separately).

Plaintiffs claim that by providing financial assistance to socially disadvantaged farmers, Section 1005 discriminates against them on the basis of their membership in the "white race." But Plaintiffs are not members of a suspect class sheltered by the heightened protections of strict scrutiny. Instead, Plaintiffs belong to the racial group that has controlled the "majoritarian political process," *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973), and enacted prejudiced laws to impose "disabilities" and "purposeful unequal treatment" on every other race, *Id.* at 28.

Furthermore, Plaintiffs' claim requires this Court to hold that Congress cannot confer benefits on members of oppressed racial and ethnic groups. But that is an ahistorical interpretation of the Constitution that ignores the original intent of the Congress that passed the Fourteenth

Amendment. The groups identified as socially disadvantaged in the NOFA are precisely those classes of persons whose legal rights were curtailed by white people specifically because of their race.

Plaintiffs' challenge to Section 1005 turns the purpose of the Equal Protection Clause on its head and "assumes that there is no significant difference between a decision by the majority to impose a special burden on the members of a minority race and a decision by the majority to provide a benefit to certain members of that minority notwithstanding its incidental burden on some members of the majority." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 243 (1995) (Stevens & Ginsburg, JJ., dissenting). "It 'would be a distortion of the policy manifested in th[e Fourteenth] amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color,' to hold that it barred state action to remedy the effects of that discrimination." *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 398 (1978) (Marshall, J., writing separately) (quoting *Railway Mail Assn. v. Corsi*, 326 U.S. 88, 94 (1945)).

I. The History and Purpose of Equal Protection

The Fourteenth Amendment contains two key equal protection provisions, one prohibitory and one affirmative: Section 1 prohibits any government[2] from denying any person equal protection of the laws, while Section 5 grants Congress the "power to enforce, by appropriate legislation, the provisions of this article." U.S. Const. amend. XIV, § 5. These provisions encompass the dual purposes of equal protection: first, to prevent the continued oppression of racial minorities by the racial and political majority, and second, to enable the government to compensate for any such racial oppression, past or present.

[2] The Equal Protection Clause is limited on its face to the states but was incorporated against the federal government through the Fifth Amendment. *See Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

Under Section 1, governments are prohibited from passing legislation that "operate[s] to the peculiar disadvantage of any suspect class," where a "suspect class" is one that is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Indep. Sch. Dist.*, 411 U.S. at 28. Where no fundamental right is at issue — such as the right to vote — "the character of the classification in question" is of critical importance to the question of whether a law violates the Equal Protection Clause. *Dunn v. Blumstein*, 405 U.S. 330, 335 (1972); *see also Rodriguez*, 411 U.S. at 19 (identifying as a "threshold question" whether the class can "be identified or defined in customary equal protection terms").[3]

Section 5 "is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment." *Katzenbach v. Morgan,* 384 U.S. 641, 651 (1966). The thirty-ninth Congress that introduced and adopted the Fourteenth Amendment plainly intended Section 5 to be used as a mechanism to "ameliorat[e] the condition of the freedmen,"[4] or, more generally stated, to remediate racial discrimination through racially directed benefits. This purpose is evidenced by contemporaneous legislative history.

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[3] The Court in *Rodriguez* also identified a second threshold question: "whether the relative—rather than absolute—nature of the asserted deprivation is of significant consequence." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 19 (1973). As intervenor-defendant Federation discusses in its brief, *see* (Doc. 225 at 24), Plaintiffs are *not* absolutely deprived of any right either by Section 1005 or the agency's interpretation of that statute in the NOFA. *See* NOFA, 86 Fed. Reg. 28,329, 28,330 (May 26, 2021) (stating USDA "will determine on a case-by-case basis whether additional groups qualify under this definition in response to a written request with supporting explanation").

[4] Eric Schnapper, *Affirmative Action and the Legislative History of the Fourteenth Amendment*, 71 Va. L. Rev. 753, 785 (1985) (quoting Congressman Stevens, who introduced the Fourteenth Amendment in the House).

The thirty-ninth Congress enacted numerous statutes conferring benefits on persons solely on their basis of their membership in oppressed racial groups. "These programs were generally open to all blacks, not only to recently freed slaves, and were adopted over repeatedly expressed objections that such racially exclusive measures were unfair to whites."[5]

One such program is the 1866 Freedmen's Bureau Act, a "far-reaching, racially restricted" program designed to benefit those persons who had been enslaved for generations solely on account of their race.[6] *See* Act of July 16, 1866, ch. 200, 14 Stat. 173. There is "substantial evidence that Congress adopted the fourteenth amendment in part to provide a constitutional basis for the Freedmen's Bureau Act."[7] Indeed, members of Congress "regarded the race-concious [sic] assistance programs of the Freedmen's Bureau as furthering rather than violating the principle of equal protection."[8] Furthermore, that same Congress also adopted statutes appropriating "money for 'the relief of destitute colored women and children,'"[9] *see* Act of July 28, 1866, ch. 296, 14 Stat. 310, 317, and "awarding bounty and prize money to the 'colored' soldiers and sailors of the Union Army."[10] *See* Resolution of June 15, 1866, No. 46, 14 Stat. 357, 358–59.

