No. _____

In The

Supreme Court of the United States

COREY LEA,

Petitioner,

v.

THE SECRETARY OF AGRICULTURE – SONNY PERDUE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is it a violation of the Due Process Clause and Equal Protection Clause of the Fifth Amendment for the United States Department of Agriculture to promulgate Rules and regulations to create a separate system for Black Farmers and other Social Disadvantaged Farmers (members of a protected class as defined by Congress in the 1991 Consolidated Farm Bill) to be denied a formal hearing on the merits before the administrative law judge, that includes a mini trial, complete with running records provided to the complainant and representatives, on pending administrative discrimination complaints as afforded to similarly situated White farmers? The petitioner believes the answer is yes.

2. When a private lender or bank enters into a guaranteed contract with the Dept. of Agriculture, in which the affected Socially Disadvantaged Farmer is a third party, and the private lender or bank agrees to abide by all the rules and regulations, both current and future, that may include moratorium relief by an Act of Congress or codified by the agency, is the private lender or bank subject to the Administrative Procedures Act and exhaustion requirements; if the answer is yes, if the private lender or bank forecloses on real property or calls in loans when the Secretary of Agriculture was required to act by Acts of Congress and the authority to resolve all claims pursuant to 42 U.S.C. § 1480 in the 180 day period pursuant to 5 U.S.C. § 706(1)(2) would the state court or district court judgment for foreclosure or any other adverse action be void?

QUESTIONS PRESENTED – Continued

3. Did the Sixth Circuit Court of Appeals incorrectly determine that a judicial review was properly dismissed by the district court under 28 U.S.C. § 1391 when the mandamus action was brought where the petitioner resides pursuant to 28 U.S.C. § 1361 and 28 U.S.C. § 1402(b); further dismissed the mandamus relief pursuant to 28 U.S.C. § 1915(e)(2) when in fact, the IFP was granted in the district and petitioner, respondent served by the US Marshal and paid the fee for the court of appeals, furthermore the district court did not do a substantial inquiry of the agency record or what claims was before the Administrative Law Judge?

4. When "in the nature of the mandamus" for unreasonable delay under 5 U.S.C. § 706(1)(2), the agency was required to act by Congressional Acts, Federal Law and agency rules and regulations that provided moratorium relief, should the real property or offsets of affected Socially Disadvantaged Farmers be returned until a final determination of the agency or a court of competent jurisdiction has conducted a judicial review and all appeals have been exhausted?

5. When a district court has exclusive jurisdiction over a settlement agreement, can a sister circuit provide relief to either party on injunctive relief such as foreclosure, offsets or enforcement action of the settlement agreement; should any relief provided by sister court be returned for lack of jurisdiction pursuant to FRCP 60(b)? The petitioner thinks the answer concerning the exclusive jurisdiction is no and if the relief provided by the sister

QUESTIONS PRESENTED – Continued

court is not within the jurisdiction of the sister court, the judgment should be void and the relief provided should be returned to adverse party.

PARTIES TO THE PROCEEDINGS

Corey Lea was a plaintiff-petitioner in the Sixth Circuit Court of Appeals and the district courts in the Middle District of Tennessee-Nashville Division, the Western District of Kentucky-Bowling Green Division and the Federal Court of Claims. The petitioner is currently a co-plaintiff in the Middle District of Alabama-Montgomery Division.

The Secretary of Agriculture – Sonny Perdue is the respondent by succession in the Sixth Circuit Court of Appeals, Middle District of Tennessee-Nashville Division, the Western District of Kentucky-Bowling Green Division and the Federal Court of Claims.

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PETITION FOR WRIT OF CERTIORARI

Corey Lea, Pro Se, a Socially Disadvantaged Farmer and representative of farmers at the administrative level for The Cowtown Foundation Inc., respectfully petitions this court for a writ of certiorari to review the judgment of the Sixth Circuit Court of Appeals.

OPINIONS BELOW

The decision by the Sixth Circuit Court of Appeals denying Mr. Lea's direct appeal is reported as *COREY LEA v. UNITED STATES DEPARTMENT OF AGRICULTURE; SONNY PERDUE, COMMISSIONER* (Sixth Circuit, February 05, 2019). The Sixth Circuit Court of Appeals is attached at Appendix ("App.") at App. 1.

JURISDICTION

Pro Se Petitioner Corey Lea invokes this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for a writ of certiorari within ninety days of the request of this Court of the date December 26, 2018 and again the Sixth Circuit Court's judgment dated February 5, 2019.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONGRESSIONAL ACTS:

CIVIL RIGHTS ACT OF 1964

CIVIL RIGHTS ACT OF 1991

Debt Collection Improvement Act of 1996

2008 FOOD ENERGY AND CONSERVATION ACT "FARM BILL". Sections:

> (Sec. 14002) Amends the Consolidated Farm and Rural Development Act to place a moratorium on all loan acceleration and foreclosure proceedings where there is a pending claim, or a filed claim that is accepted, of discrimination against the Department related to a loan acceleration or foreclosure. Waives interest and offsets during the moratorium period, but requires payment if the claim is

denied. Terminates the moratorium on the earlier of the date the Secretary resolves the discrimination claim or the court renders a final decision on the claim.

(Sec. 14011) Expresses the sense of Congress that the Secretary should expeditiously resolve all claims and class actions brought against the Department by socially disadvantaged farmers or ranchers, including Native Americans, Hispanics, and female farmers.

(Sec. 14012) States that: (1) any Pigford (discrimination) claimant who has not previously obtained a determination on the merits of a Pigford claim may obtain that determination in a civil action brought in the U.S. District Court for the District of Columbia filed within two years after the date of enactment of this Act; (2) the total amount of payments and debt relief is $100 million; and (3) the intent of Congress is to have this section liberally construed.

STATUTORY PROVISIONS INVOLVED

5 U.S.C. §§ 701-706

The Administrative Procedure Act (APA), Pub.L. 79–404, 60 Stat. 237, enacted June 11, 1946, is the United States federal statute that governs the way in which administrative agencies of the federal government of the United States may propose and establish regulations.

5 U.S.C. § 706
7 U.S.C. § 1981
15 U.S.C. § 1691
28 U.S.C. § 1361
28 U.S.C. § 1402 – United States as defendant
28 U.S.C. § 1915(e)(2)
31 U.S.C. § 3716(a)(3)
42 U.S.C. § 1981

AGENCY RULES AND REGULATIONS

7 C.F.R. § 3.60(b)
7 C.F.R. § 3.62
7 C.F.R. §§ 762.149(b), (c), (d), (i), and (m)
7 C.F.R. § 766.358
Part 15d of 7 C.F.R.
7 C.F.R. § 15d.1
7 C.F.R. §§ 15d.2 and 4(a) and (b)
7 C.F.R., Part 15f
7 C.F.R., Part 15, Subparts A and C

STATEMENT OF THE CASE

In 2008, Congress enacted moratorium relief for affected Socially Disadvantaged Farmers in the Food Energy and Conservation Act. In addition, the Secretary of Agriculture has authority to settle all claims against the affected farmer, pursuant 42 U.S.C. § 1480, that has an accepted discrimination complaint lodged with the agency, to include third party claims. In particular, guaranteed loans, in which the private lender is a party to a contract with the Department of Agriculture and by terms of the contract agree to all rules

and regulations and future rules that would control all parties of the contract and the affected farmer as a third party beneficiary.

Pursuant to section 14002 of the Food Energy and Conservation Act, and later codified 7 C.F.R. § 766.358, Congress gave an unambiguous mandate to the Secretary of Agriculture, thereby removing any and all discretion to act within the 180 days of the Administrative Procedure Act, in which both the affected farmer and private bank must adhere to before any action could be filed in any court. The Secretary failed to act pursuant 5 U.S.C. § 706(1)(2) by resolving the claims adversely affecting the Socially Disadvantaged Farmer and concurring with the private bank who did not submit a claim to the agency as required under the Administrative Procedure Act and furthermore, the agency gave permission to the private bank to foreclose against the moratorium relief provided by Congress and the authority provided to carry out such acts.

The petitioner is a Black farmer who has for a mandamus action pursuant 28 U.S.C. § 1361 to compel the Secretary to issue a final agency decision after nearly 10 years of the accepted discrimination complaint and the loss of the farm belonging to petitioner has been foreclosed on by the private bank on May 29, 2014. In *Parker et al. v. The USDA, Sonny Perdue*, 1:17-cv-02834, the USDA conceded that the Secretary of Agriculture and a Pigford Class Action Team were in fact determining what class members were receiving relief instead of the third party neutrals. This is fraud and repudiation of the settlement agreement that has cost

the American taxpayers nearly 3 billion dollars. This also gives rise to the money paid to class counsel for conspiring with the agency so they could receive nearly 600 million in fees paid by the government to breach their fiduciary duty.

THE DISTRICT COURT PROCEEDINGS

On April 16, 2016, the petitioner filed for a Judicial Review pursuant 5 U.S.C. § 706 to compel the OALJ to grant a formal hearing on the merits before the Secretary pursuant the OALJ's previous order titled Lea 11-0180. In that order, the OALJ stated pursuant to 7 C.F.R., Part 15, Subparts A and C – "The regulations specifically allow applicants or recipients to request a hearing before OALJ if the applicant or recipient is adversely affected by an Order of the Secretary suspending, terminating, or refusing to continue Federal financial assistance; and the Secretary subsequently denies a request to restore eligibility for the assistance. 7 C.F.R. §§ 15.8(c); 10(f); 10(g); Subpart C." There were multiple claims before the Secretary that included post judgment violations with the private bank and other various claims, most notably, 7 C.F.R. § 766.358.

The petitioner stated in the record before the OALJ that the Secretary was without discretion to act on the foreclosure by the private bank and furthermore, the Secretary controlled the foreclosure procedure, by admitting that the agency gave the private bank permission to foreclose. Therefore, it was axiomatic that there is ample evidence that the Secretary

terminated the financial assistance to the petitioner and that the time for a formal hearing on the merits is now ripe pursuant the aforementioned agency rules 7 C.F.R. §§ 15.8(c); 10(f); 10(g). The ALJ further states "Similarly, there is no evidence that Petitioners requested the Secretary to restore their eligibility for assistance, which is the event that triggers the right to a hearing." The appeal to the Judicial Officer affirmed the dismissal.

The respondent filed a motion to dismiss and erroneously thought that the petition for judicial review was to review a previous case in the Federal Claims Court. In any event, at no time did Magistrate Newbern look at the agency record or anything remotely close to what was before the ALJ, as evidenced by the submission of app. 1. The magistrate issued a report and recommendation to the District Judge Berg who accepted the report and recommendation. Interestingly enough, the magistrate and the district judge dismissed with prejudice for being frivolous and at no time ever looked at the agency record or the claims that were before the ALJ. Instead the court relied on 7 U.S.C. § 1981, a claim not offered by the respondent or that was never before the agency. Let it be noted, that the initial screening of the in forma pauperis complaint was granted by Judge Todd Campbell on April 18, 2016 and the respondent was served by the US Marshal and the original Judge also stated that the complaint was not facially frivolous, see app 3.

