

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

RUSTY STRICKLAND,)
ALAN AND AMY WEST FARMS,)
ALAN WEST,)
AMY WEST,)
DOUBLE B FARMS, LLC, and)
BRYAN BAKER,)

Plaintiffs,)

v.)

Case No. 2:24-cv-00060-Z

THE UNITED STATES DEPARTMENT OF)
AGRICULTURE,)
THOMAS J. VILSACK, in his official capacity)
as Secretary of the United States Department of)
Agriculture,)
ZACH DUCHENEAUX, in his official capacity)
as Administrator of the Farm Service Agency,)
and)
THE UNITED STATES OF AMERICA,)

Defendants.)

**PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION OR, IN THE
ALTERNATIVE, RELIEF UNDER 5 U.S.C. § 705**

Plaintiffs Rusty Strickland, Alan and Amy West Farms, Alan West, Amy West, Double B Farms, LLC, and Bryan Baker hereby move under Federal Rule of Civil Procedure 65 to preliminarily enjoin the United States Department of Agriculture (USDA) from using race, sex, or progressive factoring when administering the following programs: (1) Notice of Funds Availability; Emergency Relief Program (ERP), 87 Fed. Reg. 30164 (May 18, 2022); (2) Pandemic

Assistance Programs and Agricultural Disaster Assistance Programs, Subpart S—Emergency Relief Program Phase 2, 88 Fed. Reg. 1862 (Jan. 11, 2023) (codified at 7 C.F.R. § 760.1901); (3) Subpart A—Coronavirus Food Assistance Program 2, *id.* at 1877 (codified at 7 C.F.R. § 9.201); (4) Subpart D—Pandemic Assistance Revenue Program, *id.* at 1879 (codified at 7 C.F.R. § 9.302); (5) Notice of Funds Availability; Emergency Livestock Relief Program (ELRP), 87 Fed. Reg. 19465 (Apr. 4, 2022); (6) Notice of Funds Availability; 2021 Emergency Livestock Relief Program (ELRP) Phase 2, 88 Fed. Reg. 66366 (Sept. 27, 2023); (7) Notice of Funds Availability; Emergency Relief Program 2022, 88 Fed. Reg. 74404 (Oct. 31, 2023); (8) Notice of Funds Availability; Emergency Livestock Relief Program (ELRP) 2022, 88 Fed. Reg. 66361 (Sept. 27, 2023). Alternatively, they move under 5 U.S.C. § 705 to stay these programs. This is Plaintiffs’ First Application for Extraordinary Relief.

As set forth more fully in the brief filed in support of this motion, enjoining USDA from using race, sex, or progressive factoring when administering the programs is warranted because Plaintiffs are likely to succeed on the merits of their claims that: (1) the programs, as currently administered, are unconstitutional; (2) USDA lacks statutory authority to run the programs in their current form; and (3) USDA failed to adequately explain changes in calculating payments when implementing progressive factoring. Plaintiffs are also able to demonstrate immediate and irreparable harm both to themselves and to the public.

Dated: April 5, 2024.

Respectfully submitted,

/s/ Braden H. Boucek
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CERTIFICATE OF CONFERENCE

Under Local Rule 7.1(b)(3), I hereby certify that on April 4, 2024, I emailed Alexander Sverdlov and Faith Lowry, the Department of Justice attorneys who will represent Defendants and asked if Defendants opposed this motion. They indicated that Defendants oppose this motion.

Respectfully submitted,

/s/ B. H. Boucek
BRADEN H. BOUCEK

CERTIFICATE OF COMPLIANCE

This brief conforms to the requirements of Local Rule 7.2. It was prepared in 12-point Times New Roman Font. It is double-spaced and has margins that are at least one inch on all four sides. No text other than page numbers are in the margins.

Respectfully submitted,

/s/ Braden H. Boucek
BRADEN H. BOUCEK

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2024, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. I further certify that I will email Alexander Sverdlov and Faith Lowry, the attorneys assigned to represent Defendants, at their doj.gov email addresses.

Respectfully submitted,

/s/ B. H. Boucek
BRADEN H. BOUCEK

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as Administrator of the Farm Service Agency,)
and)
THE UNITED STATES OF AMERICA,)

Defendants.)

**[PROPOSED] ORDER ON PLAINTIFFS’ MOTION FOR A PRELIMINARY
INJUNCTION OR, IN THE ALTERNATIVE, RELIEF UNDER 5 U.S.C. § 705**

The Court, having considered Plaintiff’s Motion for a Preliminary Injunction or, in the Alternative, Relief under 5 U.S.C. § 705 and all briefing submitted in support of and in opposition to the motion, as well as the applicable law, concludes that Plaintiffs have shown a substantial likelihood of success on the merits, a substantial threat of irreparable harm if a stay is not granted, that the threatened injury outweighs any harm that will result if the stay is granted, and that granting

the stay is in the public interest. It is, therefore, ORDERED that Plaintiffs' Motion [ECF No. ____] is hereby GRANTED. It is FURTHER ORDERED that, while this litigation is pending or until this Court amends this order, the United States Department of Agriculture (USDA) is enjoined from using race, sex, or progressive factoring when administering disaster and pandemic relief programs, including but not limited to the following (1) Notice of Funds Availability; Emergency Relief Program (ERP), 87 Fed. Reg. 30164 (May 18, 2022); (2) Pandemic Assistance Programs and Agricultural Disaster Assistance Programs, Subpart S—Emergency Relief Program Phase 2, 88 Fed. Reg. 1862 (Jan. 11, 2023) (codified at 7 C.F.R. § 760.1901); (3) Subpart A—Coronavirus Food Assistance Program 2, *id.* at 1877 (codified at 7 C.F.R. § 9.201); (4) Subpart D—Pandemic Assistance Revenue Program, *id.* at 1879 (codified at 7 C.F.R. § 9.302); (5) Notice of Funds Availability; Emergency Livestock Relief Program (ELRP), 87 Fed. Reg. 19465 (Apr. 4, 2022); (6) Notice of Funds Availability; 2021 Emergency Livestock Relief Program (ELRP) Phase 2, 88 Fed. Reg. 66366 (Sept. 27, 2023); (7) Notice of Funds Availability; Emergency Relief Program 2022, 88 Fed. Reg. 74404 (Oct. 31, 2023); (8) Notice of Funds Availability; Emergency Livestock Relief Program (ELRP) 2022, 88 Fed. Reg. 66361 (Sept. 27, 2023).

The Court reaches this conclusion because: (1) the use of race and sex classifications to calculate payments under the programs likely violates equal protection, as secured by the Due Process Clause of the Fifth Amendment; (2) USDA likely lacked statutory authorization to consider race and sex when calculating payments; and (3) USDA likely acted arbitrarily and capriciously when adopting progressive factoring. No bond or other security is required.

This _____ day of _____, 2024

THE HONORABLE MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE