

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

SID MILLER, *et al.*,

Plaintiffs,

v.

TOM VILSACK, in his official capacity as
SECRETARY OF AGRICULTURE,

Defendant.

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) Civil Action No. 4:21-cv-595-O
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DEFENDANT’S NOTICE REGARDING SCOPE OF PRELIMINARY INJUNCTION

In an order issued July 1, 2021, this Court granted Plaintiffs’ motion for a preliminary injunction, as well as Plaintiffs’ motion to certify two classes in this matter. ECF No. 60. In the order, the Court set forth the scope of the preliminary injunction as follows:

The Court ... **ENJOINS** Defendants Tom Vilsack, and the United States Department of Agriculture and their officers, agents, servants, employees, attorneys, designees, and subordinates, as well as any person acting in concert or participation with them from discriminating on account of race or ethnicity in administering section 1005 of the American Rescue Plan Act for any applicant who is a member of the Certified Classes. This prohibition encompasses: (a) considering or using an applicant Class Member’s race or ethnicity as a criterion in determining whether that applicant will obtain loan assistance, forgiveness, or payments; and (b) considering or using any criterion that is intended to serve as a proxy for race or ethnicity in determining whether an applicant Class Member will obtain loan assistance, forgiveness, or payments.

Id. at 23-24.

In discussing the scope of the relief, the Court noted that “Plaintiffs d[id] not seek nationwide relief” in their preliminary injunction motion, but sought “relief tailored to any classes

certified under Rule 23.” *Id.* at 21. Plaintiffs’ requested relief was based upon their view that payments to minority farmers would inflict irreparable harm. *See* Pls.’ Reply in Supp. of Mot. for Prelim. Inj. 3, ECF No. 42.

The United States Department of Agriculture (USDA) understands the Court’s preliminary injunction in this case to extend to all members of the two certified classes, and USDA understands its obligations in complying with this injunction to be consistent with the injunctions already entered in *Faust v. Vilsack*, No. 21-548 (E.D. Wis.), and *Wynn v. Vilsack*, No. 21-514 (M.D. Fla.). Those injunctions prohibited USDA from making payments under Section 1005, but they permitted USDA to take preparatory steps to enable the agency to be in a position to make payments under Section 1005 in the event the injunctions are lifted. *See* Order at 49 n.19, *Wynn*, ECF No. 41 (explaining that “[t]he Court’s injunction prohibits the distribution of payments, loan assistance, or debt relief, but does not enjoin Defendants from continuing to prepare to effectuate the relief under Section 1005 in the event it is ultimately found to be constitutionally permissible”); Order at 10, *Faust*, ECF No. 21 (“Defendants are enjoined from forgiving any loans pursuant to Section 1005 until the Court rules on Plaintiffs’ motion for a preliminary injunction.”).

Consistent with those prior injunctions, USDA had not been issuing payments under the Section 1005 program even before this Court issued the preliminary injunction on July 1, 2021. But USDA had been taking preparatory steps, including sending offer letters to eligible borrowers, to enable prompt payments if later permitted.

USDA understands the continuation of this pre-payment preparatory work to be consistent with this Court’s order as long as no payments are made, but USDA respectfully submits this notice to advise the Court of its interpretation and intended implementation of the Court’s order.

Dated: July 2, 2021

Respectfully submitted,

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/s/ Emily Newton
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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2021, a copy of the foregoing was filed electronically via the Court's ECF system, which effects service upon counsel of record.

/s/ Emily Newton

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