THE APPELLATE COURT PROCEEDINGS

On May 22, 2018, the petitioner filed a notice of appeal to the Sixth Circuit Court of Appeals. On February 5, 2019, the Sixth Circuit issued a decision **NOT RECOMMENDED FOR FULL-TEXT PUBLICATION** and affirmed the judgment of the district court pursuant 28 U.S.C. § 1915(e)(2)(B)(i). The petitioner duly notes that the original judge granted the in forma pauperis affidavit, the petitioner is not a prisoner and lastly, the Sixth Circuit asked the petitioner to pay the appeals fee by August 17, 2018. The petitioner paid the $505 fee on August 17, 2018.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. A REVIEW IS WARRANTED BECAUSE THE OPINION OF THE SIXTH CIRCUIT IS IN CONFLICT WITH EVERY CIRCUIT AND HAS CREATED A SPLIT WITHIN THE SIXTH CIRCUIT. IN FURTHERANCE, THIS COURT REQUESTED THAT THE PETITIONER SUBMIT A WRIT DATED DECEMBER 26, 2018 BASED ON COMPLAINTS WRITTEN TO CHIEF JUSTICE JOHN ROBERTS ABOUT THE RESPONDENT AND LOWER COURTS WILLFULLY VIOLATING ACTS OF CONGRESS TO PROVIDE MORATORIUM AND OFFSET RELIEF TO AFFECTED SOCIALLY DISADVANTAGED FARMERS WHO HAVE BEEN VICTIMS OF ADMITTED SYSTEMIC DISCRIMINATORY CONDUCT THAT HAS BEEN ONGOING FOR DECADES. A FAVORABLE DECISION BY THIS COURT WILL AFFECT NEARLY ONE HUNDRED THOUSAND SOCIALLY DISADVANTAGED FARMERS AND PROVIDE DIRECTION TO LOWER COURTS AND TRIBUNALS AS GUIDANCE IN UNAMBIGUOUS LANGUAGE.

On February 05, 2019, the Sixth Circuit Court of Appeals issued a majority opinion and affirmed the district court's judgment of dismissing the mandamus action pursuant 28 U.S.C. § 1915(e)(2)(B)(i). In reaching the decision, the court found that the petitioner failed to state a claim and that the petition was

frivolous and had to be dismissed due to the fact that the district judge accepted the report and recommendation of the magistrate who did not review the amended complaint[1] that was presented to the Judicial Officer of the USDA. Moreover, because the Majority panel's error is so clear, Petitioners respectfully submit that the Court may wish to summarily reverse the Sixth Circuit's decision.

II. REVIEW IS WARRANTED TO CREATE HARMONY WITHIN THE SIXTH CIRCUIT AND CONFLICT WITH THE NINTH CIRCUIT ON JURISDICTIONAL GROUNDS OF 28 U.S.C. § 1361 AND 28 U.S.C. § 1402

The Sixth Circuit Court of Appeals in regards to jurisdiction of a mandamus action has routinely held "The Court has subject matter jurisdiction to entertain that request under section 1361. Whether the petition has merit or even states a claim for relief is another question entirely. But the potential lack of merit in the petition does not undermine this Court's subject matter jurisdiction. "[T]he fact that a complaint may not state a claim upon which relief can be granted is of no relevance to the question of subject matter jurisdiction." *Cherokee Exp., Inc. v. Cherokee Exp., Inc.*, 924

[1] The Judicial Officer references the amended complaint and as an alternative theory of recovery, the petitioner did allege that the agency instituted the foreclosure in an effort to circumvent the moratorium relief provided by the 2008 Food Energy and Conservation Act (section 14002) and codified by the agency as 7 C.F.R. § 766.358 which deals directly with third party actions.

F.2d 603, 609 (6th Cir. 1991) (internal quotes and citation omitted)."

The district court and the Sixth Circuit ignored the petitioner's argument pursuant 28 U.S.C. § 1402 through 28 U.S.C. § 1361. In addition, the petitioner motioned the district court for a hearing to resolve any jurisdictional matters, but was denied the opportunity. Moreover, the United States Department and its Secretary, Sonny Perdue is the only party to this action.

The Middle District of Tennessee-Nashville

Short v. United States Dept. of State, 3:16-cv-2917 – "Furthermore, actions seeking monetary damages from the United States are governed by the venue provisions of 28 U.S.C. § 1402, which generally provide for venue in the district in which the plaintiff resides."

Buckley v. The United States, 13-cv-17 EDTN (transferred to NDGA) – "Plaintiffs filed a complaint against Defendant seeking judicial review under the Administrative Procedure Act ("APA"). See 5 U.S.C. §§ 101 et seq. Furthermore, actions seeking monetary damages from the United States are governed by the venue provisions of 28 U.S.C. § 1402, which generally provide for venue in the district in which the plaintiff resides."

Alegria v. The United States, 945 F.2d 1523 (11th Cir. 1991) – "In the only case addressing this issue of which the Court is aware, the U.S. District Court for the District of Columbia concluded that it was bound

by the venue provisions of § 1402(a), which create venue in the district in which the plaintiff resides." *Aruba Bonaire Curacao Trust Co., Ltd. v. U.S.*, 43 AFTR 2d 79-797, 1979 WL 1315 (D.D.C. 1979).

