

# AMERICA’S INVISIBLE FARMERS: FROM SLAVERY, TO FREEDMEN, TO THE FIRST ON THE LAND

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## I. INTRODUCTION

It’s August 22, 2002, and the day is hot. The sun is beating down with little wind, but the weather does not stop a group from beginning to form on the front steps of the United States Department of Agriculture (USDA or Department) in Washington, D.C. The group’s members carry signs that read “unfair system delays again,” “in justice for black farmers,” and “we need land, not ‘promises.’”<sup>1</sup> Indeed, their purpose is clear. They are members of the National Black Farmers Association protesting the USDA for damages the agency promised to pay them, along with thousands of other black farmers, as part of a settlement to a 1997 class-action lawsuit commonly referred to as *Pigford I.*<sup>2</sup> However, their compensation has yet to be seen.<sup>3</sup>

While the above is only one specific instance, the African-American farming community has fought for its very existence since the end of the Civil War.<sup>4</sup> From the early nineteenth century to today, black farmers have struggled with governmental, societal, and social disadvantages; all of which led to a drastic

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1. Mark Wilson, *Black Farmers Protest Dept. Of Agriculture*, GETTYIMAGES (2002), <https://perma.cc/JH4E-6JMZ>.

2. *Id.*

3. *Id.*

4. See BRUCE J. REYNOLDS, USDA, BLACK FARMERS IN AMERICA, 1865-2000: THE PURSUIT OF INDEPENDENT FARMING AND THE ROLE OF COOPERATIVES 1 (2003).

decrease in both their land and population.<sup>5</sup> Fortunately, after almost 100 years, black farmers are slowly on the rise again.<sup>6</sup>

This Note examines the past, present, and future of the African-American farming community. Specifically, it will first briefly discuss the end of slavery in the mid-nineteenth century and the transition these newly freed slaves underwent to become the nation's first black farmers. Second, it discusses black-operated farming at its peak in the early twentieth century. Third, it specifically addresses certain factors that led to the drastic decline in black farmers after this peak. Fourth, it examines what plans and policies were implemented to battle these factors while also discussing the current state of the African-American farming community today. Finally, it concludes perhaps the most important issue: whether these plans and policies are sufficient, or if we, as a nation, should be doing more moving forward.

## II. FROM SLAVES TO FREEDMEN TO THE FIRST ON THE LAND

On September 22, 1862, President Abraham Lincoln made history and delivered the preliminary Emancipation Proclamation.<sup>7</sup> When this executive order eventually went into full effect on January 1, 1863, it declared that “all persons held as slaves within the rebellious states ‘are, and henceforward shall be free.’”<sup>8</sup> While it was a necessary and vital first step, the Emancipation Proclamation did not actually end the practice of slavery.<sup>9</sup> Thus, the thirteenth Amendment to the United States Constitution, which formally abolished slavery throughout the nation, was passed by Congress on January 31, 1865, and later ratified on December 6 of that same year.<sup>10</sup> It provides that “neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”<sup>11</sup> This provision, along with the fourteenth and fifteenth Amendments which soon followed, essentially altered society by asserting the unprecedented

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5. Leah Penniman, *After a Century in Decline, Black Farmers are Back and on the Rise*, YES! MAG. (May 5, 2016), <https://perma.cc/V6H2-33B8>.

6. *Id.*

7. *Preliminary Emancipation Proclamation, 1862*, NAT'L ARCHIVES & RECORDS ADMIN., <https://perma.cc/FH99-NDEW> (archived Mar. 19, 2019).

8. *The Emancipation Proclamation*, NAT'L ARCHIVES & RECORDS ADMIN., <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation> (last visited Mar. 8, 2017).

9. *13th Amendment to the U.S. Constitution: Abolition of Slavery (1865)*, OUR DOCUMENTS, <https://perma.cc/U69Q-SP8N> (archived Mar. 19, 2019).

10. *Id.*

11. *Id.*

view that not only are African-Americans valid members of society, they are entitled to the fundamental rights of citizens.<sup>12</sup>

While all abolitionists worked to end slavery in the years prior to the Civil War, few considered how newly freed slaves would adjust to society if their goal was actually realized.<sup>13</sup> Even after this goal was accomplished and former slaves became legally free, they were still socially shackled.<sup>14</sup> These men and women were wholly dependent, as they were essentially disregarded when it came to acquiring a job or making a living on their own.<sup>15</sup> Various Northerners argued that to solve this problem, ex-slaves should be provided with their own land.<sup>16</sup> Indeed, as one former slave stated, "Gib us our own land and we take care ourselves; but widout land, de ole massas can hire us or starve us, as dey please."<sup>17</sup> Thus, this became the likely solution. However, these former slaves struggled immensely to gain independent access to property and obtain the same economic achievements from its use as their Caucasian counterparts.<sup>18</sup> Various government proposals and promises designed to aid the black population in becoming self-sufficient all failed for mixed reasons.<sup>19</sup> For example, the famous "Forty Acres and a Mule," which was supposed to provide opportunities for former slaves to begin farming on land formerly used by Confederate troops, was revoked months after it was originally implemented.<sup>20</sup> In the end, only an estimated 2,000 blacks received and retained the land promised to them after the war.<sup>21</sup>

Fortunately, primarily through their own actions, African-Americans steadily began to obtain property as the beginning of the twentieth century neared.<sup>22</sup> Despite the lack of any substantial federal aid or reconstruction, blacks acquired

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12. David S. Bogen, *From Racial Discrimination to Separate but Equal: The Common Law Impact of the Thirteenth Amendment*, OHIO N. U. L. REV. 117, 117 (2011).