Subsequent Congresses continued the race-conscious measures of the thirty-ninth. Several more statutes were passed to award money to "the 'colored' soldiers and sailors of the Union Army."[11] *See, e.g.*, Act of Mar. 3, 1873, ch. 227, 17 Stat. 510, 528; Act of Mar. 3, 1869, ch. 122,

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[5] Schnapper, *supra* note 4, at 754.

[6] Schnapper, *supra* note 4, at 784.

[7] *See also* Schnapper, *supra* note 4, at 785–87.

[8] *See also* Schnapper, *supra* note 4, at 785–87.

[9] Jed Rubenfeld, *Affirmative Action*, 107 Yale L.J. 427, 430 (1997) (quoting Act of July 28, 1866, ch. 296, 14 Stat. 310, 317).

[10] Rubenfeld, *Affirmative Action*, *supra* note 9, at 431.

[11] Rubenfeld, *Affirmative Action*, *supra* note 9, at 431.

15 Stat. 301, 302. "In 1867, the Fortieth Congress . . . passed a statute providing money for . . . destitute 'colored' persons in the nation's capital."[12] *See* Resolution of Mar. 16, 1867, No. 4, 15 Stat. 20.

II. White people are not a suspect class entitled to the protections of strict scrutiny.

Plaintiffs claim they are entitled to relief under the Equal Protection Clause because Section 1005 denies a benefit to white people as a class. But white people are not now, nor have they ever been in American history, a "discrete and insular minorit[y]" denied the protection of traditional "political processes." *See United States v. Carolene Prod. Co.*, 304 U.S. 144, 153 n.4 (1938). "Nor do whites as a class have any of the 'traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 357 (1978) (Brennan, J., concurring in part and dissenting in part) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)).

White people are instead "a large, diverse, and amorphous class, unified only by the common factor" that they are not members of the racial minority. *See Rodriguez*, 411 U.S. at 28–29 (holding that poor people are similarly too amorphous to be considered a suspect class).

Membership in the "white race" is not defined by any specific biological criteria.[13] *See, e.g.*, *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 610 n.4 (1987) ("Many modern biologists

[12] Rubenfeld, *Affirmative Action*, *supra* note 9, at 430–31 (quoting Resolution of Mar. 16, 1867, No. 4, 15 Stat. 20.).

[13] *See, e.g.*, Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 Harv. C.R.-C.L. L. Rev. 1, 11–16 (1994) (reviewing the lack of support for biological definitions of races); Sarah A. Tishkoff & Kenneth K. Kidd, *Implications of biogeography of human populations for 'race' and medicine*, 36 Nature Genetics S21, S26 (2004) ("'[R]aces' are neither homogeneous nor distinct for most genetic variation.").

and anthropologists . . . criticize racial classifications as arbitrary and of little use in understanding the variability of human beings. . . . These observations and others have led some, but not all, scientists to conclude that racial classifications are for the most part sociopolitical, rather than biological, in nature." (citations omitted). In fact, race is a social construct invented by European colonizers—who named themselves white—and applied to distinguish Native Americans and people of African descent in the 1600s.[14]

The legal definition of "white" also lacks consistency and specificity but has been controlled by white people in the political majority throughout history. For example, between 1860 and 1910, the Virginia legislature—controlled by white men—amended a statute defining the white race several times to ensure any person with even remote "Negro" ancestry would not enjoy the rights and privileges reserved to white people.[15] The courts also played a central role in defining and protecting whiteness: between 1878 and 1952, courts reported 52 cases in which "an individual sued to be declared white by law after being denied citizenship rights by immigration authorities on the grounds of racial ineligibility."[16]

Whatever the common understanding of the time, two features of whiteness have always held constant: white people have the power to decide who else is white,[17] and membership in the white race has been the only means of evading legalized racial oppression. Insofar as white people

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[14] IBRAM X. KENDI, STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA 18, 36 (2016).

[15] THEODORE W. ALLEN, THE INVENTION OF THE WHITE RACE, VOLUME 1: RACIAL OPPRESSION AND SOCIAL CONTROL 27–28 & n.7 (1994).

[16] John Tehranian, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 Yale L.J. 817, 819 (2000).

[17] When asked to define "white," the entirely white and male Supreme Court answered with the written equivalent of a shrug, stating, "the governing test always being that of common understanding." *Morrison v. People of State of California*, 291 U.S. 82, 85–86 (1934) (citations omitted).

as a group have been treated unequally in this country, it has always been to the group's benefit. These are not features of the "discrete and insular minorities" the Equal Protection Clause was designed to protect. To treat Plaintiffs "as if they were [members of] a suspect class" due to their white racial status "would violate everything the Court has ever said about the types of groups that qualify for suspect class status."[18]

III. Every other racial group in the United States has been legally denied the rights enjoyed by white people in recent U.S. history.