In *McGore v. Wrigglesworth*, 97-1165, Sixth Circuit Court of Appeals, that court held the following: "In contrast, § 1915(e)(2) and § 1915A(b) do not contain discretionary language. Section 1915(e)(2) requires that a court "shall dismiss" a case if: the allegation of poverty is untrue; the case is frivolous or malicious; the case fails to state a claim on which relief may be granted; or a party seeks monetary relief against a defendant who is immune from such relief. Section 1915A(b) is essentially identical to § 1915(e)(2) except that § 1915A applies only to prisoners and does not contain the provision concerning the allegation of poverty."

"However, because such a certification would assist this court in reviewing an appeal under § 1915(e)(2)(B), we request the district courts to make a certification under § 1915(a)(3) for all cases filed by prisoners and for all cases filed by non-prisoners seeking leave to proceed in forma pauperis on appeal." See *Floyd v. United States Postal Service*, No. 96-3991. Failure to issue a § 1915(a)(3) certification may result in a remand.

Although the petitioner is not a prisoner, the new judge on the case in the district court overruled the IFP status of the original judge that granted the petitioner IFP status and served the complaint. In addition,

the petitioner paid the appeals fee. In *Lopez v. Smith*, Ninth Circuit Court of Appeals, 97-16987, held "However, I do not believe this appeal can, or should, be used to decide whether the same rule applies to dismissals under § 1915(e)(2). While § 1915(e)(2) now makes failure to state a claim a basis for sua sponte dismissals of a "case" brought pro se, in forma pauperis, § 1915(e)(2) was not invoked in this case and Lopez's claim was not dismissed sua sponte under § 1915(e)(2). Cf., e.g., *Gomez v. USAA Federal Savings Bank*, 171 F.3d 794 (2d Cir.1999) (reviewing judgment which dismissed pro se, in forma pauperis complaint sua sponte without prejudice pursuant to § 1915(e)(2) and holding that dismissal of the case for failure to state a claim would be improper without leave to amend); *Perkins v. Kansas Dept. of Corrections*, 165 F.3d 803 (10th Cir.1999) (reviewing sua sponte dismissal of action pursuant to 1915(e)(2)(B)(ii) before complaint was served and holding that district court prematurely dismissed certain of plaintiff's claims); *Anyanwutaku v. Moore*, 151 F.3d 1053 (D.C.Cir.1998) (reviewing sua sponte dismissal of complaint deemed to have been under § 1915(e) and holding that allegations were sufficient to proceed beyond the sua sponte dismissal stage); *Christiansen v. Clarke*, 147 F.3d 655 (8th Cir.1998) (affirming sua sponte dismissal of complaint before service and without giving leave to amend pursuant to § 1915(e)(2)(B)(ii)); *Bazrowx v. Scott*, 136 F.3d 1053 (5th Cir.1998) (reviewing sua sponte dismissal pursuant to § 1997e(c) for failure to state a claim and holding that district court did not err reversibly in dismissing suit without prejudice); *McGore v. Wrigglesworth*, 114 F.3d 601 (6th

Cir.1997) (distinguishing sua sponte dismissals under § 1915(e)(2)(B) from pre-PLRA law and holding that if a complaint falls within the requirements of § 1915(e)(2) when filed, district courts should sua sponte dismiss the complaint and they have no discretion in permitting a plaintiff to amend a complaint to avoid a sua sponte dismissal); *Mitchell v. Farcass*, 112 F.3d 1483 (11th Cir.1997) (reviewing sua sponte dismissal under § 1915(e)(2) before service and remanding because it did not appear beyond doubt that the plaintiff could prove no set of facts entitling him to relief)."

As aforementioned, the original judge granted the IFP status for a non prisoner, ordered the magistrate to enter a scheduling order pursuant to FRCP 16. As soon as the case was reassigned to another judge, some 22 months later, the scheduling order could have cured all concerns, including a review of the record that would have shown that what the magistrate recommended for grounds of dismissal was part of the amended complaint before the ALJ. In addition, the district judge saw the amended complaint and failed to read all of the claims before the ALJ.

III. REVIEW IS WARRANTED TO CLARIFY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT WHEN THE SECRETARY WAS REQUIRED TO ACT PURSUANT TO 5 U.S.C. § 706(1)(2) BUT THEN DELEGATED AUTHORITY TO THE ASSISTANT SECRETARY OF CIVIL RIGHTS PURSUANT TO § 2.25 FURTHER FAILS TO ACT CAUSING INJURY TO SOCIALLY DISADVANTAGED FARMERS USING A DIFFERENT PROCESS TO ADJUDICATE ADMINISTRATIVE CLAIMS THAN SIMILARLY SITUATED WHITE FARMERS

COMPARATIVE ANALYSIS BETWEEN SOCIALLY DISADVANTAGED FARMERS AND SIMILARLY SITUATED WHITE FARMERS

A. Process For Socially Disadvantaged Farmers Through The Assistant Secretary of Civil Rights

***Johnson v. USDA*, No. 15-1796 (8th Cir.2016)** – "Under OASCR's procedures, as counsel for the USDA employees explained at oral argument, an investigator is appointed to develop evidence relevant to the claim. "The investigator is a neutral party who develops the official record of the case. In the course of developing the record, the investigator is usually the person who will have direct contact with the parties, witnesses and other informants." USDA Departmental Manual 4330–1, § II.2a, http://www.ocio.usda.gov/sites/default/files/docs/2012/DM4330-001%5B1%5D.pdf (October 18, 2000) [https://perma.cc/EP44-8NC5]. The investigator can

collect both documentary and testimonial evidence from the complainant and the USDA, see id. § 3.III.8, but lacks subpoena powers, see id. § 3.II.2.b ("[T]he investigator acts with the same authority as [the Office of Civil Rights] and USDA to collect evidence, in whatever form, that is relevant to the case. This authority, however, stops short of subpoena power.").