13. REYNOLDS, *supra* note 4, at 2.

14. See GEORGE BROWN TINDALL & DAVID EMORY SHI, *AMERICA: A NARRATIVE HISTORY* 662 (Karl Bakeman ed., 7th ed. 2007).

15. *See id.*

16. *Id.*

17. Jennifer Condon, *Where Do We Go From Here?*, TEACHING AM. HIST. IN S.C., <https://perma.cc/FG6T-NRSA> (archived June 21, 2018).

18. John Francis Ficara & Juan Williams, 'Black Farmers in America,' NPR (Feb. 22, 2005), <http://www.npr.org/2005/02/22/5228987/black-farmers-in-america>.

19. *See id.*

20. *Id.*; Henry Louis Gates, Jr., *The Truth Behind '40 Acres and a Mule,'* IOWA PUB. TELEVISION, <https://perma.cc/KVM4-4ZQY> (archived June 21, 2018).

21. Devon McCurdy, *Forty Acres and a Mule*, BLACKPAST.ORG, <https://perma.cc/GMG4-4MAN> (archived June 21, 2018).

22. Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Ownership, Political Independence, and Community through Partition Sales of Tenancy in Common Property*, NW. U. L. REV. 505, 526 (2001).

this land via private purchase, by overcoming discriminatory lending practices, and by pursuing alternative pieces of property when certain whites would refuse to sell to them.<sup>23</sup> By 1910, black farm ownership was in full-swing.<sup>24</sup> In fact, millions of acres of land were bought throughout several states, and black farmers comprised around 16.5% of all landowners in the South.<sup>25</sup> The future started to shine a little bit brighter.

While the process up to this point had been a struggle for simple land, these former slaves viewed their new property as much more.<sup>26</sup> Not only was the property their very own place to live, eat, or raise a family, but it was also many blacks' first independent stake in society.<sup>27</sup> It represented a better future which recognized and rewarded them for the years of labor that slavery had stolen.<sup>28</sup> African-Americans would no longer be forced to rely on their former masters or superiors, as owning this land was "the key to economic independence and autonomy."<sup>29</sup> Owning their own property or even the lesser desired alternative of sharecropping meant freedom in the black farmer's daily work and social life.<sup>30</sup> Furthermore, not only did land ownership provide individual benefits, but it aided entire neighborhoods as well.<sup>31</sup> For instance, African-American farming and land ownership in North Carolina stabilized entire black communities, as this newfound autonomy and independence extended to regions as a whole.<sup>32</sup> Black-operated farms were finally approaching their peak.<sup>33</sup>

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23. *Id.*

24. See PAMELA BROWNING, U.S. COMM'N ON CIVIL RIGHTS, *THE DECLINE OF BLACK FARMING IN AMERICA* 21 (1982).

25. *Id.*

26. See *Q & A: Sharecropping and Changes in the Southern Economy*, IOWA PUB. TELEVISION (Dec. 19, 2003), [http://www.pbs.org/wgbh/amex/reconstruction/sharecrop/sf\\_economy.html](http://www.pbs.org/wgbh/amex/reconstruction/sharecrop/sf_economy.html).

27. *Id.*

28. Michael O'Malley, *Who Owns this Land?*, EXPLORING US HISTORY, GEO. MASON U. (Apr. 2004), <https://perma.cc/HH77-MGGT>.

29. *Sharecropping*, HISTORY, <https://perma.cc/7PJZ-HAR9> (archived June 25, 2018).

30. *Id.*

31. See JESS GILBERT ET AL., *THE DECLINE (AND REVIVAL?) OF BLACK FARMERS AND RURAL LANDOWNERS: A REVIEW OF THE RESEARCH LITERATURE* 5 (Inst. For Research & Educ. on Soc. Structure, Rural Inst., Res. Use & Dev., Working Paper No. 44. 2001).

32. *Id.*

33. See BROWNING, *supra* note 24, at 1.

### III. THE PEAK OF BLACK FARMING IN THE EARLY TWENTIETH CENTURY

From 1910 to 1920, the black farming community boomed.<sup>34</sup> By 1920, there were around 926,000 black-operated farms, and these farmers managed an estimated 15 million acres of land.<sup>35</sup> In this same year, 14% of all farmers in the United States identified as African-American.<sup>36</sup> Furthermore, on an unprecedented note, all but 10,000 of these farmers lived in the South.<sup>37</sup> Farming was becoming a part of the social and economic fabric of the black population.<sup>38</sup>

As impressive as these numbers may seem, however, it is important to acknowledge that even at this peak, a majority of African-American farmers were not truly owners of the land they inhabited.<sup>39</sup> Many simply obtained property available through the crop lien or sharecropping systems.<sup>40</sup> The “[c]rop lien system was inaugurated in North Carolina in March of 1867” and was originally viewed as a solution to cash shortage problems among farmers following the Civil War.<sup>41</sup> Under this process, farmers would receive essentials such as fertilizer, farming equipment, and other goods in exchange for giving a lien on their crops to a merchant.<sup>42</sup> These merchants provided a credit to these farmers until the farmers’ crops were harvested.<sup>43</sup> By doing so, many merchants were able to upcharge as much as 50 % over normal value to farmers who were desperate for their help.<sup>44</sup> This led to many farmers, black farmers included, being reduced to a state of economic slavery, as many drowned in debt because they could not repay these merchants.<sup>45</sup> Some even lost their land to foreclosure.<sup>46</sup>

Similarly, the sharecropping system was also started due to low levels of economic development and the absence of money after the Civil War.<sup>47</sup> Here, landowners in need of labor would allow black and white farmers to raise cash

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34. See VERA J. BANKS, USDA, *BLACK FARMERS AND THEIR FARMS* 1 (1986).

35. *Id.*

36. GILBERT ET AL., *supra* note 31, at 2.

37. *Id.*

38. *See id.*

39. *See Q & A: Sharecropping and Changes in the Southern Economy*, *supra* note 26.

40. *Id.*

41. See K. Todd Johnson, *Crop Lien System*, *ENCYCLOPEDIA OF NORTH CAROLINA*, (William S. Powells ed., 2006), <https://perma.cc/4A26-X3CU>.

