

BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

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| <p>Food Chain Workers Alliance, Rural Community Workers Alliance, HEAL Food Alliance, American Friends Service Committee – Iowa, Idaho Organization of Resource Councils, and Forward Latino,</p> <p style="text-align:center">Complainants,</p> <p>v.</p> <p>Tyson Foods, Inc., Tyson Fresh Meats, Inc., Keystone Foods, LLC, JBS USA, Inc., and Pilgrim’s Pride Corp.,</p> <p style="text-align:center">Respondents.</p> | <p>COMPLAINT UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §§ 2000d-2000d-7; 7 C.F.R. §§ 15.1-15.12</p> |
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I. INTRODUCTION

Respondents, meat processing corporations that have received over \$150 million dollars in federal contracts during 2020, are engaged in racial discrimination. Meat processing workers, the majority of whom are Black, Latino, and Asian bear an adverse disparate impact from exposure to COVID-19 caused by Respondents’ Corporate Processing Policies that favor a processing capacity objective – the bottom line – over common-sense measures to protect workers’ health and safety. In addition, when compared to Respondents’ management, workers are overwhelmingly exposed to the virus while white managers are not exposed to the same risks as the Black, Latino, and Asian workers on the “front lines.” The crowded and confined working conditions paired with frigid temperatures and long shifts allows COVID-19 to spread among workers in

meat processing plants. Tens of thousands of workers have contracted the virus, and over 100 have died.

Complainants Food Chain Workers Alliance, Rural Community Workers Alliance, HEAL Food Alliance, American Friends Service Committee – Iowa, Idaho Organization of Resource Councils, and Forward Latino (collectively “Food Chain Workers” or “Workers”) file this administrative civil rights complaint pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7, and the implementing regulations codified at Part 15 of Title 7 of the Code of Federal Regulations. Food Chain Workers allege that Tyson Foods, Inc., Tyson Fresh Meats, Inc., Keystone Foods, LLC, JBS USA, Inc., and Pilgrim’s Pride Corp. (collectively “Meat Processing Corporations” or “Corporations”) adopted their respective Policies after the onset of the COVID-19 pandemic in the United States on or about March 11, 2020.¹

This Complaint alleges that the Policies violate Title VI of the Civil Rights Act of 1964, which protects individuals from racial discrimination by recipients of federal financial assistance because the Policies (1) cause a disparate impact on Black, Latino, and Asian workers; and (2) represent a pattern or practice of racial discrimination. The Policies reject common-sense protective measures, including a 6-foot minimum of social distancing among workers critical to mitigate the risk of exposure to COVID-19. The Policies discriminate on the basis of race by causing a substantial adverse effect on Black, Latino, and Asian workers. In addition, publicly available facts indicate a pattern or practice of discrimination. Existing social inequities compound this discrimination for Black and

¹ From January 1, 2020 through July 7, 2020, Tyson and JBS have received \$109,389,928 and \$45,774,572 worth of federal contracts, respectively, through Farm Bill nutrition programs and the Trade Mitigation Program.

Latino workers, including higher death rates and higher hospitalization rates than white people.

Recent data from the Centers for Disease Control and Prevention corroborate this Complaint. On July 7, 2020, the Centers for Disease Control published data collected through May 31, 2020, analyzed the COVID-19 harm suffered by workers in meat processing facilities, and discussed the measures implemented – or more importantly not implemented – at such facilities.² The CDC Disparity Report found that, based on 21 states reporting race and ethnicity data, “Hispanic and Asian workers might be disproportionately affected by COVID-19 in this workplace setting.”³ The Report does not identify *any* instances of facilities reporting adoption of the minimum 6-foot social distancing measure to protect workers on processing lines.⁴

The Corporations have known for months that several common-sense measures alleviate the impact to workers. On or after April 26, 2020 and in response to guidance from the Centers for Disease Control and Prevention (“CDC”) and Occupational Safety and Health Administration (“OSHA”),⁵ the Corporations further refined and amended the Policies by declining to adopt CDC-recommended measures that would secure a minimum of 6-feet of separation between workers on the processing line. The Corporations’ Policies continue to

² M. Waltenburg, et al., CDC, *Update: COVID-19 Among Workers in Meat and Poultry Processing Facilities — United States, April-May 2020*, 69 MORBIDITY & MORTALITY WEEKLY REPORT, EARLY RELEASE (Jul. 7, 2020), <http://dx.doi.org/10.15585/mmwr.mm6918e3> [hereinafter CDC DISPARITY REPORT] [attached as Ex. 1].

³ *Id.*

⁴ *See id.*

⁵ CDC & OSHA, Interim Guidance for Meat & Poultry Processing Workers & Employers, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html> [hereinafter “CDC Guidance”] [attached as Ex. 2].

place Black, Latino, and Asian front line workers at risk of exposure to COVID-19. Food Chain Workers therefore allege and request the Office of Civil Rights to investigate the disparate impact and disparate treatment of meat processing workers since the onset of the COVID-19 pandemic.

Because this Complaint is an administrative complaint, Food Chain Workers do not bear the burden of proof, including whether the Corporations lack a substantial legitimate justification for the Policies, or that less discriminatory alternatives exist.⁶ Nevertheless, this Complaint demonstrates the Policies lack a substantial legitimate justification. The President has designated meat and poultry as critical materials for domestic use. However, the Policies have the objective of securing pre-pandemic processing capacity, including capacity to meet export demand. The Corporations could process meat and poultry to meet domestic demand and avoid the disparate impact. Workers also demonstrate that adding processing shifts and increasing social distancing during processing work could meet the pre-pandemic processing capacity objective, thus achieving a less discriminatory alternative to rejecting measures recommended by the CDC.

II. THE COMPLAINANTS

Food Chain Workers Alliance

The Food Chain Workers Alliance is a decade old coalition of 33 worker-based organizations whose members plant, harvest, process, pack, transport, prepare, serve, and sell food. Its aim is to improve working conditions and wages for all workers along the

⁶ The Office of Civil Rights, upon accepting the complaint for investigation, will gather evidence and determine whether Respondents are violating Title VI, including whether a substantial legitimate justification a less discriminatory alternative exist. U.S. Dep't of Justice, Title VI Legal Manual, Section VII: Proving Discrimination – Disparate Impact, at 33-34, 40 [hereinafter Title VI Legal Manual] [attached as **Ex. 3**].

food chain. It works towards this objective by supporting worker led organizing, advocacy, and policy campaigns including trainings to inform workers of their workplace rights and build strategies to address workplace exploitation, campaigns to use government purchasing power to alter how food producers treat their workers, local and federal policy advocacy to strengthen worker protections, and movement building to develop alliances between pro-worker groups.

Rural Community Workers Alliance

Complainant Rural Community Workers Alliance (RCWA) is a Missouri non-profit corporation with its principal place of business in Milan, Missouri. RCWA is a membership organization whose members consist exclusively of workers in Northern Missouri, including members who work at meat processing plants. Since the onset of the COVID-19 pandemic, at the direction of its worker members, RCWA has diverted its resources to focus almost entirely on the immediate threat to health and safety due to COVID-19, particularly the lack of personal protective equipment, paid sick leave, and overcrowding. Because COVID-19 exposure at the Plant also places families and the community at risk, RCWA has also been working on ways to protect people once workers leave the plant. This has included research and hosting virtual meetings about these issues, such as instructing workers about how to decontaminate at home.

HEAL Food Alliance

Complainant HEAL Food Alliance was co-founded by the Food Chain Workers Alliance, the National Black Food & Justice Alliance, Real Food Generation, and the Union of Concerned Scientists. HEAL is a multi-sector, multi-racial coalition that builds collective power to transform our food & farm systems, with racial justice and

community self-determination at the core. HEAL is led by 55 member organizations, and strive to amplify the experience and expertise of frontline communities who are most burdened by the disparities of our current system. HEAL members represent over 2 million rural and urban farmers, ranchers, fishers, farm and food chain workers, indigenous groups, scientists, public health advocates, policy experts, community organizers, and activists nationwide. HEAL is committed to achieving food and farm systems that are healthy for our families, accessible and affordable for all communities, and fair to the hard-working people who grow, distribute, prepare, and serve our food — while protecting the air, water, and land we all depend on. HEAL does this by connecting and uniting groups from different sectors, building and advancing a shared political analysis, supporting member-led campaigns, and operating a School of Political Leadership to train our members and allies to lead policy change.

American Friends Service Committee – Iowa

American Friends Service Committee – Iowa is a non-profit corporation that has worked to serve and empower the immigrant community in Iowa since 1995 by providing low-cost immigration legal services, developing effective organizing strategies to address local concerns, and building leaders and coalitions to bring about positive systemic change.

Idaho Organization of Resource Councils

Complainant Idaho Organization of Resource Councils is a membership-based non-profit corporation which empowers people to improve the well-being of their communities, sustain family farms and ranches, transform local food systems, promote clean energy, and advocate for responsible stewardship of Idaho’s natural resources.

Forward Latino

Complainant Forward Latino is a non-profit, non-partisan advocacy and service organization with members across 28 states and the Commonwealth of Puerto Rico. Forward Latino is dedicated to assisting Latinos pursuing the American Dream and fulfills its mission through advocacy, civic engagement, and service delivery. Organizational priorities include civil rights, gun violence prevention, immigration, active duty/guard/veteran assistance, workplace safety and more. From the halls of Congress to rural America, Forward Latino is making a difference in our Hispanic community.