"Following the investigation, the investigator creates a "record of investigation" or ROI, which is approved by the Chief of the Investigation Unit and forwarded to the Adjudication Unit. See id. § 3.III.13–14. An adjudicator then makes a determination as to whether there was discrimination based on the information in the ROI and issues a Final Agency Decision that must be approved by the Chief of the Adjudication Unit. See id. § 3.IV.2–5."

"The complainants may be represented by counsel. See id. § 3.I.6j. But as conceded by counsel for the USDA and the individual plaintiffs at oral argument, there is no procedure for questioning evidence submitted by the opposing party, much less an evidentiary hearing – a fact confirmed by the absence of provisions for such procedures in the USDA's manual specifying procedures for Part 15d investigations. See generally USDA Departmental Manual 4330–001, supra."

"In addition, there appears to be no avenue for seeking judicial review of OASCR's final decisions. No statute provides for judicial review of decisions under 7 C.F.R., Part 15d, and we believe the Administrative Procedure Act does not do so either. The APA authorizes

judicial review of a final agency action, *Bowen v. Massachusetts*, 487 U.S. 879, 891–92 (1988), but only with respect to claims "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. "[Section] 704 'does not provide additional judicial remedies in situations where the Congress has provided special and adequate review procedures." *Bowen*, 487 U.S. at 903 (quoting Attorney General's Manual on the Administrative Procedure Act 101 (1947))."

"Judicial review through the APA is precluded because there is an alternative adequate remedy in court in the form of an ECOA suit. See *Garcia v. Vilsack*, 563 F.3d 519, 524–26 (D.C. Cir.2009). The basis for Johnson's complaint is that the USDA discriminated against him on the basis of race in administering its loan programs, which is precisely the type of injury ECOA is meant to remedy. 15 U.S.C. § 1691(a)(1). Because Congress has provided an adequate alternative remedy under another statute, the APA does not authorize judicial review of OASCR's final decisions. See *Cent. Platte Nat. Res. Dist. v. U.S. Dep't of Agric.*, 623 F.3d 1142, 1148 (8th Cir.2011); *Great Rivers Habitat All. v. Fed. Emergency Mgmt. Agency*, 615 F.3d 985, 989 (8th Cir.2010); *Defs. of Wildlife v. Adm'r, E.P.A.*, 882 F.2d 1294, 1301–03 (8th Cir.1989)."

The difference between the administrative process for Socially Disadvantaged Farmers and Similarly Situated White Farmers can be – "Complaints filed pursuant to Section 741 are not handled under the Part 15d procedures, but rather under a separate set of regulations codified at 7 C.F.R., Part 15f. The Part

15f procedures, among other things, allow the complainant to request and receive a formal hearing before an ALJ and to depose witnesses. See Administrative Civil Rights Adjudications under Section 741, 63 Fed. Reg. 67392, 67393 (Dec. 4, 1998); 7 C.F.R. §§ 15f.10, 15f.13, 15f.18."

Section 741 is similar to the right to a formal hearing on the merits before the Administrative Law Judge that all White farmers enjoy. Congress directly spoke in unambiguous terms about the right to a formal hearing on the merits. The 2008 Food Energy and Conservation Act, Section 14012, (b) DETERMINATION ON MERITS. – Any Pigford claimant who has not previously obtained a determination on the merits of a Pigford claim may, in a civil action brought in the United States and (d) INTENT OF CONGRESS AS TO REMEDIAL NATURE OF SECTION. – It is the intent of Congress that this section be liberally construed so as to effectuate its remedial purpose of giving a full determination on the merits for each Pigford claim previously denied that determination. (e) LOAN DATA. – (1) REPORT TO PERSON SUBMITTING PETITION. – (A) IN GENERAL. – Not later than 120 days after the Secretary receives notice of a complaint filed by a claimant under subsection (b), the Secretary shall provide to the claimant a report on farm credit loans and noncredit benefits, as appropriate, made within the claimant's county (or if no documents are found, within an adjacent county as determined by the claimant), by the Department during the period beginning on January 1 of the year preceding the period covered by the

complaint and ending on December 31 of the year following the period. (B) REQUIREMENTS. – A report under subparagraph (A) shall contain information on all persons whose application for a loan or benefit was accepted, including – (i) the race of the applicant; (ii) the date of application; (iii) the date of the loan or benefit decision, as appropriate; (iv) the location of the office making the loan or benefit decision, as appropriate; (v) all data relevant to the decisionmaking process for the loan or benefit, as appropriate; and (vi) all data relevant to the servicing of the loan or benefit, as appropriate.

The Congressional mandate of the ALJ hearing the claims first, before the judicial review, by the DC District Court, can be found in *Benoit v. The USDA*, 08-5434, DC Circuit Court of Appeals. That Court held "In 1998 the Congress passed legislation reviving ECOA claims of discrimination that had been filed with the USDA from 1981 to 1996 but were barred by the statute of limitations. Section 741 of the Department's 1999 Supplemental Appropriations Act created a two-year window within which farmers who had filed such complaints could pursue their claims in court notwithstanding the statute of limitations. Sections 741(a) and (b) each gave affected farmers a distinct option: Either file the claim (a) directly in federal district court or (b) with the USDA and, if the USDA denies the claim, then seek review of the agency decision in district court, as provided in § 741(c). Of course, a farmer who chooses option (a) "forego[es]" option (b), *Garcia v. Vilsack*, 563 F.3d 519, 523 (D.C.Cir.2009), and vice versa, see

§ 714(b) ("The complainant may, in lieu of filing a civil action, seek a determination on the merits [by the USDA]")."

