

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION
CASE NO. 4:21-cv-00595**

FILED
June 1, 2021
KAREN MITCHELL
CLERK, U.S. DISTRICT
COURT bb

SID MILLER

V.

TOM VILSACK- SECRETARY OF AGRICULTURE

MOTION TO COMPEL

**ENFORCEMENT OF THE EQUAL PROTECTION CLAUSE OF THE FIFTH
AMENDMENT TO CEASE DENIAL OF DUE PROCESS TO PROTECT
PROPERTY PURSUANT 5 U.S.C. § 706 AND 42 U.S.C. § 1480(c)(d)**

- I. Socially Disadvantaged Farmers have been deprived of the opportunity to own property and denied the liberty to enforce this right under due process. In *Brown v. Board of Education of Topeka*, the U.S. Supreme Court ruled unanimously (9–0) that racial segregation in public schools violated the Fourteenth Amendment of the Constitution. It prohibits states from denying equal protection of the law to any person within their jurisdictions. The decision declared that separate educational facilities for white and Black American

students were inherently unequal. In *Bolling Et. Al. v. Sharpe et. al.*, 1954, the Supreme Court held the Equal Protection Clause of the Fourteenth Amendment was applicable under the Fifth Amendment prohibiting the federal government from denying due process making equal protection of the law applicable in all matters. Unfortunately, the USDA does not adhere to the equal protection of the law as it pertains to Socially Disadvantaged Farmers in its failure to provide a final agency decision as outlined in the APA and ECOA.

II. Disparate Treatment

When a similarly situated White farmer has a grievance, he can file directly with the Administrative Law Judge⁷ C.F.R. §§ 15.8(c); 10(f); 10(g); Subpart C. His complaint takes the ordinary course to receive a determination, which is typically within 180 days. In 1862, when the USDA was established, it required former enslaved Africans to have credit or collateral to secure a farm loan. From the beginning, the USDA earned the title, “the last plantation,” due to the predatory lending terms directed against Black farmers.

III. The Civil Rights Report of 2003 found that loan applications from White farmers were processed in an average of 60 days, compared to 220 days for Black applicants. Notably, between 2006 to 2016, Black

farmers were foreclosed on at a higher rate than any other race, making up 13 percent of USDA foreclosures. This is significant because they make up less than 3 percent of farm loan recipients. Despite Black farmers being a part of the Socially Disadvantaged r protected class as defined under the Food, Agriculture, Conservation, and Trade Act of 1990 (7 25 U.S.C. 2279(a)) and the Civil Rights Act of 1964, they are only given the opportunity to be foreclosed upon and not due process to protect their property. This is a violation of the Fifth Amendment. We are seeking enforcement of the APA statute to toll the statute of limitation and ECOA in an effort to require the USDA to provide a final agency decision in a timely manner like it has done for White farmers. Furthermore, we are seeking due process for the Plaintiff in obtaining a formal administrative hearing based on the record just as white farmers are given.

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**JUDICIAL REVIEW OF INFORMAL RULEMAKING UNDER THE
ADMINISTRATIVE PROCEDURE ACT (APA) PURSUANT § 5 U.S.C.706
REQUIRE TO EXHAUST ADMINISTRATIVE REMEDIES**

- IV. The avoidance of the Assistant Secretary of Civil Rights in rendering a final agency decision is an abuse of discretion. Purposefully, tolling the 180-day rule under the APA (which requires a final agency decision and subsequent use of the “lapse of 180-days” as a basis to dismiss many Socially Disadvantaged Farmers cases in District Court) is an abuse of power. Under the Administrative Procedures Act

(APA), the District Court's review the Respondents' informal rulemaking was to determine if it was, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). As the Supreme Court held in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971), "the generally applicable standards of § 706 require the reviewing court to engage in a substantial inquiry." *Id.* at 415. The Court clarified this mandate in *Camp v. Pitts*, 411 U.S. 138 (1973), stating that, "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." *Id.* at 142; see also *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985) ("The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court").

White farmers get final agency decisions in the prescribed time of 180 days, as set forth in the APA, which allows for a formal hearing. This is unlike Socially Disadvantaged Farmers who often wait years to receive a final agency decision and are often denied a formal administrative hearing like in the case of the Plaintiff. If a program complaint was not subject to section 741 provisions, the Office for Civil Rights is subject to the provisions of the Administrative Procedures Act in which the ASCR has 180 days to render a final agency decision. We prayerfully request the Court review the full administrative record to prove non-compliance of the APA 180-day rule that is contrary to public policy of the Congressional moratorium and the terms of the *Pigford* settlement agreement.

*CONTINUING VIOLATION UNDER ECOA PURSUANT TO § P.L. 105-277,
§741*

V. USDA's refusal to provide a final agency decision in prohibiting SDF from relief as outlined under the *Pigford* settlement decree is a continuing violation of ECOA.[1] The ECOA prohibits discrimination against credit applicants based on race, color, religion, national origin, sex, marital status, age, or source of income. 15 U.S.C. §§1691 et seq.

VII. Under ECOA §P.L. 105-277, §741, in the fiscal year of 1999, Congress passed legislation allowing Socially Disadvantaged Farmers who had pending claims of discrimination against the USDA from 1981 to 1996, the right to pursue their claim in court, void of the tolling of the statute of limitations. Section 741(a) allowed a farmer to file a complaint in Federal District Court or (b) a right to a formal administrative hearing after USDA issued a final agency decision. Once again, Congress had to step in and has now mandated the Secretary to write off all debt for SDFs under the Emergency Relief for Farmers of Color Act of 2021 which allocated \$4 billion to pay off

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