"It is only by viewing race from a historical perspective that the importance of separating racial classifications that stigmatize or impose a badge of inferiority from those which benefit a historically oppressed class can be accurately assessed."[19] For the vast majority of this country's history, the race or ethnicity of all persons was *legally* determinative of fundamental rights. Specifically, white people enjoyed rights unavailable to members of every other race: white people as a class have controlled the "majoritarian political process," *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973), enacting racial prejudice through laws imposing "disabilities" and "purposeful unequal treatment" on every other race. *Id; see also United States v. Carolene Prod. Co.*, 304 U.S. 144, 153 n.4 (1938).

People of African descent were enslaved as property by Americans and their forbearers from 1619 until 1865—nearly 100 years longer than Black and African-American persons have

[18] Jed Rubenfeld, *The Anti-Antidiscrimination Agenda*, 111 Yale L.J. 1141, 1169 (2002).

[19] Deseriee Kennedy, *Radicalism, Racism and Affirmative Action: In Defense of a Historical Approach*, 27 Cap. U. L. Rev. 61, 72 (1998).

been free in this country.[20] Native American peoples were enslaved even earlier.[21] The very idea of race "emerged as a means of reconciling chattel slavery—as well as the extermination of American Indians—with the ideals of freedom" espoused by European colonizers and imbued in the country's founding documents.[22] Race was created to justify the kidnapping, dehumanization, rape, displacement, and murder of millions of people for the usurpation of political power[23] and financial benefit of colonizers who christened themselves "white."[24]

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[20] ISABEL WILKERSON, CASTE: THE ORIGINS OF OUR DISCONTENTS 40 (2020) (noting the first records of enslaved Africans in what is now the United States).

[21] *See* News from Brown, *Colonial Enslavement of Native Americans Included Those Who Surrendered, Too* https://www.brown.edu/news/2017-02-15/enslavement (last visited 7/20/22) (Brown University Professor Linford D. Fisher noting that from 1492 to 1880, 2 million to 5.5 million Native Americans were enslaved in the Americas in addition to 12.5 million African slaves).

[22] MICHELLE ALEXANDER, THE NEW JIM CROW 23 (2012); *see also* ISABEL WILKERSON, CASTE: THE ORIGINS OF OUR DISCONTENTS 44 (2020) ("Slavery in this land was not merely an unfortunate thing that happened to black people. It was an American innovation, an American institution created by and for the benefit of the elites of the dominant caste and enforced by poorer members of the dominant caste who tied their lot to the caste system . . . ."). *See also* A. LEON HIGGINBOTHAM, JR., IN THE MATTER OF COLOR—RACE & THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD (1978) (detailing the evolution of race-based rights in colonial America); *e.g.*, *Johnson v. M'Intosh*, 21 U.S. 543, 590-91 (1823) (holding that Native Americans, who the Court described as "fierce savages" "with whom it was impossible to mix", did not have the right to convey title to the lands they occupied by the grace of their "conquerors", unlike the "white population . . . who claimed immediately from the crown").

[23] *See Johnson*, 21 U.S. at 572-73 (1823) ("On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendency. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity, in exchange for unlimited independence.").

[24] *See* ISABEL WILKERSON, CASTE: THE ORIGINS OF OUR DISCONTENTS 44–45 (2020) ("[Slavery] made lords of everyone in the dominant caste, as law and custom stated that 'submission is required of the Slave, not to the will of the Master only, but to the will of all other White Persons.' . . . 'For the first time in history, one category of humanity was ruled out of the 'human race' and into a separate subgroup that was to remain enslaved for generations in perpetuity.'").

But even after the abolition of chattel slavery, persons who were considered *not* white suffered legal prejudice on the basis of the racial identity assigned to them by white people.

For five years after the Thirteenth Amendment was passed into law, Black and African American people were categorically denied the right to vote. *See* U.S. Const. amend. XV, § 1 (ratified in 1870). And until the 1950s, any person who was perceived as Black or African American was forced to live subjugated in a "separate but equal" world on the basis of race alone. *See Plessy v. Ferguson*, 163 U.S. 537, 552 (1896) (authorizing states to enact laws segregating persons on the basis of race under the Thirteenth and Fourteenth Amendments).[25]

To create a racial power imbalance as close to chattel slavery as the law would allow, states adopted laws dictating access to passenger trains, schools, residential areas, parks, hospitals, theaters, waiting rooms, bathrooms, phone booths, textbooks, and even prostitutes on the basis of race. *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 393 (1978) (Marshall, J., writing separately). Across the country, "the Negro was denied the right to vote, prevented from serving on juries, and excluded from theaters, restaurants, hotels, and inns." *Id.* at 394. Through "the middle of the 20th century . . . Negroes were for the most part confined to separate military units . . . [and] deliberately excluded from public graduate and professional schools—and thereby denied the opportunity to become doctors, lawyers, engineers, and the like." *Id.*

In the decades immediately following adoption of the Reconstruction Amendments, Native Americans were subjected to "legal cultural genocide"[26] with the express purpose "to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the

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[25] *See also* THEODORE W. ALLEN, THE INVENTION OF THE WHITE RACE, VOLUME 1: RACIAL OPPRESSION AND SOCIAL CONTROL 26–28 (1994) (noting the varied and changing definitions of "Negro" across the American states).

