



U.S. Department of Justice  
Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

March 10, 2025

The Honorable Mike Johnson  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

Re: Race- and Sex-Based Preferences in USDA Emergency Relief Programs

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has concluded that certain aspects of United States Department of Agriculture (USDA) emergency relief programs violate the Constitution, that the Department of Justice will no longer defend those aspects of the programs in court, and that the Department has taken that position in ongoing litigation. See Status Report, *Strickland v. United States Dep't of Agric.*, No. 24-cv-60 (N.D. Tex. Feb. 10, 2025). Specifically, the Department has determined that the programs are unconstitutional to the extent they include preferences on the basis of race and sex.

Over the past few years, Congress has appropriated billions of dollars to support farmers facing crop loss and other hardships caused by natural disasters and disease. See, e.g., Disaster Relief Supplemental Appropriations Act, 2022, Pub. L. 117-43, Div. B, Tit. I, 135 Stat. 356-357; Disaster Relief Supplemental Appropriations Act, 2023, Pub. L. No. 117-328, Div. N, Tit. I, 136 Stat. 5201-5202. The Secretary of Agriculture has developed programs over the years for allocating and distributing those appropriated funds. Several of USDA's programs provide for increased payments to farmers who are "historically underserved" or "socially disadvantaged." The Department previously recognized that aspects of the programs included race- and sex-based preferences. See Gov't Mot. for Summ. J. at 22, *Strickland, supra* ("USDA's application of the 'historically underserved' and 'socially disadvantaged' designations in the challenged policies does consider race and sex, and so their use must satisfy strict scrutiny."). For example, Track 1 of the Emergency Relief Program 2022 (ERP 2022) singles out "underserved" farmers to receive a refund of their crop-insurance fees and premiums in addition to the sums that they would otherwise receive under the program if they were not designated as "underserved." See 88 Fed. Reg. 74,404, 74,410-74,411 (Oct. 31, 2023). In *Strickland, supra*, litigants have challenged the lawfulness of eight USDA emergency relief programs including ERP 2022, arguing (among other

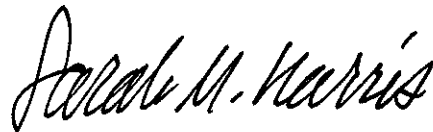
things) that the programs include race- and sex-based preferences that violate the Equal Protection Clause.

In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*), the Supreme Court recently held that race-based preferences in the admissions systems at Harvard and the University of North Carolina violated the Equal Protection Clause. *Id.* at 217-218. In reaching that conclusion, the Court rejected the argument that race-based admissions processes can be justified by the government's interest in remedying "past societal discrimination." *Id.* at 226 (citation omitted). The Court explained that such an interest cannot justify a race-based preference that "imposes disadvantages" on people who "bear no responsibility" for the harms of past discrimination. *Ibid.* (citation omitted).

The Department has now reevaluated its litigating position in *Strickland* and has determined that the USDA's emergency relief programs challenged in *Strickland* are unconstitutional to the extent they discriminate on the basis of race or sex. The Department previously defended the race- and sex-based preferences as justified by USDA's "interest and goal of remedying the persistent effects of past discrimination." *Strickland v. United States Dep't of Agric.*, 736 F. Supp. 3d 469, 476 (N.D. Tex. 2024) (citation omitted). Consistent with *SFFA*'s rejection of a similar justification in the university-admissions context, the Department has determined that an interest in remedying past discrimination does not justify the use of race- and sex-based preferences in the challenged USDA emergency relief programs. The Department, however, continues to defend other aspects of the USDA programs that employ race- and sex-neutral criteria for allocating funding to farmers.

Please let me know if I can be of further assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Sarah M. Harris". The signature is written in a cursive, flowing style.

Sarah M. Harris  
Acting Solicitor General