"The plaintiffs in this case chose option (b) and duly filed their claims, styled "Section 741 Complaint Requests" by the USDA, which considers such matters in two stages. The first is an informal settlement process overseen by the Director of the Office of Civil Rights (OCR). 7 C.F.R. § 15f.9. The Director may consider documents submitted by the complainant, review documents in the Department's files, and refer the case for investigation. Id. Ultimately the Director either negotiates a settlement with the complainant or sends him a letter stating that the OCR will not settle the complaint and informing him of his "options, including [the] right to request formal proceedings before an ALJ." Id.

B. The Commonality of Pigford Claimants and Socially Disadvantaged Farmers v. Similarly Situated White Farmers Right To A Formal Hearing On The Merits Before The Administrative Law Judge

1. The Pigford Claimant is afforded the right by section 741 of Ecoa. In particular, the Consent Decree deals with injunctive relief on farm ownership loans and farm operating loans. In any capacity, both loans are contracts with the USDA. By the terms of the settlement agreement, the Department of Agriculture agreed to two things:

A. That the DC District Court has exclusive jurisdiction of all enforcement actions, to include all adverse action, by either party. As aforementioned, the DC Circuit Court of Appeals, in Benoit held that the ALJ must hear the claims before the judicial review or mandamus action must be heard by the ALJ first.

B. The agency agreed to moratorium relief on all farm ownership loans and offsets of claimants that had business interactions with the Department of Agriculture between 1981 and 1997.

C. Congress re enforces the moratorium relief in the 2008 Food Energy and Conservation Act, Section 14012, (h) LIMITATION ON FORECLOSURES. – Notwithstanding any other provision of law, during the pendency of a Pigford claim, the Secretary may not begin acceleration on or foreclosure of a loan if – (1) the borrower is a Pigford claimant; and (2) makes a prima facie case in an appropriate administrative proceeding that the acceleration or foreclosure is related to a Pigford claim.

D. Notwithstanding any rule or regulation adopted by the agency, the Department of Agriculture was required to act and provide the moratorium relief albeit by settlement agreement or an unambiguous mandate to clarify congressional intent in the 2008 Food Energy and Conservation Act that gives rise to a judicial review under 5 U.S.C. § 706(1)(2).

2. A Socially Disadvantaged Farmer also is afforded moratorium relief provisions on Farm Ownership Loans and against Administrative Offsets pursuant the 2008 Food Energy and Conservation Act and later codified by the Agency as 7 C.F.R. § 766.358.

   E. A Socially Disadvantaged is afforded moratorium relief against foreclosure and administrative offsets if he or she has an accepted discrimination complaint lodged with the office of civil rights after May 22, 2008.

   F. A continuing tort of discrimination if the Agency has not resolved the Claims from Pigford, Garcia, Love and Keapseagle class members in which the Secretary and the Agency was required to act in case of foreclosure by a third party or the agency itself without providing a determination of discrimination or a formal hearing on the merits by the ALJ pursuant to the Pigford Settlement Agreement or any other class action settlement agreement. The threshold is met when the class request for a formal hearing on the merits and is denied the hearing by agency.

C. Similarly Situated White Farmer

G. Has more than 52 grievances that can be heard by 3 levels of appeals within 180 days pursuant the Administrative Procedure Act. First, the similarly situated White farmer, can file a grievance with the National Appeals Division (NAD), A Director's Review and the

Office of the Administrative Law Judge (ALJ). Emphasis on cost and length of time.

H. If there is a contract dispute, the similarly situated White Farmer can go to the Claims Court and have the claims court to conduct a review pursuant RCFC 52.1 and 52.2.

The *Fifth Amendment* has an explicit requirement that the federal government not deprive individuals of "life, liberty, or property" without due process of the law. It also contains an implicit guarantee that each person receive equal protection of the laws. The Secretary has the authority to enforce all contract with government interest of all affected Socially Disadvantaged Farmers pursuant 7 U.S.C. § 1981(4) and 42 U.S.C. § 1480. However, the Secretary has chosen to run a dual administrative justice system that allows Similarly Situated White Farmers to have an expeditious hearing and making Socially Disadvantaged Farmers wait as long as 35 years, then the agency goes in and takes the land from the family upon death and while the affected farmer is still living. These inactions and blatant disregard from due process is a violation of the Fifth Amendment.

42 U.S.C. § 1981: Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and

> proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
>
> **(b) "Make and enforce contracts" defined**
>
> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

The petitioners assert the right or of opportunity to be heard in the same fashion as Similarly Situated White Farmers are rights conferred unto the farm ownership loans and farm operating loans when subjected to adverse actions, in the form of moratorium relief provided by aforementioned Congressional Acts, Settlement Agreement and Agency Rules and Regulations, taken against the Socially Disadvantaged Farmers. The Secretary is without discretion to act pursuant 5 U.S.C. § 706(1)(2) with the authority to cure any claim in any court pursuant 42 U.S.C. § 1480. Moreover, 42 U.S.C. § 2000d subjects private bank and lenders to the provisions of the APA, in which the Socially Disadvantaged Farmer is a third party beneficiary with the right to attend and participate into any hearing or decision for any adverse action taken against the Socially Disadvantaged Farmer. If the third party did not exhaust the administrative remedy the District Court or State Court in which judgment was entered

against the Socially Disadvantaged Farmer should be void pursuant FRCP 60b or its State Counterpart for lack of subject matter jurisdiction. The petitioner believes it is unconstitutional to have two separate processes of administrative laws for Socially Disadvantaged Farmers and Similarly Situated White Farmers under the Equal Protection Clause and Due Process Clause of the Fifth Amendment.