[26] *See, generally,* Rennard Strickland, *Genocide-at-Law: An Historic and Contemporary View of the Native American Experience*, 34 U. Kan. L. Rev. 713 (1986).

society at large." *See Cty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 253–54 (1992) (describing the explicit purpose of the Indian General Allotment Act of 1887, "which empowered the President to allot most tribal lands nationwide without the consent of the Indian nations involved"). Though Native peoples were born on the land claimed by the United States and had been its stewards for centuries before white colonizers arrived, they were denied the rights that flowed from citizenship, including the right to vote under the Fifteenth Amendment. The Supreme Court held that such rights would only be afforded "if an individual should leave his nation or tribe, and take up his abode among the white population." *Elk v. Wilkins*, 112 U.S. 94, 101 (1884).

It was not until the Indian Citizenship Act of 1924, ch. 233, 43 Stat. 153 (codified at 8 U.S.C. § 1401(b) (2012)) that all Native Americans were granted United States citizenship, and thus, the right to vote guaranteed by the Fifteenth Amendment. Indeed, even before Native people were denied the rights of citizens secured by the Fifteenth Amendment, the drafters of the Fourteenth Amendment expressly rejected including Native Americans from the reach of the Equal Protection Amendment.[27] The federal government also enacted numerous policies, including several criminal laws, to "outlaw[] almost all conduct that was traditionally Indian, and . . . substitute conduct that was decidedly white."[28]

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[27] *See* S. REP. NO. 41-268, at 10 (1870) (while the Fourteenth Amendment "was intended to recognize the change in the status of the former slave which had been effected during the war, . . . it recognizes no change in the status of the Indians."); *see generally Elk v. Wilkins*, 112 U.S. 94.

[28] Rennard Strickland, *Genocide-at-Law: An Historic and Contemporary View of the Native American Experience*, 34 U. Kan. L. Rev. 713, 727–28 (1986) (detailing laws "establish[ing] 'courts of Indian offenses,' the goal of which was to eliminate 'heathenish practices,'" such as traditional tribal dances and medicinal practices and criminalize failure to adopt Western agricultural practices under the labels of "idleness and loafing").

Over 70 years after the passage of the Civil Rights Act of 1866, Japanese-American citizens were legally removed from their homes, possessions, livelihoods, families, and communities solely on account of their race; those who failed to submit to the power of the state were criminalized. *See Hirabayashi v. United States*, 320 U.S. 81 (1943); *Korematsu v. United States*, 323 U.S. 214 (1944). The Supreme Court rationalized these laws by alleging that Japanese-Americans had failed to "assimilat[e] as an integral part of the white population" and therefore presented a heightened "danger of espionage and sabotage." *Hirabayashi*, 320 U.S. at 96, 99. This legal dispossession of Japanese-Americans' constitutional rights was aided by white farmers—some of the "foremost advocates of the [forced] evacuation"—who "frankly admitted" that they "want[ed] to get rid of the Japs for selfish reasons . . . because the white farmers can take over and produce everything the Jap grows." *Korematsu*, 323 U.S. at 239–40 & n.12 (1944) (Murphy, J., dissenting).[29]

As for persons not born in this country, innumerable rights rested on the determination of whether they were "white" or of African ancestry,[30] including the ability to naturalize as a United States citizen, *e.g.*, *Morrison v. People of State of California*, 291 U.S. 82, 85 (1934);[31] to vote,

[29] This decision stripping Japanese-American citizens of their fundamental rights on account of their race was precedential until 2018. *See Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) ("The forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority. . . . *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'" (quoting Justice Jackson's dissent in *Korematsu*)).

[30] Unsurprisingly, however, courts also used malleable definitions of race to deny even those persons with African ancestry the rights of citizenship. *See, e.g.*, *In re Cruz*, 23 F. Supp. 774, 775 (E.D.N.Y. 1938) ("[I]n order for a petitioner to qualify under the statute, his African descent must be shown to be at least an affirmative quantity, and not a neutral thing as in the case of the half blood, or a negative one as in the case of the one-quarter blood.").

[31] *See, e.g.*, John Tehranian, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 Yale L.J. 817, 818–19 & nn.3–7 (2000) (detailing the history of immigration law from ratification of the Constitution through the present day, and noting that "[u]ntil 1952, only whites and blacks could qualify for naturalization").

see U.S. Const. amend. XV, § 1; and to own and convey property, *e.g.*, *Porterfield v. Webb*, 263 U.S. 225, 233 (1923) (upholding California's Alien Land Law against allegation that restricting property ownership on the basis of citizenship violated Equal Protection). Even the ability to participate in basic economic activity was determined on the basis of whether someone could qualify as white and thus establish citizenship. *See, e.g.*, *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410 (1948) (holding unconstitutional a California law, passed originally in 1943 and amended in 1945, that denied fishing licenses to persons ineligible for citizenship); *United States v. Pandit*, 15 F.2d 285 (9th Cir. 1926) (noting that the Brahman Indian defendant's "right to practice law in the state courts". . . "rest[ed] upon citizenship").