42. REYNOLDS, *supra* note 4, at 4.

43. Johnson, *supra* note 41.

44. *Id.*

45. REYNOLDS, *supra* note 4, at 4.

46. *Id.*

47. *Sharecropping*, IOWA PUB. TELEVISION, <https://perma.cc/X2Q5-RXWD> (archived June 25, 2018).

crops on their property.<sup>48</sup> In exchange for this access, landowners would then receive a portion of the profits from the crops raised.<sup>49</sup> Unable to purchase their own land, many black families were forced into this system and raised cash crops such as cotton, tobacco, and rice on credit.<sup>50</sup> “High interest rates, unpredictable harvests, and unscrupulous landlords and merchants,” created massive debts for black farmers who could not repay their landlords, and many were isolated with little mobility to pursue alternatives.<sup>51</sup> This was the reality for many farmers until the sharecropping system eventually faded away in the 1940s.<sup>52</sup> The circumstances were clear: while there had indeed been progress for the African-American farming community, conditions were still far from ideal.

For the black farmers who were fortunate enough to own and operate their own land, they began to exhibit behavior and trends that are still common in their farming communities today.<sup>53</sup> Specifically, these farms are usually smaller in size, with most less than fifty acres.<sup>54</sup> While many focus on livestock production, tobacco is also prevalent in certain regions.<sup>55</sup> Furthermore, compared to their white counterparts, black farmers are generally older, less educated and literate, achieve lower farm incomes, and have lower total incomes overall.<sup>56</sup> Factors such as income and total acres, along with those discussed directly below, played a direct role in non-white farmers leaving the occupation at a much higher rate than their white peers.<sup>57</sup>

#### IV. THE DECLINE OF THE BLACK FARMING COMMUNITY

The black farmer is now a rare sight in the agricultural industry.<sup>58</sup> In fact, it was an often-cited prediction that the black farming community as a whole would be completely extinct by the year 2000.<sup>59</sup> From the near 926,000 black-operated farms in 1920, that number fell to a mere 44,629 by 2012.<sup>60</sup> Moreover, this total

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48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *See* BANKS, *supra* note 34, at v.

54. *Id.*

55. *Id.*; Spencer D. Wood & Jess Gilbert, *Returning African American Farmers to the Land: Recent Trends and a Policy Rationale*, REV. OF BLACK POL. ECON. 44, 52 (2000).

56. GILBERT ET AL., *supra* note 31, at 2.

57. *See id.* at 2-3.

58. *Id.* at 1.

59. *Id.*

60. BANKS, *supra* note 34, at 1; 2012 CENSUS OF AGRICULTURE HIGHLIGHTS, USDA 1 (2014), [https://www.agcensus.usda.gov/Publications/2012/Online\\_Resources/Highlights/Black\\_Farmers/Highlights\\_Black\\_Farmers.pdf](https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Black_Farmers/Highlights_Black_Farmers.pdf).

was even a 12% increase from 2007.<sup>61</sup> Studies show that from the late 1970s until the turn of the century, no other minority group has experienced a loss of farm operations at a rate comparable to the African-American population.<sup>62</sup> While all farmers, regardless of race, encountered trouble maintaining their farms at the turn of the twentieth century due to economic factors, it became apparent numbers were dropping at a faster rate in the black farming community.<sup>63</sup> Unfortunately, there were many reasons for this decline.

One common reason, which is still prevalent today, is simply that younger African-Americans are not entering the occupation to replace the older farmers who will soon retire.<sup>64</sup> In reality, farming is not appealing to many in the younger generations.<sup>65</sup> Younger potential farmers may be initially reluctant and personally disconnected from the profession, as it can bring connotations of slavery and sharecropping.<sup>66</sup> Furthermore, many younger African-Americans are now pursuing careers which were once unavailable to their community.<sup>67</sup> For example, due to the Civil Rights Movement and various affirmative action policies, many choose to pursue alternatives such as graduate education or other white-collar professions.<sup>68</sup>

There were also several economic disadvantages which specifically affected the black farming community the most after the peak of 1920.<sup>69</sup> While the defeat of the Confederate armies and the emancipation of millions of slaves were thought to be turning points for substantial economic change in America, very little was actually altered.<sup>70</sup> The economic relations between former masters and former slaves often times stayed intact.<sup>71</sup> The social class and caste system which was built upon the back of slavery was still apparent.<sup>72</sup> Approaching the 1930s, many black farmers had mounting debt, and because of these relations, they very rarely received any form of reasonable credit to help maintain their operations.<sup>73</sup> Thus,

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61. *Id.*

62. DAVID BULAND, USDA, NRCS SUPPORT OF HISPANIC FARMERS: BY THE NUMBERS 2 (2002).

63. *See* Wood & Gilbert, *supra* note 55, at 44-45.

64. GILBERT ET AL., *supra* note 31, at 1.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *See* DEBRA A. REID, E. ILL. UNIV., AFRICAN AMERICANS AND LAND LOSS IN TEXAS: GOVERNMENT DUPLICITY AND DISCRIMINATION BASED ON RACE AND CLASS 1 (2003).