The Tenth Circuit is currently facing this question in *J and L v. Rodney Bradshaw*, 18-3176 in regards to administrative offsets being taken from a Socially Disadvantaged Farmer that is facing a foreclosure action. The USDA owes the Pigford Claimant and Socially Disadvantaged Farmer nearly $186,000 since the year of 1999. Through research, we have found that the USDA purposely denied injunctive relief to Black Farmers with substantial acreage. Bradshaw and his father were farming nearly 4,000 acres and had won 2 NAD ruling in which the Agency did not follow through during the 1981-1997 time frame. If the agency would have followed through, Rodney Bradshaw would not be in the position he is in now and about to lose his farm to foreclosure.

Agency Rules and Regulations

> . . . a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt . . . Also, non-centralized administrative offsets include USDA internal administrative offsets, for example, of CCC payments to pay Farm Service Agency (FSA)

delinquent debts. [7 C.F.R. § 3.43(d)] Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

[7 C.F.R. § 3.43(b)]

A non-centralized administrative offset may be effected 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under § 3.42(c) (subparagraph 63E) is not acceptable if the 30-day period for the debtor to seek review of the Notice has expired, unless the creditor agency makes a determination under § 3.41(b)(3) (subparagraph 62C) that immediate action to effectuate the offset is necessary.

102 Discrimination Complaints and TOP –

(A) Accepted Complaints Delinquent accounts involved in an accepted discrimination complaint will be serviced according to 1-FLP, subparagraph 41 I. Accounts that have no

> security remaining, which have been accelerated or where all loans are mature, such as those classified CNC, will continue to accrue interest and be subject to administrative offset. In cases where loans are not eligible for TOP, according to 1-FLP, subparagraph 41 I, use delete code "11" to remove them from the TOP Offset Screens.

As evidenced in 7 C.F.R. § 3.43(a)(b), the Similarly Situated White Farmers are entitled to an administrative review, complete with a formal hearing on the merits before the Administrative Law Judge. The Office of Civil Rights acts as a "catchall" and immediately triggers retaliation from the agency. Congress mandated to the Secretary of Agriculture the moratorium relief on offsets on all Pigford Class members and Socially Disadvantaged Farmers with accepted discrimination complaints after May 22, 2008. The agency automatically sends all adverse claims from Socially Disadvantaged Farmers to the Office of Civil Rights, which currently has been without an Assistant Secretary for Civil Rights Since 2016, in which the authority has been delegated to resolve the pending claims. Once the claim is accepted by the agency, the procedural protections of equal protection have dire consequences against Socially Disadvantaged Farmers, that impair the ability to defend against adverse actions taken against them, unlike Similarly Situated White Farmers who have an opportunity to have 3 different types of appeals in 180 pursuant to the "APA," the Socially Disadvantaged Farmers cannot dispute evidence submitted

against or depose witnesses, much less see what has been entered on the record against them.

IV. REVIEW IS WARRANTED FOR FAILURE TO RESOLVE CASES IN EXPEDITIOUS MANNER PURSUANT TO SECTION 14002 OF THE 2008 FOOD ENERGY AND CONSERVATION ACT AND A REVIEW WOULD RESOLVE A SPLIT BETWEEN THE SECOND CIRCUIT AND THE NINTH CIRCUIT THAT WOULD REQUIRE THIRD PARTIES TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE BRINGING SUITS IN WHICH THE GOVERNMENT HAS AN INTEREST OR STAKE IN THE REAL PROPERTY

When the Secretary is without discretion to act on an adverse claim against real property in which the USDA has interest and such interest is affected by moratorium relief provided by Congressional Acts should such claims be resolved in the 180 days allotted for the Administrative Procedures Act? The petitioner thinks the answer is yes. The Secretary has broad authority under 7 U.S.C. § 1981(4) and 42 U.S.C. § 1480 to resolve all such claims and for third parties to exhaust administrative remedies before going to court.

In addition, the district court's decision in *In re 2000 Sugar Beet Crop Ins. Litig.*, 228 F. Supp. 2d 1992 (D. Minn. 2002) illustrates the consequences of not heeding the command of § 6912(e) in an unusual

context.[2] There, unlike in the typical judicial review case where the only parties before the court are the plaintiff and the government, § 6912(e) was applied to a third party action against USDA agencies brought by private insurance companies who had been sued by some of their policyholders for failing to pay indemnities under crop insurance policies subsidized by the Federal Crop Insurance Corporation (FCIC).

The 180 days would not cause undue burden on the third party and would also require the Secretary to act if discretion was removed by Congressional Acts that imposed moratorium relief. Moreover, some third parties are controlled by guaranteed loans and the terms of agency rules and regulations or Congressional Acts that have been legislated into the guaranteed loans are required to exhaust. If the third party did not exhaust the administrative remedies the court of