IV. Plaintiffs' Equal Protection Challenge to Section 1005 Is a Perversion of the Original Intent of the Fourteenth Amendment.

"Since the Congress that considered and rejected the objections to the 1866 Freedmen's Bureau Act concerning special relief to Negroes also proposed the Fourteenth Amendment, it is inconceivable that the Fourteenth Amendment was intended to prohibit all race-conscious relief measures." *Bakke*, 438 U.S. at 398 (Marshall, J., writing separately). Any interpretation of the Equal Protection Clause that prohibits Congress from passing race conscious remedial legislation "would pervert the intent of the Framers." *Id.*

Section 1005 mirrors the remedial programs adopted by the framers of the Fourteenth Amendment and subsequent congresses during Reconstruction. Like the Freedman's Bureau Act of 1866, Section 1005, as interpreted by the NOFA, does not provide benefits on the basis of *race*, but rather on the basis of *discrimination* that flowed from race.[32] And the USDA's NOFA, which

[32] *See* Rubenfeld, *Affirmative Action*, *supra* note 9, at 430–31 (noting that the "Freedmen's Bureau Acts . . . direct[ed] benefits to blacks but using classifications that were formally race-neutral"); *see also* (Doc. 225 at 42-43) ("To the extent it does so at all, Section 1005 as interpreted by USDA does not classify based on prejudice against, or pernicious stereotypes of, any racial or ethnic

presumptively provides relief to members of specific racial and ethnic groups who "have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities," 7 U.S.C. § 2279(a)(6), is no less constitutional than the numerous acts of Congress providing direct monetary relief to "colored" persons following generations of enslavement of the vast majority of colored persons in America.

Plaintiffs do not belong to a group that has experienced discrimination "solely because of the color of their skins," *Bakke*, 438 U.S. at 400 (Marshall, J., writing separately). By comparison, the discrimination experienced by members of the groups enumerated in the NOFA has been documented extensively—both statistically and anecdotally—in the briefing by the Government and Federation.[33] This distinction in discriminatory treatment defines the relief provided by Congress in Section 1005: persons who "have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities." 7 U.S.C. § 2279(a)(5)–(6); ARPA § 1005(b)(3).

"A profound difference separates governmental actions that themselves are racist, and governmental actions that seek to remedy the effects of prior racism or to prevent neutral governmental activity from perpetuating the effects of such racism." *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 551–52 (1989) (Marshall, J., dissenting). There is simply "no moral or constitutional equivalence between a policy that is designed to perpetuate a caste system and one

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group, but rather to remedy the real discrimination experienced by Black and other socially disadvantaged farmers victimized by USDA's past and present discrimination in the administration of its loan programs.")

[33] *See*, e.g., (Doc. 221, at 15-20) (Section of Government's brief documenting historical evidence of discrimination in USDA loan programs); (Doc. 226) (Appendix to the Federation of Southern Cooperatives' brief containing expert reports, an expert deposition, and farmers' declarations, that each document past and continuing racial discrimination in the administration of USDA loan programs).

that seeks to eradicate racial subordination." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 243 (1995) (Stevens & Ginsburg, JJ., dissenting). Plaintiffs' attempts to use as a sword those constitutional protections designed to remediate discrimination experienced by *amici* is unconscionable and "pervert[s] the intent of the Framers by substituting abstract equality for the genuine equality the Amendment was intended to achieve." *Bakke*, 438 U.S. at 398 (Marshall, J., writing separately).

CONCLUSION

For the foregoing reasons, *amici* urge this Court to deny Plaintiffs' motion for summary judgment and instead grant summary judgment in favor of the Federation.

Additionally, should the Court rule that Section 1005 is unconstitutional, then the amici curiae would be harmed by the Defendant's proposed remedy of making debt relief available to those who claim to have been previously excluded under Section 1005. Similarly, should the Court rule that the law is unconstitutional, then the amici curiae would be harmed by Defendant-Intervenors National Black Farmers Association/The Association of American Indian Farmers' proposed remedy of striking down Section 1005 in its entirety.

Instead, amici curiae endorse the remedy proposed by the Federation. Should the Court conclude that a challenge to the USDA's interpretation of Section 1005 in the Notice of Funds Availability (NOFA) is properly before the Court, the constitutional defect, if any, is in the agency's interpretation, not in the statute. As such, amici curiae endorse the Federation's position that the proposed remedy should be directed at the NOFA, not the statute, which does not include racial classifications.