70. MANNING MARABLE & RUSSELL RICKFORD, BEYOND BOUNDARIES: THE MANNING MARABLE READER 153, 154 (2015).

71. *Id.*

72. *Id.*

73. *See id.* at 165.

many were simply forced to abandon their farms.<sup>74</sup> Additionally, black farmers in several states began to farm cotton as their primary crop during this time period.<sup>75</sup> When the cotton market drastically declined at the turn of the twentieth century, many suffered vast economic loss.<sup>76</sup>

Black farmers also suffered from overt racism from their peers and neighbors.<sup>77</sup> While this factor stands out as an individual reason for the decline of their farming community, it is also important to realize racism permeated into all other causes as a contributing factor as well.<sup>78</sup> Fear and intimidation were a part of daily life in areas where black-operated farms could be found.<sup>79</sup> As times were changing, non-minorities made extensive efforts to maintain their superior social and economic positions in the farming community.<sup>80</sup> Indeed, “the determination to ‘keep the Negro in his place’ was, if anything, stronger after the Civil War than before.”<sup>81</sup> Confrontations from the Ku Klux Klan, hostility from white neighbors, and unequal treatment by local storekeepers were all common problems for black farmers.<sup>82</sup> Even white peers who would help finance or sell land to African-Americans “were not uncommonly threatened with physical violence.”<sup>83</sup>

Most importantly, the black farming community experienced drastic decline not only because of racism at the individual level but at the institutional level as well.<sup>84</sup> Governmental agencies, such as Farmer’s Home Association (now Farm Service Agency) and Agricultural Stabilization and Conservation Service, were trusted and tasked to aid the continued success of all farmers, but they often times completely overlooked the black population.<sup>85</sup> Many black farmers did not have access to these programs or were simply unaware of their existence prior to the 1960s.<sup>86</sup> Those who did attempt to seek aid, financing, or counsel through these

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74. *Id.* at 164.

75. *Id.* at 155.

76. *See id.* at 162.

77. GILBERT ET AL., *supra* note 31, at 10.

78. *Id.*

79. *See* BROWNING, *supra* note 24, at 10.

80. *Id.* at 15-16.

81. *Id.*

82. GILBERT ET AL., *supra* note 31, at 2.

83. *Id.* at 16.

84. *See* JOHN A HANNAH ET. AL., U.S. COMM’N ON CIVIL RIGHTS, EQUAL OPPORTUNITY IN FARM PROGRAMS: AN APPRAISAL OF SERVICES RENDERED BY AGENCIES OF THE UNITED STATES DEPARTMENT OF AGRICULTURE 8 (1965).

85. GILBERT ET AL., *supra* note 31, at 9, 10.

86. *Id.* at 9; Valerie Grim, *Black Participation in the Farmers Home Administration and Agricultural Stabilization and Conservation Service, 1964-1990*, 70 AGRIC. HIST. 321, 336 (1996).



various programs were often met with enmity or the turn of a cheek.<sup>87</sup> The reality was many of the local branches of these programs were implemented by committees with no black members, and therefore, the voices and needs of the black community were pushed aside.<sup>88</sup> Due to these circumstances, black-operated farms were not provided the technical assistance and financial services they desperately needed to survive.<sup>89</sup> Even the USDA and its corresponding agencies were found to exclude African-Americans from programs designed to raise the economic and education levels of thousands of rural farmers.<sup>90</sup> Dr. John Boyd, Jr., founder of the National Black Farmers Association, recalls his interactions with the agency by stating “[t]he government really treated Black farmers worse than the dirt that we worked.”<sup>91</sup> As a farmer himself, he encountered incidents where “White loan officers at the USDA tossed his loan application in the trash, spat on him, and even slept during the loan-application interview process”.<sup>92</sup> One loan officer even threatened to withhold funds because Boyd answered questions with “yes” instead of “yes, sir.”<sup>93</sup> While this is just one man’s experience, it exemplifies the unfortunate reality thousands of black farmers faced as they struggled to make a living during this time.

The combination of these factors led to shocking statistics. Nearly 94% of black-operated farms have been lost since the original peak in 1920.<sup>94</sup> By 1982, the African-American farming community was comprised of a mere 30,000 members, which was estimated as 2% of the nation’s total.<sup>95</sup> “By 2003, [black farmers] accounted for less than 11[%] of the nation’s farmers, and cultivated less than .003[%] of farmland.”<sup>96</sup> Indeed, they were our nation’s “invisible farmers,” nowhere to be seen. Fortunately, for the reasons which follow, we are finally seeing the rise in the African-American farming community we desperately need.

## V. THE RECENT GROWTH OF THE AFRICAN-AMERICAN FARMING

87. See GILBERT ET AL., *supra* note 31, at 11.

88. *Id.* at 10-11.

89. See U.S. COMM’N ON CIVIL RIGHTS, EQUAL OPPORTUNITY IN FARM PROGRAMS: AN APPRAISAL OF SERVICES RENDERED BY AGENCIES OF THE UNITED STATES DEPARTMENT OF AGRICULTURE 8-9 (1965).

90. Sylvia A. Harvey, *For Decades, the USDA Was Black Farmers’ Worst Enemy. Here’s how It Became an Ally*, YES! MAG. (July 8, 2016), <https://perma.cc/DLA7-H4J5>.

91. *Id.*

92. *Id.*

93. *Id.*

94. BROWNING, *supra* note 24, at 2.

95. Sylvia A. Harvey, *The Resurgence of Black Farmers*, CIVIL EATS (July 15, 2016), <https://perma.cc/9E84-UXES>.

96. Ficara & Williams, *supra* note 18.

## COMMUNITY

While studies and reports indicate growth is slight, it is steadily occurring.<sup>97</sup> In 2012, there was an estimated 44,000 black farmers within our nation's borders.<sup>98</sup> This total was an increase of around 15% since the early 2000s.<sup>99</sup> This resurgence in the population finally began to occur due to purposeful actions made on several levels.

First, many black farmers and their corresponding groups simply became frustrated with the current process and began to organize protests, marches, and rallies.<sup>100</sup> These protests of discrimination and institutional racism drew national attention and led to political changes at the governmental level.<sup>101</sup> For instance, in December of 1996, the National Association of Black Farmers, the Federation of Southern Cooperatives/Land Assistance Fund, and other groups rallied at the USDA's Jamie Whitten Building in Washington, D.C.<sup>102</sup> Their actions eventually led to then Secretary of Agriculture Dan Glickman finding the departmental Civil Rights Action Team (CRAT), which holds hearings throughout the country to investigate alleged racial bias in the farming industry.<sup>103</sup> Through these rallies and the founding of CRAT, longstanding civil rights issues facing the USDA were brought to the forefront and the public eye.<sup>104</sup>

Second, CRAT was not the only policy change made on the federal level.<sup>105</sup> The United States Commission on Civil Rights, which was created by the Civil Rights Act of 1957, purposefully began to take more action regarding black farmers and their decline.<sup>106</sup> Specifically, it released multiple accounts of civil rights violations and discriminatory practices occurring in USDA branches and recommended action plans to combat these problems.<sup>107</sup> Its reports created action steps focused on abandoning segregation, unequal treatment, and exclusions barring African-Americans from the services and benefits of their programs.<sup>108</sup>

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97. Harvey, *supra* note 90.

98. *Id.*

99. *Id.*

100. Wood & Gilbert, *supra* note 55, at 58.

101. *Id.*

102. *Id.*

103. *Id.*

104. See CIVIL RIGHTS ACTION TEAM, CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF AGRICULTURE 3 (1997).

105. See *Mission*, U.S. COMMISSION ON CIVIL RIGHTS (June 13, 2016), <https://perma.cc/K2RE-3AUX>.

106. See U.S. COMM'N ON CIVIL RIGHTS, *supra* note 89, at 100; *id.*

107. See *id.* at 109.

108. See *id.*

Furthermore, the USDA completely restructured itself to expose and stop *institutional* racism in its tracks.<sup>109</sup> In April 2009, then United States Secretary of Agriculture Tom Vilsack sent an organization-wide memo to all employees of the USDA stating there would be zero tolerance for any form of discrimination moving forward.<sup>110</sup> From his first day in office, it was his goal “that the USDA achieves Abraham Lincoln’s vision of ‘the people’s department’ where each employee and customer is treated fairly and equitably.”<sup>111</sup> Since this pledge, he has directed a comprehensive program to improve the USDA’s record on civil rights and move the department into a new era.<sup>112</sup> The mission of this movement was simple: to transform the USDA of the past into a model employer and service provider that cares for all farmers regardless of race.<sup>113</sup> While there still may be progress to be made, the fight against institutional racism is well on its way.

Third, and most importantly, there has been a recent growth in the African-American farming community due to progress made in the courtroom. By 1999, the correlation between the USDA’s past of systematic discrimination and the decline of black farming was no secret in the legal community.<sup>114</sup> Courts themselves had noted that rather than the department being recognized as “the people’s department” by serving all farmers as President Lincoln envisioned, it was known to many as the “last plantation” because of its key role in forcing many minority and disadvantaged farmers out of the profession.<sup>115</sup> However, the court finally found what it hoped would be fair resolutions to these problems in several key decisions.<sup>116</sup>

The first and most well-known court decision in this area, *Pigford v. Glickman*, told the story of James Beverly.<sup>117</sup> Mr. Beverly was a successful African-American farmer with a bright future.<sup>118</sup> He was promised a loan by the USDA to build farrowing houses and breed hogs on his land, and he relied on this promise.<sup>119</sup> Unfortunately, because of Department practices and the color of his skin, Beverly never saw this loan and subsequently lost his farm, and his livelihood, as a result.<sup>120</sup> Beverly was just one, individual example that comprised the thousands of farmers

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109. *Civil Rights at USDA: A Backgrounder on Efforts by the Obama Administration*, USDA 1, <https://perma.cc/YH7C-J6MP> (archived Mar. 19, 2019).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *See* *Pigford v. Glickman*, 185 F.R.D. 82, 87 (D. D.C. 1999).

115. *Pigford*, 185 F.R.D. at 85.

116. *See id.*

117. *Id.* at 87.

118. *Id.*

119. *Id.* at 112.

120. *Id.*

who were parties in this class-action lawsuit.<sup>121</sup> At last, these farmers were able to charge the county offices of the USDA for its systematic and habitual discrimination that occurred throughout the twentieth century.<sup>122</sup> On April 14, 1999, United States District Judge Paul L. Friedman approved and entered a consent decree which provided two possible tracks of relief for these African-American farmers who suffered economic harm due to racial discrimination.<sup>123</sup>

The purpose of the decree was to “ensure that in the future all class members in their dealings with the USDA will ‘receive full and fair treatment’ that is ‘the same as the treatment accorded to similarly situated white persons.’”<sup>124</sup> Farmers identified in the protected class could choose between pursuing “Track A” or “Track B.”<sup>125</sup> Under Track A, a claimant was required to submit “substantial evidence” demonstrating he or she indeed suffered racial discrimination by the Department in a credit transaction.<sup>126</sup> If the claimant satisfied this burden and the adjudicator found in their favor, they received, among other secondary benefits, compensation in the amount of \$50,000 and “forgiveness of all debt owed to the USDA incurred under or affected by the program that formed the basis of the claim.”<sup>127</sup> On the other hand, Track B was an option for farmers who had more extensive documentation of racism and discrimination, as it was a higher burden to satisfy.<sup>128</sup> Under this route, an arbitrator would hold a one day adversarial hearing to determine if the claimant had established discrimination by a preponderance of the evidence, and a decision would be rendered within thirty to sixty days.<sup>129</sup> If discrimination was established and the farmer suffered injury as a result, he or she was entitled to actual damages, the return of inventory property which was foreclosed upon, and other injunctive relief.<sup>130</sup> Unlike Track A, there was no limit to the damages a claimant could recover under Track B.<sup>131</sup> This decision by the court, which became commonly known as *Pigford I*, was appealed to the United States Court of Appeals and subsequently affirmed on March 31, 2000.<sup>132</sup>

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121. Kate Pickert, *When Shirley Sherrod Was First Wronged by the USDA*, TIME (July 23, 2010), <http://content.time.com/time/nation/article/0,8599,2006058,00.html?xid=rss-fullnation-yahoo>.

122. Wood & Gilbert, *supra* note 55, at 56-60.

123. *Pigford*, 185 F.R.D. at 113.

124. *Id.* at 95.

125. *Id.*

126. *Id.* at 96.

127. *Id.* at 95-97.

128. *Id.* at 97.

129. *Id.*

130. *Id.*

131. *Id.* at 95.

132. *Pigford v. Glickman*, 206 F.3d 1212, 1219 (D.C. Cir. 2000).

Near this same time, countless other African-American farmers had filed a second class action suit against the USDA, *Brewington v. Glickman*.<sup>133</sup> Many of the plaintiffs comprising the putative class in this second case included those who had officially filed their discrimination complaints against the USDA after the cut-off date for *Pigford I*.<sup>134</sup> The allegations brought forth in *Brewington* mirrored those in the *Pigford I* settlement, and therefore, both cases were consolidated by the court and fell under the initial *Pigford I* consent decree.<sup>135</sup> Under this decree, *Pigford I* became the largest civil rights settlement in history.<sup>136</sup>

While this first settlement was “a first step of immeasurable value,” more than 58,000 African-American farmers never saw their claims reach the inside of a courtroom due to filing after the *Pigford I* deadline on October 12, 1999.<sup>137</sup> Therefore, because of the countless number of applicants who never had the merits of their claims heard, Congress took action.<sup>138</sup> On June 18, 2008, Congress passed, and President George W. Bush signed, a law giving any remaining African-American farmers an opportunity to pursue discrimination claims which would have fallen under the umbrella of *Pigford I* but were not considered due to their filing after the due date.<sup>139</sup> “This law was passed as section 14012 of the Farm, Conservation, and Energy Act of 2008 (2008 Farm Bill).”<sup>140</sup>

While it did not reopen the initial *Pigford I* settlement, it did provide farmers with a new right to sue the USDA.<sup>141</sup> These new claims which were eventually filed were then consolidated into a single case, *In Re Black Farmers Discrimination Litigation*.<sup>142</sup> This second settlement, which became known as *Pigford II*, resulted in a 1.25 billion dollar payout to thousands of black farmers all across the nation.<sup>143</sup> In coming to its decision, the court echoed the sentiments of *Pigford I* in that “[n]othing can completely undo the discrimination of the past or restore lost land or lost opportunities....”<sup>144</sup> However, it viewed these settlements as steps which

133. *Brewington v. Glickman*, 185 F.R.D. 82, 90 (D. D.C. 1999).

134. *Id.*

135. *Id.* at 91; TADLOCK COWAN & JODY FEDER, CONG. RESEARCH SERV., THE PIGFORD CASES: USDA SETTLEMENT OF DISCRIMINATION SUITS BY BLACK FARMERS 3 (2013).

136. DISCRIMINATION LAWSUITS, U.S. DEP'T OF AGRIC., <https://perma.cc/CQC3-73JS> (archived Mar. 19, 2019).

137. *Pigford*, 185 F.R.D. at 113; DISCRIMINATION LAWSUITS, *supra* note 136, at 1.

138. COWAN & FEDER, *supra* note 135, at 7.

139. DISCRIMINATION LAWSUITS, *supra* note 136, at 1.

140. H.R. 2419, 110th Cong.; *Id.* at 1.

141. COWAN & FEDER, *supra* note 135, at 7.

142. *Id.*

143. *In Re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 42 (D. D.C. 2011).

144. *Id.*

were long overdue that would finally provide the relief to which thousands of black farmers were entitled.<sup>145</sup>

When the settlements from *Pigford I* and *Pigford II* were eventually decided, their repercussions had mixed effects on society.<sup>146</sup> Many believed they were magnets for fraud, as critics stated the very design of the settlements encouraged farmers to lie about experiences with discrimination.<sup>147</sup> Some viewed the decisions as a “runaway train,” which would allow compensation to countless unsubstantiated claims.<sup>148</sup> A few even referred to the payouts as a complete waste of billions of dollars.<sup>149</sup>

Yet, despite this criticism, the *Pigford* settlements also represented much more. They represented justice, equality, and a new era of hope for farming everywhere.<sup>150</sup> These settlements were to rectify the decades of wrongdoing and discrimination that occurred at the institutional level and quite literally revive the African-American farming community.<sup>151</sup> There are thousands of black farmers, many of whom gave up on ever seeing justice done in their lifetimes, who finally received compensation for their losses.<sup>152</sup>

Furthermore, not only has there been financial progress due to these settlements, but we have also seen legislative impacts as well.<sup>153</sup> Due to a groundbreaking first step by Judge Friedman in *Pigford I*, federal bills such as the Pigford Claims Remedy Act and the African-American Farmers Benefits Relief Act were passed.<sup>154</sup> These bills, like many others, ensured that any black farmer who had a valid claim of discrimination against the USDA and was subsequently harmed would not go unheard or unnoticed.<sup>155</sup> They were put forth due to the high

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145. *Id.*

146. See Sharon LaFraniere, *U.S. Opens Spigot after Farmers Claim Discrimination*, N.Y. TIMES (April 25, 2015), [http://www.nytimes.com/2013/04/26/us/farm-loan-bias-claims-often-unsupported-cost-us-millions.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/04/26/us/farm-loan-bias-claims-often-unsupported-cost-us-millions.html?pagewanted=all&_r=0).

147. *Id.*

148. Conor Friedersdorf, *How Did Progressive Journalists Get Pigford So Wrong?*, ATLANTIC (May 7, 2013), <https://perma.cc/2NX9-8DNQ>.

149. Daniel Foster, *Pigford's Harvest*, NAT'L REV. (Feb. 17, 2011), <https://perma.cc/Z5EA-B4F6>.

150. See Black Farmers & Agriculturists Association, *Victory in Court, Defeat on the Ground: The Legacy of the Historic Pigford Class Action Lawsuit for Black Farmers*, KUUMBA REPORT (Feb. 2015), <https://perma.cc/6PMT-HY9T>.