[2] The National Agricultural Research Center – Christopher Kelley, In many of these – typical "cases, the plaintiff had not bypassed the administrative appeal process altogether but had failed to raise a claim before the agency that it then sought to raise on judicial review. Section 6912(e) has been a bar to judicial review of such claims. See, e.g., *Gilmer-Glenville Ltd. Partnership v. Farmers Home Admin.*, 102 F. Supp. 2d 791, 795 (N.D. Ohio 2000); *Bentley v. Glickman*, 234 B.R. 12, 17–18 (N.D.N.Y. 1999); *Tucson Rod and Gun Club v. McGee*, 25 F. Supp. 2d 1025, 1029 (D. Ariz. 1998); *Gregson v. United States Forestry Serv.*, 19 F. Supp. 2d 925, 929–30 (E.D. Ark. 1998). When presented with the question of whether the written comments of an interested third party can fulfill a plaintiff's duty under § 6912(e) when the applicable appeal regulations require the appellant to file a written appeal and permit interested parties to submit written comments, the only court to address the issue has answered – no." See *Chattooga River Watershed Coalition v. United States Forest Service*, 93 F. Supp. 2d 1246, 1250–51 (N.D. Ga. 2000).

competent jurisdiction was without jurisdiction. In addition, the 180 days that should be the threshold was violated when the Secretary was required to act, the farmer would be prejudice if a favorable decision would cure the adverse action from a third party and the stake of the adverse action that belong to the government and ultimately the American taxpayer.

V. REVIEW IS WARRANTED FOR LACK OF JURISDICTION OF SISTER COURTS THAT ENTERED FORECLOSURE JUDGMENTS AGAINST PIGFORD CLASS MEMBERS WHEN THE DC DISTRICT COURT HAS EXCLUSIVE JURISDICTION AND REPUDIATION OF THE SETTLEMENT AGREEMENT OR BREACH OF CONTRACT FOR ACTUAL DAMAGES FOR EVERY MONTH THAT THE AFFECTED FARMER LOST WAGES AND EXPENSES INCURRED FROM ADVERSE ACTION AGAINST AFFECTED FARMER

REVIEW IS NEEDED TO SETTLE THE JURISDICTION OF DC DISTRICT COURT OF APPEALS AND THE FEDERAL CLAIMS COURT TO BRING INTO HARMONY THE FOURTH CIRCUIT COURT OF APPEALS, THE FIFTH CIRCUIT COURT, SIXTH CIRCUIT COURT OF APPEALS, THE TENTH CIRCUIT COURT OF APPEALS AND THE ELEVENTH CIRCUIT COURT OF APPEALS

"It is well settled that limitations on subject-matter jurisdiction are not waivable; the court must

address jurisdictional issues, even sua sponte, whenever those issues come to the court's attention, whether raised by a party or not, and even if the parties affirmatively urge the court to exercise jurisdiction over the case. See *Foster v. Chatman*, 136 S. Ct. 1737, 1745 (2016) ("Neither party contests our jurisdiction to review [the plaintiff's] claims, but we 'have an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party.'" (quoting *Arbaugh v. Y&H Corp*., 546 U.S. 500, 514 (2006))); *Sebelius v. Auburn Regional Med. Ctr.*, 568 U.S. 145, 153 (2013) ("Objections to a tribunal's jurisdiction can be raised at any time, even by a party that once conceded the tribunal's subject-matter jurisdiction over the controversy."); *Ashcroft v. Iqbal*, 556 U.S. 662, 671 (2009) ("Subject-matter jurisdiction cannot be forfeited or waived and should be considered when fairly in doubt."); *Rick's Mushroom Serv., Inc. v. United States*, 521 F.3d 1338, 1346 (Fed. Cir.2008); *Folden v. United State*s, 379 F.3d 1344, 1354 (Fed. Cir.2004); *Booth v. United States*, 990 F.2d 617, 620 (Fed. Cir.1993)."

The Pigford Settlement Agreement unambiguously states that the DC District Court retains exclusive jurisdiction for enforcement actions, which include foreclosure and offsets, see *Parker v. United States*, 16-264 (Fed. Cl. 2017). Moreover, the DC Circuit Court of Appeals in *Benoit v. The USDA*, 08-5434, expressly stated that the hearing must first be heard by the Administrative Law Judge. However, the agency is refusing to hear these adverse actions administratively first.

The Agency, on the other hand, is sending the Department of Justice to the states where the farms are located and foreclosing on the land belonging to Black Farmers. Upon the filing, the Black Farmers have shown that they are Pigford Class members and filing counterclaims and the lower courts of the sister circuits are dismissing the counterclaims and allowing the USDA to foreclose on the land belonging to Black Farmers, when the agency and the Pigford Class Members agreed to have all adverse claims be litigated in the DC District Court. Foreclosure of the farms is an adverse action that is in exclusive jurisdiction of the DC District Court and those farms that have been foreclosed on belonging to Pigford Class Members should be immediately returned.

The Fourth Circuit has affirmed a foreclosure in *United States v. Eddie Wise*, 15-2477 (4th Cir.2016). The United States admitted in the District Court that Dorothy Monroe-Wise was the owner of the property and was a Pigford Class Member who had not received a formal hearing on the merits as a Pigford Class Track B Claimant. The Settlement Agreement unambiguously states that the USDA shall not foreclose until a final determination has been reached.

The Fifth Circuit lower courts have taken property from Pigford Class Members that prevailed see *Douglas v. O'Neal*, 1:17-cv-00808, WDLA and *USA v. Kennedy*, 3:17-cv-00396.

The Sixth Circuit Court lower courts *Young v. The USDA*, 4:10-cv-00074, WDKY.

The Tenth Circuit Court of Appeals, pending *J and L v. Rodney Bradshaw*, 18-3176.

The Eleventh Circuit Court of Appeals in *Abrams v. C. Brian Stuckey*, No. 1:14-cv-191, SDGA. This Court found that the foreclosure proceedings for a Pigford Class Member belong in the District Court.

CONCLUSION

The court should grant Corey Lea's Petition for a Writ of Certiorari to Review the Judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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