DATE: July 25, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing was filed through the Court's CM/ECF filing system, and by virtue of this filing notice will be sent electronically to all counsel of record.

Dated: July 25, 2022

/s/Alexandra Jordan
Alexandra Jordan
Counsel for amici curiae

Appendix: Interest Statements of Amici Curiae

Amici Curiae are twenty-five advocacy organizations that work with and represent the interests of farmers and ranchers across the country.

The **Rural Coalition** is an alliance of over 50 diverse, community-based member organizations that have worked for 44 years to advance the interests of the historically underserved producers and rural communities they represent. Since 1978, the Rural Coalition has developed and secured passage of over 45 key federal policies to strengthen rural agriculture, with a critical focus on equitable access and building a new generation of diverse producers – producers whose very future in farming is inextricably linked to the outcome of this case. Our members have provided direct outreach and technical assistance to thousands of producers to help them access USDA programs and are deeply familiar with the barriers these largely small scale, largely limited resource or socially disadvantaged producers.

The **Intertribal Agriculture Council** (IAC) is a nonprofit 501(c)(3) national organization founded in 1987 to pursue and promote the conservation, development, and use of Tribal agriculture resources for the betterment of the 574 federally recognized Tribal governments and over 80,000 Tribal producers. The IAC was established in response to the 1980s farm financial crisis when a report to Congress determined that Tribal producers needed direct and specific technical assistance to support access to USDA programs, especially access to credit through Farm Service Agency. Many of our individual Tribal membership have a direct interest in the outcome of this case and will be irreparably harmed if debt relief is not provided.

North Carolina Association of Black Lawyers Land Loss Prevention Project (LLPP) was founded in 1983 and is a non-profit, public interest organization providing comprehensive legal services and technical support to North Carolina's financially distressed and socially

disadvantaged farmers and landowners seeking to preserve their farms, homes, land, and rural livelihoods. Many of our farmers were struggling to retain their farm operations prior to the COVID-19 Pandemic, which has only worsened their conditions. Debt relief is critical for farmers who have experienced discrimination in the implementation of USDA programs, so that they may receive timely access to credit and secure favorable loan terms and servicing of loans.

Rural Advancement Fund of the National Sharecroppers Fund, Inc. (RAF) is a 501(c)(3) organization founded in 1937 that continues to represent rural farmers, with special focus on African American farmers and young farmers. Denial of American Rescue Plan funds to RAF members has immediately impacted at least 20 African American farmers in three counties in South Carolina, many of whom own small family farms that have been passed down for generations.

The **National Latino Farmers and Ranchers Trade Association** (NLFRTA) is a nonprofit based in Washington, DC, that organizes, engages, and empowers Latino farm and ranching advocacy groups, farmworkers transitioning into farm ownership, and, generally, small producers, throughout the United States and beyond. Latino farmers have historically suffered — and continue to suffer — under the discriminatory treatment of USDA staff. The relief offered under the 1005 program is the only possible relief for operations that are rendered even more vulnerable by economic, market, and climate conditions intensified by the pandemic.

American Indian Mothers, Inc. (AIMI) is a not-for-profit organization serving the education, health, social service, and agriculture and cultural needs of American Indians and minorities in North Carolina. AIMI serves our communities through 12 different programs in order to fill the gaps in services throughout rural communities. The socially disadvantaged farmers

served by AIMI have experienced extreme hardships during the COVID Pandemic, and without the Section 1005 assistance, these farmers will not be able to plant or plan for the future.

Family Farm Defenders (FFD) is a 501(c)(3) organization and has over 3500 members in all 50 states, including many farmers of color. FFD's mission is to create a farmer-controlled and consumer-oriented food and fiber system, based upon democratically controlled institutions that empower farmers to speak for and respect themselves in their quest for social and economic justice. To this end, FFD supports agroecology, farm and food worker rights, racial justice, animal welfare, consumer safety and right to know, fair trade, and food sovereignty.

Kansas Black Farmers Association (KBFA), a 501(c)(3) organization, was founded by fourteen African American Kansas farmers in 1999. KBFA represents more than 150 rural and urban farmers, agribusiness owners, youth farmers, and associate organizations and works to sustain Black land ownership. Over 50 of KBFA's members are eligible for Section 1005 relief, which they are depending on to continue their farming. The relief will allow the farmers to plant/drill — though a few weeks late due to late rains. An injunction will further delay this season, resulting in some of KBFA's farmers not having a milo, corn, or soybean crop this year.

The **National Young Farmers Coalition** (Young Farmers) aims to shift power and change policy to equitably resource a new generation of working farmers. Young Farmers represents aspiring and working farmers, ranchers, and land stewards who are reorienting agriculture in service to our communities. Young Farmers believes justice is foundational to a transformation in our food and farm systems; we've advocated for the Section 1005 loan-forgiveness program and other necessary programs that serve to increase the security and accessibility of agricultural livelihoods for farmers of color.

The **Oklahoma Black Historical Research Project, Inc.** (OBHRPI) was founded in 1998 to assist historically underserved farmers and ranchers by means of outreach, technical training, and cultural awareness to operate sustainable farms and ranches with an emphasis on sustaining historic American Indian and African American communities. We are advocates for Socially Disadvantaged Farmers and Ranchers who have been historically underserved and deserve — and urgently need — the relief that is due to them in the ARP.

Operation Spring Plant, Inc. is a grassroots 501(c)(3) organization with over 34 years of experience organizing rural and urban, predominantly Black, small family farmers in North Carolina and throughout the southern US. We have served over 1500 farmers, youth, and landowners per year in North and South Carolina, Georgia, and Oklahoma. The farmers we serve are counting on Section 1005 relief to overcome numerous challenges, from a severe drought in 2013 to crop losses, restaurant closures, and inaccessible markets due to COVID-19.

The **Texas Coalition of Rural Landowners** was founded and incorporated in Cypress, Texas, as a Domestic Nonprofit Corporation on May 30, 2021, to assist farmers and ranchers who have sought aid from various USDA agencies. The Coalition's mission is to develop training to provide farmers information, skills, and awareness, in a cultural context; assist rural landowners building strong communities; build an equitable and sustainable food system that is beneficial to underserved rural landowners; and provide assistance to underserved landowners. The producers served by the Coalition have struggled with discrimination, and the disruptions of the pandemic. They are depending upon the relief in the American Rescue Plan.

World Farmers, Inc. advocates for and supports immigrant, refugee, and historically underserved small-scale farmers from farm to market. Started in 1984, our Flats Mentor Farm Program, located in Lancaster, MA, provides access to the land, farming infrastructure, and

technical assistance in agricultural production and marketing necessary for several hundred small-scale diversified farmers to grow and market their produce. Section 1005 debt relief payments are critical to supporting farmers without generational wealth in this country, including the immigrant and refugee farmers with whom we work, and to supporting those farmers of color who are operating within an agricultural system of historic exclusion and displacement.

Farm Aid is a nonprofit organization whose mission is to keep family farmers on the land. Since the first Farm Aid Concert in 1985, Farm Aid has raised $64 million to promote a strong and resilient family farm system of agriculture. Farm Aid operates 1-800-FARM-AID to provide immediate and effective support services to farm families in crisis. We have worked with thousands of farmers and hear every day how the pandemic has stressed them to the limit — most of all the nation's socially disadvantaged farmers. We have joined this action because we know these farmers need and deserve the aid that is being delayed by this case.

The **Health, Environment, Agriculture, Labor Food Alliance** (HEAL) is a national multi-sector, multi-racial coalition of 50 organizations who represent over two million producers, workers, indigenous groups, scientists, advocates, organizers, and activists. Many of HEAL's members and their communities have borne the brunt of COVID-19, and many of the producers who are part of our Alliance have gone above and beyond to produce and distribute food for their communities during the pandemic — and have gone into debt as a result. The HEAL Food Alliance opposes preventing the USDA from moving forward with a program designed to relieve debt for farmers of color, and supports the USDA's defense of debt relief for these farmers.

The **National Family Farm Coalition** (NFFC) was established in 1986 to avert the demise of family farmers caught in the 1980s farm credit crisis. NFFC membership consists of 30 grassroots farm, ranch, and fishing organizations in 42 states and the nation's capital. Our members

are fighting for food providers' rights, fair prices, clean air and water, strong local economies, and much more. NFFC believes that an attempt to overturn this act of Congress that enables USDA to meet the urgent and particular needs of socially disadvantaged producers has no merit and only undermines the ability of family farmers who feed us with dignity and respect.

The **Rural Advancement Foundation International-USA** (RAFI-USA) was founded in 1990 to serve and advocate for farmers struggling to keep their farms. Today, our mission is to challenge the root causes of unjust food systems, supporting and advocating for economically, racially, and ecologically just farm communities. Our Farmers of Color Network program works with more than 300 farmers of color in North Carolina and the Southeast U.S.

The **National Sustainable Agriculture Coalition** (NSAC), founded in 2009, is an alliance of 130+ member organizations and their combined 2+ million members that advocates for federal policy reform to advance the sustainability of agriculture, food systems, natural resources, and rural communities. NSAC has heard directly from our members how Black, Indigenous and other People of Color (BIPOC) who farm and ranch face discrimination when seeking fair and timely access to credit, when attempting to apply for and obtain direct USDA aid through support programs (including the Coronavirus Food Assistance Program), and when applying to participate in conservation programs. Consequently, these BIPOC producers are at direct risk of losing their livelihoods without urgent relief.

California FarmLink is a 501(c)(3) nonprofit organization and lender certified by the U.S. Treasury as a Community Development Financial Institution (CDFI). In 2020, more than 70% of California FarmLink's loans provided capital to Socially Disadvantaged Farmers and Ranchers, including Latina/o farmers in the Central Coast region and Hmong-American refugee farmers in

the Fresno region. California FarmLink has at least three borrowers who are in immediate risk of bankruptcy and will likely enter bankruptcy if they do not receive debt relief.

Community Farm Alliance (CFA) was founded by Kentucky farmers in 1985 during the Farm Crisis as a vehicle for farmers to collaboratively address the issues facing them, their neighbors and their communities. The COVID-19 pandemic was particularly hard for Kentucky BIPOC farmers, and CFA responded by rallying private donations large and small to create the Kentucky Black Farmer Fund.

Women, Food, and Agriculture Network (WFAN) was founded in 1997 with a mission to engage women in building an ecological and just food and agricultural system through individual and community power. WFAN is a national organization, with women and non-binary members across the United States. Delaying debt relief for our BIPOC farmer-members compounds the challenges that they regularly face, particularly during the pandemic, which hit these communities exponentially harder. WFAN believes in the maxim that "justice delayed is justice denied," and supports the immediate release of these much-needed relief funds.

Steward Holdings (Steward) is a private lending partner offering commercial loans and expert support services to regenerative farmers, ranchers, fishermen, and producers so they can expand and sustain their businesses. Steward currently works with over 100 human-scale regenerative farmers, ranchers, fishermen, and producers across the United States. Each day that relief under Section 1005 is delayed only adds to the economic burden being shouldered by farmers we work with, causing additional harm to them, their families, and their communities.

The **Concerned Citizens of Tillery** (CCT) is a non-profit and volunteer organization that continues to be a catalyst for positive change and development. The mission of CCT is to promote and improve the social, economic, and educational welfare of the citizens of Tillery, the

surrounding communities, and beyond through the self-development of its members and others. This has made CCT a national and international leader in a variety of areas, from justice for Black farmers, to health care, to environmental justice. CCT and its members believe that justice can only be served with the dismissal of these baseless lawsuits that are delaying debt relief for Black farmers and other farmers of color.

The **Black Farmers and Agriculturalists Association** (BFAA) is a non-profit and grassroots organization created to respond to the issues and concerns of Black farmers in the U.S. and abroad. This organization seeks to improve the social, educational and economic welfare of the people whose lives are being affected by constant threats and the continued loss of family-owned land, especially in rural Black communities. These unjustifiable and discriminatory lawsuits are the latest threat aimed at undermining the survival and viability of black farmers and other underrepresented farmers.

Cottage House Incorporation (CHI), founded in 2007, works to promote sustainable agriculture solutions through education of new and beginning farmers, veterans, youth, and women in agriculture. During the pandemic, the farmers served by CHI have experienced food insecurity; been unable to sell their cows, hogs, pigs, and chickens; and lacked funds to buy feed for their animals. Without debt relief, they won't be able to buy seeds or plant or plan for the future. CHI is especially concerned about five producers with FSA Youth loans: without Section 1005, these young farmers will go into default and may not have a way to continue farming. Other producers are also struggling, a situation compounded by rising costs of inputs, at a time when the fresh products they produce are more needed than ever in the poor communities Cottage House serves.

EXHIBIT B

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

SID MILLER, et al., on behalf of themselves and others similarly situated, Plaintiffs, v. THOMAS J. VILSACK, in his official capacity as Secretary of the U.S. Department of Agriculture, Defendant, and FEDERATION OF SOUTHERN COOPERATIVES/LAND ASSISTANCE FUND; NATIONAL BLACK FARMERS ASSOCIATION (NBFA); ASSOCIATION OF AMERICAN INDIAN FARMERS (AAIF), Intervenor-Defendants.	Case No. 4:21-CV-00595-O

[PROPOSED] ORDER

Before the Court is Rural Coalition, Intertribal Agriculture Council, North Carolina Association of Black Lawyers Land Loss Prevention Project, Rural Advancement Fund of the National Sharecroppers Fund, Inc., National Latino Farmers and Ranchers Trade Association, American Indian Mothers, Inc., Family Farm Defenders, Kansas Black Farmers Association, National Young Farmers Coalition, Oklahoma Black Historical Research Project, Inc., Operation Spring Plant, Inc., Texas Coalition of Rural Landowners, World Farmers, Inc., Farm Aid, HEAL Food Alliance, National Family Farm Coalition, Rural Advancement Foundation International-USA, National Sustainable Agriculture Coalition, California FarmLink, Community Farm

Alliance, Women, Food, and Agriculture Network, Steward Holdings, Concerned Citizens of Tillery, Black Farmers and Agriculturalists Association, and Cottage House, Inc.'s Unopposed Motion for Leave to File Amici Curiae Brief in response to the Parties' Cross Motions for Summary Judgment (Doc. Nos. 217, 222, and 224), which were filed on July 18, 2022. Having considered the Motion, and good cause having been shown, the Court **GRANTS** the Motion and **DIRECTS** the Clerk of Court to file Exhibit A attached to the Motion (Doc. No. ___) as the amicus curiae brief.

SO ORDERED this _____ day of **July, 2022.**

Reed O'Connor
UNITED STATES DISTRICT JUDGE