151. U.S. DEP'T OF AGRIC., WHITE PAPER: THE PIGFORD SETTLEMENT: GRADING ITS SUCCESS AND MEASURING ITS IMPACT 1 (2017).

152. *Id.*

153. See H.R. 899, 110th Cong. (2008); H.R. 558, 110th Cong. (2008).

154. See H.R. 899; H.R. 558.

155. H.R. 899; H.R. 558.

congressional interest to provide relief for farmers who may have simply filed late yet still desperately needed assistance.<sup>156</sup> No farmer in need would be left behind.

There has also been more transparency in the courtroom since the establishment of the *Pigford* settlements.<sup>157</sup> Since the first wave of black farmers stepped forward in *Pigford I*, several additional decisions regarding alleged discrimination by the USDA towards other minority farming groups have been decided.<sup>158</sup> For example in *Keepseagle v. Veneman*, a number of Native-American farmers followed in the footsteps of the *Pigford* class and filed suit against the USDA for discriminatory practices in the disbursement of loans and funds.<sup>159</sup> They were successfully certified as a class, and \$760 million was allocated for settlement on April 28, 2011.<sup>160</sup> In *Garcia v. Johanns* and *Love v. Johanns*, a group of Hispanic farmers and female farmers brought forth similar claims against the USDA, respectively.<sup>161</sup> While both groups were eventually denied class status and certification, as of 2012, litigation was still ongoing and there was still hope that justice may be served to any valid claims.<sup>162</sup> Indeed, the legal records from the *Pigford* settlements have not only provided an avenue for women, Native Americans, and Hispanics to contest prejudicial Department practices, but it has also offered historians the opportunity to delve further into the topic of USDA discrimination as a whole.<sup>163</sup>

Most importantly, despite criticism, these settlements led to structural changes within the USDA itself.<sup>164</sup> For example, the Department made significant changes within its daily operations by dedicating seventy grants towards an effort to better serve minority and disadvantaged farmers.<sup>165</sup> Additionally, in an effort to interact closely with the National Black Farmers Association, the Department

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156. COWAN & FEDER, *supra* note 135, at 10.

157. See Stephen Carpenter, *The USDA Discrimination Cases: Pigford, In Re Black Farmers, Keepseagle, Garcia, and Love*, 17 DRAKE J. AGRIC. L. 1, 1 (2012).

158. See *Keepseagle v. Veneman*, No. Civ.A.9903119EGS1712, 2001 WL 34676944, at \*1 (D. D.C. Dec. 12, 2001); *Garcia v. Johanns*, 444 F.3d 625, 625 (D.C. Cir. 2006); *Love v. Johanns*, 439 F.3d 723, 723 (D.C. Cir. 2006).

159. Carpenter, *supra* note 157, at 21.

160. *Id.* at 14.

161. *Id.*

162. *Id.*

163. See Pete Daniel, *Farmland Blues: The Legacy of USDA Discrimination*, SOUTHERN SPACES (Oct. 30, 2013), <https://perma.cc/U7LW-Q8MC>.

164. See Press Release, USDA, USDA Announces Assistance for Socially Disadvantaged Farmers and Ranchers (Aug. 8, 2012), <https://perma.cc/PHR4-5WJB>.

165. *Id.*

founded the Minority Farmers Advisory Committee in 2015.<sup>166</sup> The purpose of the Committee is to provide “farmer, rancher, industry and public perspectives on USDA strategies, policies and programs that impact minority farmers and ranchers.”<sup>167</sup> While these actions are merely highlights of what the USDA has done since the *Pigford* settlements, evidence indicates the Department is placing increased emphasis on progressing past its mistakes of the twentieth century and welcoming black and other minority farmers as its clients and partners.<sup>168</sup>

#### VI. IS THIS PROGRESS ENOUGH?

With all of these changes noted in the courtroom, the government, and in the profession, one inevitably asks the final questions: is this enough? Has life for black farmers truly improved? Most importantly, should we be doing more? As is the case with any complex question, there is a complex answer.

“The bottom line for a settlement like this is to ask: to what extent have the victims of discrimination been helped?”<sup>169</sup> Fortunately, there are concrete statistics which shed light on the outcome. As of April 1, 2012, 69% of the claimants that chose Track A in the *Pigford* settlements prevailed on their claims.<sup>170</sup> Furthermore, 62% of the claimants that chose Track B were similarly successful.<sup>171</sup> The government provided approximately \$1.06 billion in cash relief, estimated tax payments, and debt relief to farmers who filed under both tracks.<sup>172</sup> In other words, tens of thousands of black farmers who were wrongly discriminated against received the justice they sought.<sup>173</sup> Additionally, as of September 2, 2016, the USDA had a mere 400 administrative claims still pending, which is a 97% reduction from the previous five years.<sup>174</sup> By August 19, 2016, more than 5,000 USDA employees also received diversity training under the direct watch of Secretary Vilsack.<sup>175</sup>

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166. Press Release, USDA, USDA Names Minority Farmers Advisory Committee (Nov. 6, 2015), <https://perma.cc/2KN9-RZ4T>.

167. *Id.*

168. U.S. DEP’T OF AGRIC., *supra* note 151, at 1.

169. *Id.* at 7.

170. *Id.* at 6.

171. *Id.*

172. *Id.*

173. *Id.* at 7.

174. Erin Jordan, *Fact Checker: Vilsack claims on USDA Discrimination Settlements, Training*, GAZETTE (Sep. 2, 2016), <https://perma.cc/FC6L-ZLMA>.

175. *Id.*



However, while it is clear progress has been made, circumstances for black and minority farmers today are still far from ideal.<sup>176</sup> Simply put, there is still a trust issue factor between these farmers and governmental agencies due to the many decades of systematic racism which went unchecked.<sup>177</sup> There were very few people employed by the USDA during these times that were ever terminated or penalized for these acts.<sup>178</sup> Moreover, Dr. Boyd himself has stated racism is still an issue for black farmers nationwide.<sup>179</sup> As founder of the National Black Farmers Association, even he is still treated differently than his non-minority peers, and there does not seem to be an easy fix to the problem.<sup>180</sup>

Progress has been made, yes. However, many issues—such as those cited directly above—are still present for many African-American farmers today. Therefore, moving forward, this Note aims to assist both future scholars and advocates on this topic by recommending that more emphasis be placed on the future success of black farmers at the individual, community, and institutional levels. A holistic method such as this would allow black farmers to reclaim a seminal impact on American agriculture and lead to many benefits to society as a whole.<sup>181</sup>

For instance, black-operated farms have a history of significantly aiding in beef cattle production in the nation.<sup>182</sup> As of 2007, 46% of all African-American farms were classified as beef cattle farms and ranches, compared to 30% of all farms nationwide.<sup>183</sup> Based upon their crop or area of focus, these farms have the potential and ability to lead key agricultural businesses.<sup>184</sup>

Additionally, the return and success of black farmers could strengthen the health and welfare of not only citizens in Iowa, but millions of men, women, and

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176. Madeleine Thomas, *What Happened to America's Black Farmers?*, GRIST (Apr. 24, 2015), <https://perma.cc/3HQU-LVKC>.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. See Shakara S. Tyler & Eddie A. Moore, *Plight of Black Farmers in the Context of USDA Farm Loan Programs: A Research Agenda for the Future*, 1 PROF. AGRIC. WORKERS J. 1, 9 (2013).

182. See 2007 CENSUS OF AGRICULTURE BLACK FARMERS, USDA 3 (2004) [https://www.agcensus.usda.gov/Publications/2007/Online\\_Highlights/Fact\\_Sheets/Demographics/black.pdf](https://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Demographics/black.pdf).

183. *Id.*

184. See *id.*

children throughout the entire United States as well.<sup>185</sup> It is no secret obesity is becoming more common and serious in the United States, especially among certain ethnicities and socioeconomic groups.<sup>186</sup> The resurgence and success of black farmers, both in Iowa and abroad, creates more opportunities for consumers to access healthier food alternatives that are grown directly from nearby farms.<sup>187</sup> The growth of these alternatives, such as string beans, onions, and other fresh vegetables, could directly impact the number of Americans affected by food health illnesses.<sup>188</sup>

Specifically to Iowa, black farmers have the power to play a primary role in the future of the state's agriculture. Iowa currently ranks number one nationally in the production of corn.<sup>189</sup> In fact, "[i]n 2015, Iowa farmers produced more than 2.51 billion bushels of corn for grain according to the U.S. Department of Agricultural Statistics Service."<sup>190</sup> The importance of this grain cannot be overlooked, as it is used for ethanol production, livestock feed, and food and industrials usage.<sup>191</sup> On average, Iowa produces more corn than most countries, and the grain quite literally fuels the state's economy.<sup>192</sup> Corn is the top crop item per acre on black-operated farms in Iowa, and these farms annually contribute to these impressive state totals.<sup>193</sup> By aiding the regrowth of African-American farmers within state lines, Iowa is not simply assisting a mere sub-population within the profession. Rather, Iowans are ensuring the continued success of the entire state by increasing its agricultural workforce.<sup>194</sup>

Progress has been made. Society has evolved. The USDA has acknowledged its past. Most importantly, the *Pigford* settlements and the decisions made in the courtroom will be landmark factors which will open the eyes of students and historians alike to the decades of struggle black farmers faced.<sup>195</sup> Yet, there is still more to be done. Racism persists, but efforts continue to be waged to right these

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185. See *Farmer John Boyd Jr. Wants African-Americans to Reconnect with Farming*, NPR (Feb. 14, 2016), <http://www.npr.org/sections/thesalt/2016/02/14/466565785/farmer-john-boyd-jr-wants-african-americans-to-reconnect-with-farming> [hereinafter *Farmer John*].

186. *Adult Obesity Facts*, CTR. FOR DISEASE CONTROL & PREVENTION (archived June 21, 2018), <https://perma.cc/UYL5-3GEH>.

187. See *Farmer John*, *supra* note 185.

188. *Id.*

189. *Corn Facts*, IOWA CORN, <https://perma.cc/3WFX-SSUB> (archived June 21, 2018).

190. *Id.*

191. *Id.*

192. *Id.*

193. 2102 CENSUS OF AGRICULTURAL HIGHLIGHTS, *supra* note 60, at 10.

194. See *id.* at 9.

195. Daniel, *supra* note 163.

egregious wrongs.<sup>196</sup> Even today, many black farmers continue to fight against the discrimination that confronts them because “. . . the door is not closed yet.”<sup>197</sup> Fortunately, societal awareness regarding the past, present, and future of black farmers has continued to increase, and many have joined this fight.<sup>198</sup> Rightfully so, because only when the wrongs committed against black farmers have been addressed at *all* levels, when “the door” is finally closed permanently, will society and the farming profession benefit as a whole moving forward.<sup>199</sup>

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196. Waymon R. Hinson & Edward Robinson, “We Didn’t Get Nothing:” *The Plight of Black Farmers*, J. OF AFR. AM. STUD. 283, 299 (2008).

197. Fayemi Shakur, *A Difficult Harvest for America’s Black Farmers*, N.Y. TIMES (Oct. 24, 2016), <https://perma.cc/NV4U-X776>.

198. See GILBERT ET AL., *supra* note 31, at 16.

199. See U.S. DEP’T OF AGRIC., *THE PIGFORD SETTLEMENT: GRADING ITS SUCCESS AND MEASURING ITS IMPACT* 1 (2017).