III. TIMELINESS OF THE COMPLAINT

A complaint must be filed within 180 days of the discriminatory act.⁷ The Meat Processing Corporations adopted their Corporate Processing Policies after COVID-19 began spreading rapidly in their meat processing facilities, beginning in March 2020.⁸ The Corporations adopted further policies and procedures following the CDC Guidance issued on April 26, 2020. Based on information and belief, such policies and procedures were not adopted uniformly on a single date, but rather over time since the onset of the COVID-19 pandemic in the United States beginning on or about March 11, 2020 when the World Health Organization declared a global pandemic. Accordingly, this Complaint is timely filed within the 180-day period.

⁷ 7 C.F.R. § 15.6.

⁸ See *infra* Section V.

IV. FINANCIAL ASSISTANCE TO A PROGRAM OR ACTIVITY

A. Programs & Activities.

The USDA's Agricultural Marketing Service (AMS) enters into contracts with the Meat Processing Corporations to procure meat and poultry from the Corporations as a whole or from certain plants, as specified in the contracts. Thus, Corporations, as corporate entities and specific plants named in AMS contracts, are "programs and activities" under Title VI. *See* 7 C.F.R. § 15.2(k)(3)(i), (ii).

The AMS administers the Food Purchase and Distribution Program (FPDP) as part of the Trade Mitigation Program. A primary objective of the USDA Trade Mitigation Program is to strengthen the agricultural economy and support agricultural jobs by mitigating "damage due to unjustified trade retaliation by foreign nations."⁹ The Corporations have received federal funds through FPDP contracts, a portion of which covers the cost of production, including meat processing workers' wages. Thus, such funding is, in part, for the purposes of providing employment necessary for production. 7 C.F.R. § 15.3(c).

The AMS also administers the Farm Bill child nutrition programs and other domestic food assistance programs. A self-evident, primary objective of these Farm Bill programs is to strengthen the agricultural economy and support agricultural jobs.¹⁰ The

⁹ *Food Purchase & Distribution Program* (last accessed Jul. 3, 2020), <https://www.ams.usda.gov/selling-food-to-usda/trade-mitigation-programs> [attached as **Ex. 4**].

¹⁰ *See, e.g.*, Press Release: Senator David Perdue: Farm Bill is a Jobs Bill (Jun. 28, 2018) ("One thing is very clear: this Farm Bill is indeed a jobs bill. Getting this across the finish line is simply a must for rural communities in Georgia and around the country."), <https://www.perdue.senate.gov/newsroom/press-releases/senator-david-perdue-farm-bill-is-a-jobs-bill> [attached as **Ex. 5**]; Press Release: Senate Passes Stabenow's Bipartisan 2018 Farm Bill (Jun. 28, 2018) ("The bipartisan Agriculture Improvement Act of 2018, also known as the 2018 Senate Farm Bill, will support the one in four jobs related to food and

Corporations have received federal funds through Farm Bill nutrition program contracts, a portion of which covers the cost of production, including meat processing workers' wages. Thus, such funding is, in part, for the purposes of providing employment necessary for production. 7 C.F.R. § 15.3(c).

B. Financial Assistance.

1. Tyson Foods, Inc., Tyson Fresh Meats, Inc., and Keystone Foods, LLC.

Tyson Foods, Inc., must comply with the USDA's Title VI implementing regulations because Tyson and its subsidiaries Keystone Foods LLC (Keystone) and Tyson Fresh Meats, Inc., received a significant amount of government contracts awarded by the AMS under the Farm Bill programs and the Food Purchase and Distribution Program. The USDA awarded Tyson \$165,756,043 in Fiscal Year 2019,¹¹ and over \$109,389,928 year to date in 2020.¹² The contracts awarded by the USDA in 2020 will be fulfilled or have been fulfilled by Tyson plants located in Alabama, Arkansas, Florida, Georgia, Kentucky, Indiana, Iowa, Kansas, Michigan, Missouri, North Carolina, Oklahoma, Pennsylvania, Texas, and Virginia.

2. JBS USA, Inc. and Pilgrim's Pride Corp.

JBS USA, Inc., must comply with the USDA Title VI implementing regulations because JBS USA and its subsidiary Pilgrim's Pride Corp. (Pilgrim's) received a

agriculture in Michigan.”), https://www.stabenow.senate.gov/news/senate-passes-stabenows_bipartisan-2018-farm-bill- [attached as **Ex. 6**].

¹¹ Tyson Foods, Inc., 2019 Awards, <https://www.usaspending.gov/#/recipient/19cf8289-9973-044b-c900-90a7354a6745-P/2019> [attached as **Ex. 7**].

¹² See Tyson Foods, Inc., 2020 Agricultural Marketing Service Contracts [attached as **Ex. 8**]; 2020 Tyson & JBS Agricultural Marketing Services Contracts [attached as **Ex. 9**].

significant amount of government contracts awarded by AMS under the Farm Bill programs and the Food Purchase and Distribution Program. AMS awarded JBS USA and Pilgrim's Pride \$147,643,591 in Fiscal Year 2019,¹³ and \$45,774,572 year to date in 2020.¹⁴ The contracts awarded by the USDA in 2020 will be fulfilled or have been fulfilled by JBS plants located in Kentucky, Illinois, Iowa, Minnesota, South Carolina, Texas, and West Virginia.

V. STATEMENT OF FACTS

Coronavirus disease 2019 ("COVID-19") is a viral respiratory illness caused by a novel coronavirus. COVID-19 was first reported in November 2019. Over the next few months, the illness spread to almost every country. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic.¹⁵

From mid-March to April, there was a surge of COVID-19 cases in meat processing plants across the country. In early April, the CDC Meat Processing Report documents the CDC was alerted to several cases of COVID-19 in meat processing facilities, and the CDC began conducting qualitative on-site and remote risk assessments, in response to requests from state and local authorities.¹⁶

¹³ JBS USA, 2019 Awards, <https://www.usaspending.gov/#/recipient/9123cae2-54d8-028b-fc9c-881b022942c3-C/2019> [attached as **Ex. 10**].

¹⁴ See JBS USA, Inc., 2020 Agricultural Marketing Service Contracts [attached as **Ex. 11**]; 2020 Tyson & JBS AMS Contracts, *supra* note.

¹⁵ WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> [attached as **Ex. 12**].

¹⁶ J. Dyal, et al., CDC, *COVID-19 Among Workers in Meat and Poultry Processing Facilities — 19 States, April 2020*, 69 MORBIDITY & MORTALITY WEEKLY REPORT 557, 557-58 (May 8, 2020), <http://dx.doi.org/10.15585/mmwr.mm6918e3> [hereinafter CDC MEAT PROCESSING REPORT] [attached as **Ex. 13**].

In the CDC Meat Processing Report, the CDC disclosed data from a subset of meat processing plants with COVID-19 outbreaks:

By April 27, CDC had received aggregate data on COVID-19 cases from 19 of 23 states reporting at least one case related to this industry; there were 115 meat or poultry processing facilities with COVID-19 cases, including 4,913 workers with diagnosed COVID-19. Among 17 states reporting the number of workers in their affected facilities, 3.0% of 130,578 workers received diagnoses of COVID-19. The percentage of workers with diagnosed COVID-19 ranged from 0.6% to 18.2%. Twenty COVID-19–related deaths were reported among workers.¹⁷

The CDC observed that meat processing facilities have common characteristics that “increase risk for transmitting or acquiring [the virus that causes COVID-19]” among workers.¹⁸

Facility challenges included structural and operational practices that made it difficult to maintain a 6-foot (2-meter) distance while working, especially on production lines, and in nonproduction settings during breaks and while entering and exiting facilities. The pace and physical demands of processing work made adherence to face covering recommendations difficult, with some workers observed covering only their mouths and frequently readjusting their face coverings while working. Some sites were also observed to have difficulty adhering to the heightened cleaning and disinfection guidance recommended for all worksites to reduce SARS-CoV-2 transmission.¹⁹

The CDC recommended various actions, including ensuring 6-foot social distancing among workers, reducing the rate of animal processing, requiring facial coverings, installing barriers between workers, health screening, and modifying personnel policies to provide sick leave benefits and incentives to limit transmission.²⁰

¹⁷ *Id.* at 557 (internal citations omitted); *see also id.* at 558 tbl.1.

¹⁸ *Id.* at 559 tbl.2.

¹⁹ *Id.*

²⁰ *Id.*

On April 22, CDC prepared specific recommendations to reduce the spread of COVID-19 between employees of the Smithfield plant in Sioux Falls.²¹

On Sunday, April 26, in a full-page advertisement in the New York Times, Washington Post, and the Arkansas Democrat-Gazette, Tyson Foods urged “government bodies at the national, state, county and city levels” to help the meat processing industry during the pandemic.²²

On April 26, CDC and OSHA jointly issued guidelines for meat and poultry processing workers. According to this Guidance, employers should conduct worksite assessments to identify COVID-19 risks and prevention strategies and then implement them.²³ However, the CDC Guidance repeatedly provides employers an out, stating certain recommendations need only be implemented if feasible or if possible.²⁴

On Monday, April 27, the Food Safety Inspection Service (“FSIS”) issued a press release, noting that

USDA strongly recommends establishments utilize the recommendations highlighted in [the CDC Guidance] where practical, recognizing that how they are implemented may differ given the unique circumstances of establishments and processing facilities nationwide. In the event of a closure, establishments should work with the state departments of agriculture and state and local health authorities, in coordination with

²¹ Memorandum from Michael Grant, et al., CDC, to Joshua Clayton, South Dakota Dep’t of Health (Apr. 22, 2020) [attached as **Ex. 14**]; *see also* Letter from Joshua Clayton to Kenneth Sullivan, President & CEO of Smithfield (Apr. 23, 2020) [attached as **Ex. 15**].

²² *Tyson Ad* (Apr. 27, 2020), https://www.washingtonpost.com/context/tyson-ad/86b9290d-115b-4628-ad80-0e679dcd2669/?itid=lk_inline_manual_2 [attached as **Ex. 16**]; Katie Shepherd, ‘The Food Supply Chain is Breaking’: Tyson Foods Raises Coronavirus Alarm In Full-Page Ads, Defends Safety Efforts, WASHINGTON POST (Apr. 27, 2020), <https://www.washingtonpost.com/nation/2020/04/27/tyson-food-supply-coronavirus> [attached as **Ex. 17**].

²³ CDC Guidance, *supra* note.

²⁴ *Id.*

CDC, to utilize the guidance and develop a plan to safely resume operations as soon as possible.²⁵

On April 27, U.S. Senators Joni Ernst and Chuck Grassley of Iowa, along with Iowa Governor Kim Reynolds and Iowa Secretary of Agriculture Mike Naig, sent a letter to Vice President Pence asking for additional support for the state’s pork producers: “While . . . [the CDC Guidance] provides useful steps for protecting workers, we urgently request [additional] resources and authorities, including invoking the Defense Production Act, that will be required to keep Iowa pork production viable.”²⁶ Specifically, they “urg[ed] [Trump’s administration] to utilize every authority available to keep plants open, and to re-open closed facilities as soon as it is possible to do so safely.”

On April 28, President Trump issued Executive Order 13917.²⁷ Executive Order 13917 finds that “meat and poultry in the food supply chain meet the criteria specified in section 101(b) of the Defense Production Act” as critical materials for domestic use.²⁸

Despite the CDC Guidance, COVID-19 cases and deaths have increased dramatically since April. As of July 6, the Food & Environment Reporting Network reports that there are at least 291 meatpacking processing plants with confirmed cases, with at least 32,151 meatpacking workers testing positive for, and at least 122

²⁵ Press Release: CDC/DOL Issues Guidance to Industry (Apr. 27, 2020), <https://www.fsis.usda.gov/wps/portal/fsis/newsroom/news-releases-statements-and-transcripts/news-release-archives-by-year/archive/2020/nr-04272020-01> [attached as **Ex. 18**].

²⁶ Letter from Gov. Kim Reynolds to Vice President Pence (Apr. 27, 2020) [attached as **Ex. 19**].

²⁷ Executive Order Delegating Authority under the Defense Production Act with respect to Food Supply Chain Resources during the National Emergency Caused by the Outbreak of COVID-19, 85 Fed. Reg. 26313 (May 1, 2020) [attached as **Ex. 20**].

²⁸ *Id.* (citing 50 U.S.C. § 4511(b)).

meatpacking workers dying from, COVID-19.²⁹ As of July 6, the Midwest Center for Investigative Reporting documents that Tyson and JBS have the first and second most COVID-19 cases tied to their meat processing facilities, respectively, with a combined total of at least 12,409 positive cases.³⁰

In addition, USDA data through May 31, 2020, shows that the amount of beef and chicken in cold storage increased compared to the same period last year, while the pork inventory represented 74 percent of the amount at the end of May 2019.³¹ And exports of pork and beef surged during the first four months of 2020 compared to the same period in 2019.³² On June 6, 2020, USDA Secretary Sonny Perdue reported that meat processing plants “are operating more than 95% of their average capacity compared to this time last year.”³³ These data demonstrate the objective of the Corporate Processing Policies.

On July 7, 2020, the CDC published the CDC Disparity Report. The Report “provides updated aggregate data from states regarding the number of meat and poultry processing facilities affected by COVID-19, the number and demographic characteristics

²⁹ Leah Douglas, *Mapping Covid-19 Outbreaks in the Food System*, FERN (updated Jul. 6, 2020), <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants> [attached as **Ex. 21**]. Neither the USDA, OSHA, nor the CDC have instituted a federal reporting program, and some states are not disclosing data on COVID-19 cases and deaths in meat processing facilities, so these data and those reported by the Midwest Center for Investigative Reporting are likely understated.

³⁰ Sky Chadde, *Tracking Covid-19's Impact on Meatpacking Workers & Industry*, MIDWEST CENTER FOR INVESTIGATIVE REPORTING (updated Jul. 6, 2020), <https://investigatamidwest.org/2020/04/16/tracking-covid-19s-impact-on-meatpacking-workers-and-industry> [attached as **Ex. 22**].

³¹ USDA, COLD STORAGE REPORT 7, 10 (Jun. 21, 2020), <https://downloads.usda.library.cornell.edu/usda-esmis/files/pg15bd892/sf268s898/9593vg26b/cost0620.pdf> [attached as **Ex. 23**].

³² Letter from Senators Elizabeth Warren and Cory Booker to Corporations, 2-3 (Jun. 22, 2020) [attached as **Ex. 24**].

³³ Press Release: America's Meatpacking Facilities Operating More Than 95% of Capacity Compared to 2019 (Jun. 6, 2020), <https://www.usda.gov/media/press-releases/2020/06/09/americas-meatpacking-facilities-operating-more-95-capacity-compared> [attached as **Ex. 25**].

of affected workers, and the number of COVID-19–associated deaths among workers, as well as descriptions of interventions and prevention efforts at these facilities.”³⁴ Twenty-three states reported data, with the following states not reporting data to the CDC: Arkansas, Indiana, Iowa, Minnesota, North Carolina, Oklahoma, and Texas.³⁵ A significant majority of COVID-19 cases with accompanying race/ethnicity data show an overwhelming rate of infection among people of color. “Among 9,919 (61%) cases in 21 states with reported race/ethnicity, 87% occurred among racial and ethnic minority workers.”³⁶ And the report found a likely adverse disparate impact, qualified by the limited data set:

The effects of COVID-19 on racial and ethnic minority groups are not yet fully understood; however, current data indicate a disproportionate burden of illness and death among these populations. Among animal slaughtering and processing workers from the 21 states included in this report whose race/ethnicity were known, approximately 39% were white, 30% were Hispanic, 25% were black, and 6% were Asian. However, among 9,919 workers with COVID-19 with race/ethnicity reported, approximately 56% were Hispanic, 19% were black, 13% were white, and 12% were Asian, suggesting that Hispanic and Asian workers might be disproportionately affected by COVID-19 in this workplace setting.³⁷

The CDC Disparity report also discussed reported interventions. “Commonly reported interventions and prevention efforts at facilities included implementing worker temperature or symptom screening and COVID-19 education, mandating face coverings, adding hand hygiene stations, and adding physical barriers between workers.”³⁸ None of

³⁴ CDC DISPARITY REPORT, *supra* note.

³⁵ *Id.* These seven states have facilities with known outbreaks.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

the facilities reported implementing the 6-foot minimum social distance separation on the processing line.

In summary, COVID-19 cases surged and temporary plant closures occurred. Meat processors met U.S. domestic demand, increased exports, and maintained the cold storage inventory, and achieved all of this at the expense of Black, Latino, and Asian workers disproportionately contracting and dying from COVID-19.

VI. STATUTORY BACKGROUND

Title VI of the Civil Rights Act protects individuals from racial discrimination by recipients of federal financial assistance. *See* 42 U.S.C. §§ 2000d–2000d-7. Section 601 mandates that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” *Id.* § 2000d.

Section 602 authorizes and directs each federal agency which is empowered to extend federal financial assistance to any program or activity “to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.” *See id.* § 2000d-1. Congress further authorized agencies to ensure compliance with any requirement promulgated pursuant to section 602 by “terminat[ing]” federal funding or “by any other means authorized by law.” *Id.*

Pursuant to section 602, the USDA promulgated regulations prohibiting EPA funding recipients from engaging in racial discrimination. *See* 7 C.F.R. §§ 15.1-15.12. The regulations expressly prohibit programs or activities that have a disparate impact.

A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

7 C.F.R. § 15.3(b)(2). The USDA Assistant Secretary for Civil Rights, through the Office of Civil Rights, is responsible for investigating complaints against USDA funding recipients. 7 C.F.R. § 15.6.

VII. ARGUMENT

A. The Disparate Impact Standard.

Because the Corporate Processing Policies inflict harmful racial discrimination, this Complaint alleges disparate impact violations of Title VI of the Civil Rights Act. The U.S. Department of Agriculture regulations implementing Title VI prohibit policies which have “the effect of subjecting individuals to discrimination because of their race, color, or national origin.” 7 C.F.R. § 15.3(a), (b)(2). The disparate impact standard analysis involves three inquiries: (1) whether the alleged conduct has a disparate impact; (2) whether a substantial legitimate justification exists for the allegedly discriminatory practice; and (3) whether other, less discriminatory means would serve the same objective. *N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995); *see*

also Title VI Legal Manual, *supra* note, at 8-9. To determine whether the alleged conduct has an adverse disparate impact, the investigating agency must (1) identify the specific policy or practice at issue; (2) establish adversity/harm; (3) establish disparity; and (4) establish causation. *See N.Y.C. Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000).

B. The Corporate Processing Policies.

Upon the onset of the COVID-19 pandemic, on or after March 11, 2020, the Corporations adopted their respective Corporate Processing Policies to reject common-sense measures to reduce the risk of exposure to coronavirus with the objective of maintaining pre-pandemic processing capacity. The Policies are in the exclusive control of Corporations and, have been described by Corporations and others in several public statements and, based on those statements, Food Chain Workers believe and therefore allege that the Corporations' current Corporate Processing Policies primarily (1) reject social distancing among workers to achieve a minimum six-foot separation at their work stations; and (2) reject a lower processing rate that would allow a minimum six-feet of separation between workers. The CDC Guidance recommends such measures, including adding extra shifts to achieve a lower processing rate, but the Corporate Processing Policies decline to implement them as infeasible or not possible.

C. The Corporate Processing Policies Expose Meat Processing Workers to the Risk of Contracting COVID-19.

After the onset of the COVID-19 pandemic, the Corporations did not provide workers protection to mitigate the risk of COVID-19 transmission. Specific documents and plans reflecting the Policies and the manner in which specific plants have implemented the CDC Guidance – and opted to disregard protective measures as

infeasible or not possible – are documents that USDA could obtain for the purpose of investigating the Corporations’ compliance with Title VI.³⁹ Although, after initially stating that the agency would review the Corporations’ plans to meet the CDC Guidance at closed plants, the USDA later reversed itself, and the Corporations have submitted no plans to the agency.⁴⁰

The Corporations have issued statements regarding implementation of certain measures at their facilities.⁴¹ The June 22, 2020 letter from Senators Elizabeth Warren and Cory Booker requested information from Tyson and JBS by June 30, including the following:

Please provide a list stating the dates when you implemented Centers for Disease Control and Prevention and Occupational Safety and Health Administration best practices for meat and poultry processors to protect workers at each of your plants, specifically including when you implemented the following safety measures: (a) modifying the processing line to accommodate social distancing, (b) installing physical barriers, (c) having workers wear protective personal equipment including masks, and (d) modifying sick leave policies so that ill workers are not in the workplace or penalized for taking leave.⁴²

Food Chain Workers will supplement the record of this complaint when such responses become publicly available.

³⁹ The USDA has the authority to require, and the Corporations have the obligation to provide, relevant data. *See* 7 C.F.R. § 15.5(b) and (c).

⁴⁰ Rachel Axon & Sky Chadde, ‘*All Smoke & Mirrors*’: *How Trump’s Meatpacking Order Has Failed To Keep Workers Safe*, USA TODAY (updated Jun. 19, 2020), <https://www.usatoday.com/story/news/2020/06/18/coronavirus-trumps-meatpacking-order-has-failed-workers/3175621001> [attached as **Ex. 26**].

⁴¹ *See supra* Sections V; *see also infra* Sections VII.C.1 and VII.C.2.

⁴² *See* Letter from Senators Warren and Booker, *supra* note, at 4 (citing the CDC Guidance, *supra* note).

The most significant protective measure disregarded by the Corporations, as documented below and in the CDC Disparity Report, is spacing workers at least six-feet apart while working on the processing line, which would require reducing the animal processing rate.⁴³ Specific evidence of non-compliance with the CDC Guidance regarding distance between workers and reduced animal processing rate is in the possession and control of the Corporations.

1. Tyson.

By late March, Tyson had confirmed cases of COVID-19 at several plants across the country.⁴⁴ As the number of new cases and deaths surged among workers, Tyson had outbreaks in multiple states, including Texas, Washington, North Carolina,⁴⁵ Indiana, Iowa, and Kansas. On April 1, the first worker died from COVID-19 complications at Tyson’s plant in Camilla, Georgia. The first worker to die was Eloise Willis, who worked at the Camilla plant for 35 years “five days a week, 10 hours a day, 100,000 chickens a shift.”⁴⁶

⁴³ Other elements of the hierarchy of controls provide essential protections as well: requiring facial coverings, installing barriers between workers, health screening that ensures workers remain asymptomatic, have not had a positive test result for COVID-19 and modifying personnel policies to provide sick leave benefits and incentives to limit transmission. Failure to enforce these other practices is likely to put workers of color at disproportionate risk for infection as well.

⁴⁴ Dana Ullman, *COVID-19 Has Infected Workers at a Tyson Beef Plant in Amarillo, Employees Say*, TEXAS OBSERVER (May 7, 2020), <https://www.texasobserver.org/covid-19-has-infected-workers-at-a-tyson-beef-plant-in-amarillo-employees-say> [attached as **Ex. 27**].

⁴⁵ *Most of 49 Wilkes Virus Cases Tied to Outbreak at Tyson Complex*, WILKES JOURNAL-PATRIOT (Apr. 29, 2020), https://www.journalpatriot.com/covid-19/most-of-49-wilkes-virus-cases-tied-to-outbreak-at-tyson-complex/article_3853ed5a-8a79-11ea-b4dd-a388ed600367.html [attached as **Ex. 28**].

⁴⁶ Oliver Laughland & Amanda Holpuch, ‘We’re Modern Slaves’: How Meat Plant Workers Became the New Frontline in COVID-19 War, THE GUARDIAN (May 2, 2020), <https://www.theguardian.com/world/2020/may/02/meat-plant-workers-us-coronavirus-war> [attached as **Ex. 29**].

As early as March 18, 2020, “the vast majority” of employees in Tyson’s corporate offices have been “working remotely” to reduce the spread of COVID-19.⁴⁷ However, employees in Tyson’s meat processing plants have been forced to continue working in unsafe conditions, resulting in numerous COVID-19 infections and deaths. Despite hundreds of confirmed cases and deaths in several plants, Tyson did not provide any personal protective equipment to all workers or install barriers between workers until mid-April.⁴⁸

Moreover, Tyson has dissuaded workers from staying home which means that employees with COVID-19 face economic pressure to work, which places their coworkers on the processing line at risk of contracting the virus. On March 31, instead of offering paid sick leave, Tyson waived the five-day waiting period for short-term disability benefits,⁴⁹ which only covers 60% of a worker’s typical pay. On April 29, Tyson temporarily increased short-term disability coverage to 90% of worker’s typical pay until June 30 to encourage workers to stay home when they are sick.⁵⁰ However,

⁴⁷ Letter from Scott Rouse, Executive Vice President of Tyson Foods (Mar. 18, 2020), <https://www.tysonfoods.com/sites/default/files/2020-03/Custom%20Letter%20COVID-19.pdf> [attached as **Ex. 30**].

⁴⁸ Rachel Axon, et al., *Coronavirus Outbreaks Climb at U.S. Meatpacking Plants Despite Protections, Trump Order*, MIDWEST CENTER FOR INVESTIGATIVE REPORTING (Jun. 8, 2020), <https://investigatamidwest.org/2020/06/06/coronavirus-outbreaks-climb-at-u-s-meatpacking-plants-despite-protections-trump-order> [attached as **Ex. 31**].

⁴⁹ Press Release: Tyson Foods to Provide Approximately \$60 Million in Bonuses for Frontline Workers (Mar. 31, 2020), <https://www.tysonfoods.com/news/news-releases/2020/3/tyson-foods-provide-approximately-60-million-bonuses-frontline-workers> [attached as **Ex. 32**]; Kate Taylor, *5 Tyson Employees Have Died of COVID-19, As Hundreds of Slaughterhouse Workers Fall Ill. Tyson Still Does Not Offer Paid Sick Leave*, BUSINESS INSIDER (Apr. 16, 2020), <https://www.businessinsider.com/tyson-workers-die-ill-covid-19-without-paid-sick-leave-2020-4> [attached as **Ex. 33**].

⁵⁰ Press Release: Tyson Foods Doubles Bonuses; Increases Health Benefits and Protections for Frontline Workers (Apr. 29, 2020) (increasing short-term disability coverage from 60% to 90%), <https://www.tysonfoods.com/news/news-releases/2020/4/tyson-foods-doubles-bonuses-increases-health-benefits-and-protections> [attached as **Ex. 34**]; Kate Taylor, *At Least 4,500 Tyson Workers Have Caught*

Tyson did not provide any pay coverage for workers who stayed home to reduce the spread of the virus.⁵¹ In addition, Tyson incentivizes workers to go into work when they are ill by offering two \$500 bonuses to workers who continue working during the pandemic.⁵²

In March, Tyson stopped punishing workers who stay home from work due to illness.⁵³ However, on June 3, Tyson reinstated its pre-pandemic attendance policy, meaning employees can be penalized—and potentially fired—for missing shifts when they are ill or have been exposed to the virus.⁵⁴ Penalizing workers for missing shifts has a direct nexus to the Corporate Processing Policies because the lack of workers on the processing line reduces processing capacity, the objective of the Policies. Since reinstating its pre-pandemic attendance policy, there have been hundreds of new cases among workers.⁵⁵

COVID-19, With 18 Deaths. The Meat Giant Still Doesn't Offer Paid Sick Leave, As The Industry Blames Workers For Outbreaks, BUSINESS INSIDER (May 11, 2020), <https://www.businessinsider.com/tyson-4500-covid-19-cases-as-meat-industry-blames-workers-2020-5?r=US&IR=T> [attached as **Ex. 35**].

⁵¹ See, e.g., *Arkansas Poultry Workers Amid The Coronavirus: 'We're Not Essential, We're Expendable'*, ARKANSAS TIMES (May 11, 2020) (noting that management told workers “they could stay home but [they] wouldn't be paid” and they “would only be paid if [they] got sick from the virus”), <https://arktimes.com/arkansas-blog/2020/05/11/arkansas-poultry-workers-amid-the-coronavirus-were-not-essential-were-expendable> [attached as **Ex. 36**].

⁵² Press Release: Tyson Foods Doubles Bonuses, *supra* note.

⁵³ Deena Shanker & Jen Skerritt, *Tyson Reinstates Policy That Penalizes Absentee Workers*, BLOOMBERG (Jun. 3, 2020), <https://www.bloomberg.com/news/articles/2020-06-03/tyson-reinstates-policy-that-penalizes-absentee-workers> [attached as **Ex. 37**].

⁵⁴ *Id.*; Tyler Jett, *Despite New Coronavirus Outbreaks At Its Iowa Plants, Tyson Foods Resumes Attendance Policy*, DES MOINES REGISTER (Jun. 3, 2020), <https://www.desmoinesregister.com/story/money/business/2020/06/03/iowa-coronavirus-outbreaks-tyson-foods-resumes-attendance-policy-meatpacking-plants-covid-19/3137109001> [attached as **Ex. 38**].

⁵⁵ Kate Taylor, *Tyson Reverts To Its Pre-Pandemic Absentee Policy. More Than 7,100 Workers Have Tested Positive For COVID-19, Including Hundreds In Recent Weeks*, BUSINESS INSIDER (Jun. 8, 2020),

According to a spokesperson for the company, Tyson has not increased the distance between workstations to a minimum of 6 feet or reduced the processing rate to accommodate that protection. Rather, it has put in place minimal protective steps, which “includes taking employees’ temperatures when they arrive at the facility; providing face masks; implementing social distancing measures such as installing physical barriers between workstations and in break rooms; and installing hand sanitizer stations throughout.”⁵⁶ The number of cases and deaths at Tyson plants continues to rise dramatically.⁵⁷

2. JBS USA, Inc.

On March 20, the local health department notified JBS about health risks at its plant in Greeley, Colorado, after receiving a complaint about workers eating lunch in large groups, despite social distancing guidelines.⁵⁸ On March 26, the first worker tested positive for COVID-19 at the JBS plant in Greeley, Colorado.⁵⁹ The first worker to die from COVID-19 complications was Saul Sanchez, a line worker at the Greeley plant for

<https://www.businessinsider.com/tyson-ends-covid-19-policy-as-more-workers-get-sick-2020-6> [attached as Ex. 39].

⁵⁶ Liz Crampton, *As Meatpacking Plants Reopen, Workers Terrified of Coronavirus Risk*, POLITICO (Jun. 2, 2020), <https://www.politico.com/news/2020/06/02/meatpacking-plants-reopen-coronavirus-294382> [attached as Ex. 40].

⁵⁷ See, e.g., Rachel Axon, et al., *Coronavirus Outbreaks Climb at U.S. Meatpacking Plants*, *supra* note.

⁵⁸ Erin Udell, *Before Coronavirus, He Was ‘Papa’ At His Greeley Meat Plant. Now, He’s A Cautionary Tale*, THE COLORADOAN (Apr. 24, 2020), <https://www.coloradoan.com/story/news/2020/04/24/coornavirus-colorado-covid-19-jbs-greeley-worker-death/5168427002> [attached as Ex. 41].

⁵⁹ *Id.*

30 years.⁶⁰ On April 10, following a surge of confirmed cases and deaths, the county and state health departments issued a joint public health order requiring JBS to temporarily close its Greeley plant.⁶¹ There were also COVID-19 outbreaks linked to JBS plants in several additional locations, including Plainwell, Michigan;⁶² Green Bay, Wisconsin;⁶³ Souderton, Pennsylvania; and Worthington, Minnesota.

According to a spokesperson for JBS, the company is “providing free testing and face masks to workers,” and has “removed the most vulnerable populations” from its plants, such as employees 60 years or older, with full pay and benefits.⁶⁴ However, despite these measures, the number of cases and deaths at JBS plants continues to rise dramatically.⁶⁵ Moreover, “workers remain standing shoulder to shoulder on assembly

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Andrew Feather, *JBS Employees Concerned About Safety After 60 Employees Test Positive For COVID-19*, WWMT (Apr. 21, 2020), <https://wwmt.com/news/coronavirus/i-team-jbs-employees-concerned-about-safety-after-60-employees-test-positive-for-covid-19> [attached as **Ex. 42**]; Ryan Boldrey, *Plainwell Meat Plant's Coronavirus Case Count Rises To 86*, MLIVE (Apr. 27, 2020), <https://www.mlive.com/news/kalamazoo/2020/04/plainwell-meat-plants-coronavirus-case-count-rises-to-86.html> [attached as **Ex. 43**].

⁶³ Haley BeMiller, *JBS Plant in Green Bay Linked to 147 Coronavirus Cases as Meatpacking Outbreaks Continue To Spread*, GREEN BAY PRESS-GAZETTE (Apr. 22, 2020), <https://www.greenbaypressgazette.com/story/news/2020/04/22/green-bay-jbs-meatpacking-plant-tied-147-coronavirus-cases/3004584001> [attached as **Ex. 44**].

⁶⁴ Liz Crampton, *supra* note.

⁶⁵ *See, e.g.*, Rachel Axon, et al., *Coronavirus Outbreaks Climb at U.S. Meatpacking Plants*, *supra* note.

lines,”⁶⁶ and workers have not been paid for time off.⁶⁷ For example, JBS reopened its Greeley, Colorado plant on April 24.⁶⁸ However, since reopening, the number of confirmed cases and deaths at the Greeley plant has doubled. As of July 1, 2020, at least 282 workers have contracted COVID-19 at the Greeley plant, and 6 workers have died.⁶⁹

D. The Corporate Processing Policies have Significant Adverse Impacts.

Meat processing plants operating during the COVID-19 pandemic have several adverse impacts, including increased health, safety, and economic risks for hourly workers and their communities. Most notably, meat processing plants impact workers by increasing their risk of contracting COVID-19. Meat processing plants that do not mitigate the risk of COVID-19 transmission cause several adverse health effects, including increased rates of COVID-19 infection, serious illness, hospitalization, and death. Outbreaks in meat processing plants can also have widespread impacts on the economy and healthcare system, particularly in rural areas.

⁶⁶ Liz Crampton, *supra* note; Esther Honig & Ted Genoways, ‘The Workers Are Being Sacrificed’: As Cases Mounted, Meatpacker JBS Kept People on Crowded Factory Floors, FERN (May 1, 2020), <https://thefern.org/2020/05/the-workers-are-being-sacrificed-as-cases-mounted-meatpacker-jbs-kept-people-on-crowded-factory-floors> [attached as **Ex. 45**].

⁶⁷ Cuyler Meade, *JBS Employee With COVID-19 Not Getting Paid For Time In Hospital, Despite Company Promises*, GREELEY TRIBUNE (May 28, 2020), <https://www.greeleytribune.com/2020/04/06/jbs-employee-with-covid-19-not-getting-paid-for-time-in-hospital-despite-company-promises> [attached as **Ex. 46**].

⁶⁸ Press Release: JBS USA Reopens Greeley Beef Facility (Apr. 24, 2020), <https://jbssa.com/about/news/2020/04-24/#.XukBrEopA2x> [attached as **Ex. 47**].

⁶⁹ Excerpt of Colorado COVID-19 Outbreaks (updated Jul. 1, 2020), <https://covid19.colorado.gov/data/outbreak-data> [attached as **Ex. 48**].

1. Meat processing plants are hotspots for COVID-19 outbreaks.

Meat processing plants are major hotspots for COVID-19 outbreaks across the country.⁷⁰ Counties with outbreaks linked to meat processing plants have the highest infection rates in the United States. Although most meat processing plants are located in rural areas,⁷¹ the infection rates in counties with outbreaks in meat processing plants are among the highest in the nation. According to an analysis by the Food & Environment Reporting Network, as of May 28, 2020, six of the top ten counties with the highest infection rates per resident had meat processing plants with COVID-19 outbreaks, and exceed those of major metropolitan hotspots, such as New York, Chicago, and Los Angeles.⁷²

As of July 2, 2020, three of the top ten counties with the highest infection rates per resident are linked to Tyson and JBS plants.⁷³

⁷⁰ See, e.g., Kate Gibson, *U.S. Meat Industry Seen as Source of Most New COVID-19 Hotspots*, CBS NEWS (May 1, 2020) (noting that COVID-19 outbreaks in meat processing plants “appear to play an outsized role in a handful of states with new infection rates far higher than the rest of the country”), <https://www.cbsnews.com/news/u-s-meat-industry-a-top-source-of-new-covid-19-hotspots> [attached as **Ex. 49**]; Kate Taylor, *Experts Say Meat Processing Plants Are The Next Coronavirus Hotspots In America, As Trump Orders Slaughterhouses To Stay Open*, BUSINESS INSIDER (May 4, 2020), <https://www.businessinsider.com/meat-processing-plants-are-the-new-hotspot-for-the-coronavirus-2020-5> [attached as **Ex. 50**].

⁷¹ In addition, 52 percent of counties with outbreaks in meatpacking plants are rural, and 21 percent are small metropolitan areas. Only 14 percent of meatpacking-related outbreaks are in major metropolitan areas. Leah Douglas & Tim Marema, *When Covid-19 Hits A Rural Meatpacking Plant, County Infection Rates Soar To Five Times The Average*, FERN (May 28, 2020), <https://thefern.org/2020/05/when-covid-19-hits-a-rural-meatpacking-plant-county-infection-rates-soar-to-five-times-the-average> [attached as **Ex. 51**].

⁷² *Id.*

⁷³ *U.S. COVID-19 Cases & Deaths by County* (last accessed Jul. 3, 2020), <https://www.cdc.gov/covid-data-tracker/index.html#county-map> [attached as **Ex. 52**].

**Counties with the Highest Number of Recent Cases Per Resident
(as of July 2, 2020)**

| County | Total Cases | Per 100,000 | Meat Processing Corporations in County |
|-------------------------|-------------|-------------|----------------------------------------|
| Trousdale County, TN | 1,490 | 13,205 | N/A |
| Lake County, TN | 690 | 9,835 | N/A |
| Dakota County, NE | 1,765 | 8,814 | Tyson (Dakota City, NE) |
| Buena Vista County, IA | 1,705 | 8,690 | Tyson (Storm Lake, IA) |
| Lee County, AR | 755 | 8,524 | N/A |
| Lincoln County, AR | 1,041 | 7,993 | N/A |
| Nobles County, MN | 1,661 | 7,680 | JBS (Worthington, NE) |
| East Carroll County, LA | 445 | 6,486 | N/A |
| Colfax County, NE | 670 | 6,256 | Cargill (Schuyler, NE) |
| Ford County, KS | 2,008 | 6,256 | Cargill (Dodge City, KS) |

Moreover, outbreaks in meat processing plants disproportionately impact rural areas, which are more vulnerable to health risks than metropolitan areas.⁷⁴ Even in normal times, rural hospitals face significant financial and operational challenges, including increased risk of closure,⁷⁵ and limited access to specialists, hospital beds, and

⁷⁴ Dan Keating & Laris Karklis, *Rural Areas May Be The Most Vulnerable During the Coronavirus Outbreak*, WASHINGTON POST (Mar. 19, 2020), <https://www.washingtonpost.com/nation/2020/03/19/rural-areas-may-be-most-vulnerable-during-coronavirus-outbreak/?arc404=true> [attached as **Ex. 53**]; Kendal Orgera, et al., *Urban & Rural Differences in Coronavirus Pandemic Preparedness*, HEALTH SYSTEM TRACKER (Apr. 22, 2020), <https://www.healthsystemtracker.org/brief/urban-and-rural-differences-in-coronavirus-pandemic-preparedness> [attached as **Ex. 54**].

⁷⁵ UNIV. OF NORTH CAROLINA, CHAPEL HILL, *Number of Rural Hospital Closures: January 2005-Present* (last accessed Jul. 6, 2020) (demonstrating that 11 rural hospitals have closed in 2020, and 128 have closed since 2010), <https://www.shepscenter.unc.edu/programs-projects/rural-health/rural-hospital-closures> [attached as **Ex. 55**].

supplies.⁷⁶ During a pandemic, “a shortage of healthcare resources amplifies risks.”⁷⁷ According to a recent analysis by the Union of Concerned Scientists, eight states (Delaware, Iowa, Indiana, Kansas, Minnesota, Nebraska, South Dakota, and Wisconsin) are at risk of overflowing hospital intensive care units if additional COVID-19 infections occurred in meat processing plants that have not already seen outbreaks.⁷⁸ Thus, even a minor surge in cases at meat processing plants will overwhelm the healthcare system, particularly in rural areas.

As of July 6, the number of coronavirus cases tied to meat processing plants has more than doubled since the CDC and OSHA released the CDC Guidance at the end of April,⁷⁹ topping at least 32,151 confirmed cases across 291 plants.⁸⁰ At least 122 meatpacking workers have died.⁸¹ As new cases continue to surge in meatpacking plants across the country, the number of COVID-19 cases and deaths will continue to increase dramatically in areas with meat processing plants.

⁷⁶ DAVID MOSLEY & DANIEL DEBEHNKE, RURAL HOSPITAL SUSTAINABILITY: NEW ANALYSIS SHOWS WORSENING SITUATION FOR RURAL HOSPITALS, RESIDENTS (Feb. 2019), <https://guidehouse.com/-/media/www/site/insights/healthcare/2019/navigant-rural-hospital-analysis-22019.pdf%20> [attached as **Ex. 56**].

⁷⁷ Rebecca Boehm, *With Trump Executive Order, Are Meat & Poultry Plants a COVID-19 Ticking Time Bomb?*, UNION OF CONCERNED SCIENTISTS (updated Jun. 5, 2020), <https://blog.ucsusa.org/rebecca-boehm/with-trump-executive-order-are-meat-and-poultry-plants-a-covid-19-ticking-time-bomb> [attached as **Ex. 57**].

⁷⁸ *Id.*

⁷⁹ Rachel Axon, et al., *Coronavirus Outbreaks Climb at U.S. Meatpacking Plants*, *supra* note; Sky Chadde, *Tracking Covid-19's Impact*, *supra* note

⁸⁰ Leah Douglas, *Mapping Covid-19 Outbreaks*, *supra* note.

⁸¹ *Id.*

2. Meat processing plants significantly increase risks for workers to contract COVID-19.

Meat processing plants place workers in close proximity to each other while working on processing lines operating at a meat processing rate to achieve meat processing capacity objectives. The failure to provide a minimum of 6-feet of social distancing on the processing line increases the risk of COVID-19 spread.⁸² Corporations discourage workers from taking time off from work.⁸³ All of these compounding factors significantly increase workers' risk of exposure to the highly infectious virus.⁸⁴

In sum, meat processing plants are responsible for thousands of COVID-19 infections and deaths because they prioritize processing rate and profit over worker safety and public health.⁸⁵ As explained by labor advocates, “[t]he tough working conditions that have been employed in these plants for decades—including a disregard for workers, in some cases a lack of basic benefits and low wages, a push for faster line speeds that

⁸² See Declaration of Melissa J. Perry, ¶¶ 7-14, *Rural Community Workers Alliance v. Smithfield Foods, Inc.*, No. 5:20-cv-06063-DGK (Dkt. 35-2) [attached as **Ex. 58**]; see also Taylor Telford & Kimberly Kindy, *As They Rushed To Maintain U.S. Meat Supply, Big Processors Saw Plants Become Covid-19 Hot Spots, Worker Illnesses Spike*, WASHINGTON POST (Apr. 25, 2020) (explaining how “work while sick” culture leads to exponential spread of COVID-19 among meat processing workers), <https://www.washingtonpost.com/business/2020/04/25/meat-workers-safety-jbs-smithfield-tyson> [attached as **Ex. 59**].

⁸³ See, e.g., Michael Puente, *Meatpacking Workers' Dilemma: Quit Job Or Face COVID-19 Risks*, NPR (May 14, 2020) (noting that workers at meat-processing plants have to decide whether “to go to work with fears of contracting or spreading COVID-19, or stay home and risk losing a job and health insurance”), <https://www.npr.org/local/309/2020/05/14/856162183/meatpacking-workers-dilemma-quit-job-or-face-c-o-v-i-d-19-risks> [attached as **Ex. 60**].

⁸⁴ See CDC MEAT PROCESSING REPORT, *supra* note, at 559 tbl.2.

⁸⁵ According to Debbie Berkowitz, a former high-ranking official at the Occupational Safety and Health Administration, “[meat processing plants] prioritize line speed production and traffic over worker health and public health,” and “[i]t’s shocking . . . that the government gave this industry a pass over worker safety.” Michael Corkery, et al., *Powerful Meat Industry Holds More Sway After Trump’s Order*, N.Y. TIMES (Apr. 29, 2020), <https://nyti.ms/3bOtJWh> [attached as **Ex. 61**].

increase the dangers of the job, and no access to protective equipment—are now placing workers at increased risk of contracting COVID-19.”⁸⁶

3. Workers are *not* responsible for outbreaks in meat processing plants.

Some companies and public officials have falsely blamed Latino and immigrant workers for outbreaks in meat processing plants, claiming that these workers are exposed to the virus in their homes, not plants.⁸⁷ These claims are not only false, but they are based on harmful racial stereotypes. The data confirms that the virus does not spread faster in Latino and immigrant communities because the infection rates in counties with meat processing outbreaks are significantly *higher* than other counties with large Latino and immigrant populations.⁸⁸ Moreover, infection rates in counties with meatpacking

⁸⁶ Gosia Wozniacka, *Poor Conditions at Meatpacking Plants Have Long Put Workers at Risk. The Pandemic Makes it Much Worse*, CIVIL EATS (updated Apr. 29, 2020), <https://civileats.com/2020/04/17/poor-conditions-at-meatpacking-plants-have-long-put-workers-at-risk-the-pandemic-makes-it-much-worse> [attached as **Ex. 62**]; see also Sky Chadde, et al., *Cheap Chicken, Beef Came at a Cost. How American Meat Plants Bred Coronavirus Hot Spots.*, MIDWEST CENTER FOR INVESTIGATIVE REPORTING (May 22, 2020) (noting that “[t]he same features that allow a steady churn of cheap meat also provide the perfect breeding ground for airborne diseases like the coronavirus: a cramped workplace, a culture of underreporting illnesses, and a cadre of rural, immigrant and undocumented workers who share transportation and close living quarters”), <https://investigatamidwest.org/2020/05/22/cheap-chicken-beef-came-at-a-cost-how-american-meat-plants-bred-coronavirus-hot-spots> [attached as **Ex. 63**].

⁸⁷ See, e.g., Albert Samaha & Katie Baker, *Smithfield Foods Is Blaming “Living Circumstances In Certain Cultures” For One of America’s Largest COVID-19 Clusters*, BUZZFEED NEWS (Apr. 20, 2020), <https://www.buzzfeednews.com/article/albertsamaha/smithfield-foods-coronavirus-outbreak> [attached as **Ex. 64**]; Lauren Frias, *A Wisconsin Chief Justice Faced Backlash For Blaming A County’s Coronavirus Outbreak On Meatpacking Employees, Not ‘Regular Folks’*, BUSINESS INSIDER (May 8, 2020), <https://www.businessinsider.com/chief-justice-condemned-for-blaming-coronavirus-spread-on-corporations-2020-5> [attached as **Ex. 65**].

⁸⁸ For example, Buena Vista County, Iowa, has one of the highest rates of infection in the country, and it is linked to outbreaks in Tyson’s Storm Lake plant. Only 12.5% of Buena Vista County is Latino, but the infection rate is 7,897 per 100,000 residents. Conversely, roughly 26% of New York City is Latino, but the rate of infection is only 256 per 100,000 residents. See *U.S. COVID-19 Cases & Deaths by County*, *supra* note; see also Nick Coltrain, *Latino, Black Iowans Are A Disproportionate Share of the COVID-19 Cases, According to New State Data*, DES MOINES REGISTER (Apr. 14, 2020) (noting that “[n]early half of the new confirmed cases of COVID-19 reported Tuesday — 86 of the 189 — were tied to an outbreak at a Tyson Foods pork processing plant in Louisa County,” where “a little more than 16% of that county’s residents are

outbreaks are significantly higher than other rural counties, indicating that meat processing plants are a major source for new COVID-19 cases.⁸⁹

Therefore, meat processing plants that do not adequately protect their workers from COVID-19 are responsible for causing the virus to spread at alarmingly high rates, not their workers.⁹⁰

4. COVID-19 has several adverse effects on workers and communities.

COVID-19 results in severe illness and death, especially among at-risk adults. According to the CDC, older adults and people of any age who have serious underlying medical conditions are at higher risk for severe illness from COVID-19.⁹¹ In the United States, nearly four in ten adults (or 92.6 million people) have a higher risk of developing serious illness if they become infected with coronavirus due to their older age (65 and older) or health condition.⁹² The share of at-risk adults varies across the country, ranging from 49.3 percent in West Virginia, to 30 percent in Utah.⁹³

Hispanic or Latino”), <https://www.desmoinesregister.com/story/news/health/2020/04/14/coronavirus-covid-19-iowa-gov-kim-reynolds-news-conference-shelter-in-place/5134961002> [attached as **Ex. 66**].

⁸⁹ In rural counties with outbreaks linked to meatpacking plants, the average infection rate is nearly 1,100 cases per 100,000 residents. In contrast, the rate in other rural counties is only 209 cases per 100,000 residents. Leah Douglas & Tim Marema, *supra* note.

⁹⁰ In the rural counties with the top ten highest infection rates, at least seven have meatpacking plants with COVID-19 outbreaks. *Id.*

⁹¹ See, e.g., *People Who Are At Higher Risk for Serious Illness* (June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> [attached as **Ex. 67**].

⁹² Wyatt Koma, et al., *How Many Adults Are at Risk of Serious Illness If Infected with Coronavirus?*, KAISER FAMILY FOUNDATION (Apr. 23, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus> [attached as **Ex. 68**].

⁹³ *Id.*

People who contract COVID-19 may need extensive medical treatment, including hospitalization, admission to an intensive care unit, and ventilation. Roughly 15 percent of people infected with coronavirus will need hospitalization.⁹⁴ For most admitted patients, the cost of COVID-19 treatment can exceed \$20,000.⁹⁵ However, some patients will need invasive mechanical ventilation. For patients who need ventilator support, costs can range from \$30,000 to \$88,000, depending on the amount of ventilation needed.⁹⁶ Even with private insurance, the out-of-pocket costs for COVID-19 treatment can exceed \$1,300.⁹⁷ Some patients may also suffer long-term damage, including “lung scarring, heart damage, and neurological and mental health effects,” which will require additional care and monitoring.⁹⁸

In addition, COVID-19 has widespread financial impacts on U.S. workers and businesses. Tens of millions of people have lost their jobs during the pandemic, and unemployment rate remains in the double-digits.⁹⁹ Moreover, nearly one-third (31 percent) of Americans have experienced problems paying rent or mortgage, or food,

⁹⁴ Cynthia Cox, et al., *How Health Costs Might Change with COVID-19*, HEALTH SYSTEM TRACKER (Apr. 15, 2020), <https://www.healthsystemtracker.org/brief/how-health-costs-might-change-with-covid-19> [attached as **Ex. 69**]; see also Matthew Rae, et al., *Potential Costs of COVID-19 Treatment For People With Employer Coverage* (Mar. 13, 2020), <https://www.healthsystemtracker.org/brief/potential-costs-of-coronavirus-treatment-for-people-with-employer-coverage> [attached as **Ex. 70**].

⁹⁵ Cynthia Cox, et al., *supra* note.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Lois Parshley, *The Emerging Long-Term Complications of Covid-19, Explained*, VOX (May 8, 2020), <https://www.vox.com/2020/5/8/21251899/coronavirus-long-term-effects-symptoms> [attached as **Ex. 71**].

⁹⁹ *Unemployment Rate*, <https://data.bls.gov/timeseries/LNS14000000> [attached as **Ex. 72**].

utilities, credit card bills or medical costs as a result of the pandemic.¹⁰⁰ Although some states have been eager to lift restrictions, reopening businesses too soon may lead to a surge of new cases, which would “send[] the economy back into lockdown,” and “significantly heighten the risks for an already debilitated U.S. economy.”¹⁰¹

E. The Corporate Processing Policies Disproportionately Impact Black, Latino, and Asian workers.

Black, Latino, and Asian meat processing workers are disproportionately affected by COVID-19 outbreaks in meat processing plants because they make up a disproportionate share of affected workers at meat processing plants, are disproportionately affected compared to majority white management, and they are more vulnerable to the adverse impacts of COVID-19 than white people.

1. The vast majority of frontline workers at meat processing plants are Black, Latino, and Asian.

Black and Latino workers comprise the majority of meat processing hourly workers who have a disproportionately high risk of exposure to the virus that causes COVID-19.¹⁰² According to a recent report, Black, Latino, and Asian workers make up 69.6 percent (25.2, 44.4, and 10 respectively) of frontline workers in meat processing plants, but only 61.9 percent (22.5, 39.4, and 7 respectively) of all meatpacking workers,

¹⁰⁰ Drew Atman, *Coronavirus' Unequal Economic Toll* (May 29, 2020), <https://www.axios.com/coronavirus-economy-jobs-unemployment-racial-disparities-29e3c6c4-bb43-4eaf-bf90-04697ca66b2d.html> [attached as **Ex. 73**].

¹⁰¹ Paul Wiseman, *Reopening the U.S. Economy Too Soon Could Cause a 'Double-Dip' Recession*, FORTUNE (May 11, 2020), <https://fortune.com/2020/05/11/us-economy-reopen> [attached as **Ex. 74**].

¹⁰² Shawn Fremstad, et al., Center for Economic & Policy Research, *Meatpacking Workers are a Diverse Group Who Deserve Better Protections* (Apr. 29, 2020), <https://cepr.net/meatpacking-workers-are-a-diverse-group-who-need-better-protections> [attached as **Ex. 76**].

and 28.7 percent (11.9, 16.8 and 6.6, respectively) of all U.S. workers.¹⁰³ Conversely, white workers are underrepresented in frontline meatpacking positions. Although white workers make up 34.5 percent of all meatpacking workers, and 63.5 percent of all U.S. workers, only 19.1 percent of frontline meatpacking workers are white.¹⁰⁴

Black and Latino people also make up a disproportionate share of frontline workers at the Corporations. Over 68 percent of Tyson’s hourly employees are Black (26.4%), Latino (29.9%), or Asian (12%) and only 27.2 percent are white.¹⁰⁵ Further, more than 76 percent of JBS’s total workforce is Latino (46.8%), Black (20.1%), or Asian (9.7%).¹⁰⁶

Moreover, Black, Latino, and Asian workers are significantly underrepresented in the management positions with the least amount of risk. Unlike frontline workers, who work in crowded conditions without social distancing and worry about keeping their jobs and supporting their families,¹⁰⁷ the people in management positions have less contact with other people because they can work remotely. For example, “the vast majority of

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Team Members by Ethnicity* (as of Dec. 2019), <https://www.tysonustainability.com/workplace> [attached as **Ex. 77**].

¹⁰⁶ *Percent of Team Members by Race* (as of Dec. 2019), <https://sustainability.jbssa.com/chapters/team-members/building-a-diverse-dedicated-workforce> [attached as **Ex. 78**]. Nearly 28 percent of JBS’s total workforce is also over the age of 50. *Id.*

¹⁰⁷ *See, e.g.,* Adam Gabbatt, *Latino Workers Face Discrimination Over Spread of Coronavirus in Meat Plants*, THE GUARDIAN (May 25, 2020) (“With the Latino meat plant workers, some of whom are undocumented, frequently living paycheck to paycheck, they could not afford to not go to work – particularly as large plants tend not to offer sick pay.”), <https://www.theguardian.com/world/2020/may/25/latino-workers-coronavirus-discrimination-meat-plants> [attached as **Ex. 79**]; Jens Krogstad, et al., *U.S. Latinos Among Hardest Hit By Pay Cuts, Job Losses Due To Coronavirus*, PEW RESEARCH CENTER (Apr. 3, 2020), <https://pewrsr.ch/2UILEb7> [attached as **Ex. 80**].

Tyson’s team members in US corporate office locations [were] working remotely” as early as March 18, 2020.¹⁰⁸ And according to Smithfield’s Chief Executive Kenneth Sullivan, “[s]ocial distancing is a nicety that makes sense only for people with laptops.”¹⁰⁹

Although white workers only account for a small percentage of the total workforce at the two Corporations at issue here, the management is overwhelmingly white. Over 73 percent of Tyson’s salaried employees are white,¹¹⁰ and over 58 percent of JBS’s management is white.¹¹¹

Thus, the Corporations know their Policies disproportionately impact Black, Latino, and Asian workers in frontline positions because those workers have a greater risk of contracting COVID-19, and suffer more adverse health outcomes,¹¹² than white workers. Moreover, the Policies disproportionately impact Black, Latino, and Asian workers in frontline positions compared to the population in management.

2. Social Inequity Compounds the Adverse Disparate Impact of Corporations’ Policies.

Black and Latino workers not only bear an adverse disparate impact because of the Policies, but they are also the most vulnerable to COVID-19 harm due to

¹⁰⁸ Letter from Scott Rouse, *supra* note.

¹⁰⁹ Michael Grabell, et al., *Emails Reveal Chaos as Meatpacking Companies Fought Health Agencies Over COVID-19 Outbreaks In Their Plants*, PROPUBLICA (Jun. 12, 2020), <https://www.propublica.org/article/emails-reveal-chaos-as-meatpacking-companies-fought-health-agencies-over-covid-19-outbreaks-in-their-plants> [attached as **Ex. 81**].

¹¹⁰ *Team Members by Ethnicity*, *supra* note.

¹¹¹ *Percent of Team Members by Race*, *supra* note.

¹¹² *See infra* Part VII.D.2.

longstanding health and socioeconomic racial disparities. Black and Latino workers with COVID-19 are more likely than white people to die, more likely than white people to require hospitalization, less likely than white people to receive adequate medical treatment, and more likely than white people to experience economic stress. These forms of social inequity compound the disparate impact inflicted by the Corporate Processing Policies. Corporations' meat processing plants that continue to operate during the COVID-19 pandemic pursuant to the Policies without common-sense measures adversely affect workers by increasing their risk of contracting COVID-19, developing serious illness, incurring additional financial burdens, and experiencing other negative effects.

a. Black and Latino people suffer higher death rates than white people.

Black and Latino workers who become infected with coronavirus are also significantly more likely to die from the virus due to higher rates of serious illness,¹¹³ and longstanding inequities related to race, class, and access to healthcare.¹¹⁴ According to the most recent CDC data available, Black people are overrepresented in COVID-19 deaths. From February 1 to June 27, 2020, Black people accounted for 23.1% of deaths, but only 12.5% of the population.¹¹⁵ When taking into account the racial and ethnic

¹¹³ E. Stokes, et al., CDC, *Coronavirus Disease 2019 Case Surveillance — United States, Jan. 22–May 30, 2020*, 69 MORBIDITY & MORTALITY WEEKLY REPORT 759 (Jun. 19, 2020) (noting that “[d]eaths were 12 times higher among patients with reported underlying conditions compared with those without reported underlying conditions”), <http://dx.doi.org/10.15585/mmwr.mm6924e2> [attached as **Ex. 82**].

¹¹⁴ Aditi Nayak, et al., *Impact of Social Vulnerability on COVID-19 Incidence & Outcomes in the United States* (Apr. 17, 2020) (finding that counties with higher social vulnerability have higher COVID-19 case fatality), [doi:10.1101/2020.04.10.20060962](https://doi.org/10.1101/2020.04.10.20060962) [attached as **Ex. 83**].

¹¹⁵ CDC, Table 2a: Count & Percent Distribution Of Deaths COVID-19 With Distribution of the Weighted & Unweighted Percent Population By Race & Hispanic Origin Group (updated Jul. 1, 2020), https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/#Race_Hispanic [attached as **Ex. 84**].

distribution in the geographic locations of COVID-19 outbreaks, Latino people are also overrepresented in COVID-19 deaths. Latino people accounted for 16.7% of deaths, and 27.9% of the weighted population distribution. Conversely, CDC data reveals that white people are significantly underrepresented in COVID-19 deaths. White people accounted for 53.2% of deaths, but 60.4% of the population.

Characteristics of COVID-19 Deaths from February 1-June 27, 2020

| | Black | Latino | White |
|----------------------------------------------|--------------|---------------|--------------|
| COVID-19 Deaths | 25,871 | 18,797 | 59,696 |
| Proportion of COVID-19 Deaths | 23.1% | 16.7% | 53.2% |
| Unweighted Distribution of Population | 12.5% | 18.3% | 60.4% |
| Weighted Distribution of Population | 17.1% | 27.9% | 42.1% |

In another recent report on mortality, researchers found that although “Black Americans represent 13% of the population in all areas in the U.S. releasing COVID mortality data,” “they have suffered 25% of deaths.”¹¹⁶ In addition, white people “are considerably less likely to die from COVID-19 than expected, given their share of the population.”¹¹⁷

¹¹⁶ APM RESEARCH LAB, THE COLOR OF CORONAVIRUS: COVID-19 DEATHS BY RACE & ETHNICITY IN THE U.S. (May 27, 2020), <https://www.apmresearchlab.org/covid/deaths-by-race> [attached as **Ex. 85**]; see also COVID Racial Data Tracker, <https://covidtracking.com/race> [attached as **Ex. 86**].

¹¹⁷ APM RESEARCH LAB, *supra* note; see also G. Millett, et al., *Assessing Differential Impacts of COVID-19 on Black Communities*, 47 ANNALS OF EPIDEMIOLOGY 37 (2020), <https://doi.org/10.1016/j.annepidem.2020.05.003> [attached as **Ex. 87**].

b. Black and Latino people suffer higher hospitalization rates than white people.

Black and Latino workers who contract the virus are significantly more likely to need treatment, such as hospitalization and ventilation, due to increased rates of serious illness.¹¹⁸ According to national data from the CDC, Black patients are overrepresented among hospitalized COVID-19 patients.¹¹⁹ In a CDC report analyzing COVID-19 hospitalizations in March 2020, researchers found that Black people represented 33% of hospitalized patients, but only 18% of the relevant population, “suggesting that Black populations might be disproportionately affected by COVID-19.”¹²⁰ Conversely, white people were significantly underrepresented in hospitalizations. Although white people accounted for nearly 60% of the relevant population, they only represented 45% of hospitalized patients.¹²¹

The most recent data from the CDC confirms that Black and Latino people continue to suffer higher hospitalization rates than white people. According to the CDC data on COVID-19 hospitalizations from March 1 to June 27, 2020, Black and Latino

¹¹⁸ M. Killerby, et al., CDC, *Characteristics Associated with Hospitalization Among Patients with COVID-19 — Metropolitan Atlanta, Georgia, March–April 2020.*, MORBIDITY & MORTALITY WEEKLY REPORT (Jun. 17, 2020), <http://dx.doi.org/10.15585/mmwr.mm6925e1> [attached as **Ex. 88**]; E. Stokes, et al., *supra* note, at 759 (finding that hospitalizations were 6 times higher and deaths 12 times higher among those with underlying conditions than those with no reported conditions).

¹¹⁹ J. Gold, et al., CDC, *Characteristics & Clinical Outcomes of Adult Patients Hospitalized with COVID-19 — Georgia, March 2020*, 69 MORBIDITY & MORTALITY WEEKLY REPORT 545, 545–50 (May 8, 2020), <http://dx.doi.org/10.15585/mmwr.mm6918e1> [attached as **Ex. 89**].

¹²⁰ S. Garg, et al., *Hospitalization Rates & Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019 — COVID-NET, 14 States, March 1–30, 2020*, 69 MORBIDITY & MORTALITY WEEKLY REPORT 458, 459 (Apr. 17, 2020) (analyzing patients admitted in March 2020, the first month of U.S. surveillance), <http://dx.doi.org/10.15585/mmwr.mm6915e3> [attached as **Ex. 90**].

¹²¹ *Id.*

people were nearly five times more likely to be hospitalized for COVID-19 complications than white people.¹²² Black people accounted for 32.5% of all hospitalized patients, but only 17% of the relevant population (and 13.4% of the U.S. population), and Latino people accounted for 22.2% of hospitalizations, but only 14% of the relevant population (and 18.5% of the U.S. population).¹²³ Conversely, white people accounted for 32.6% of hospitalizations, but nearly 60% of the relevant population (and 60.4% of the U.S. population).

Characteristics of COVID-NET Hospitalizations from March 1-June 27, 2020

| | Black | Latino | White |
|--------------------------------------------------------|--------------|---------------|--------------|
| Age-adjusted Hospitalization Rate (per 100,000) | 212.8 | 205.0 | 45.7 |
| Proportion of Hospitalized COVID-NET Cases | 32.5% | 22.2% | 32.6% |
| Proportion of Population in COVID-NET Catchment | 17.7% | 14.0% | 58.8% |
| Prevalence Ratio | 1.8 | 1.6 | 0.6 |

c. Black and Latino people are less likely to receive adequate medical care than white people.

Black and Latino people who contract COVID-19 are less likely to receive adequate care and treatment than white people due to racism and implicit bias in the

¹²² CDC, SURVEILLANCE SUMMARY OF U.S. COVID-19 ACTIVITY FOR WEEK 26, ENDING JUNE 27, 2020, at 1-2, 10 (updated Jul. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html> [attached as **Ex. 91**].

¹²³ *Id.* at 10; *see also* U.S. Census Data on Race & Hispanic Origin (estimates as of July 1, 2019), <https://www.census.gov/quickfacts/fact/table/US/PST045219> [attached as **Ex. 92**].

healthcare system.¹²⁴ According to one recent study, doctors are less likely to test Black people for COVID-19, even when they are displaying symptoms.¹²⁵ Delays in testing and treatment can have significant consequences for Black patients because they are more likely to experience severe cases of COVID-19.¹²⁶ Delays in testing can also have adverse effects on Latino patients because they are more likely to unknowingly spread the virus to elderly family members in their care.¹²⁷

Latino workers may also experience bias from healthcare providers, which is fueled by harmful racial stereotypes perpetuated by meat processing companies and public officials.¹²⁸ Systemic racism in the healthcare system can also lead to a disproportionate concentration of medical supplies and resources in white communities.¹²⁹ As a result, hospitals in nonwhite communities have a harder time obtaining the materials they need to treat Black and Latino patients, who have higher

¹²⁴ Marya T. Mtshali, *How Medical Bias Against Black People Is Shaping Covid-19 Treatment & Care*, VOX (Jun. 2, 2020), <https://www.vox.com/2020/6/2/21277987/coronavirus-in-black-people-covid-19-testing-treatment-medical-racism> [attached as **Ex. 93**].

¹²⁵ Blake Farmer, *The Coronavirus Doesn't Discriminate, But U.S. Health Care Showing Familiar Biases*, NPR (Apr. 2, 2020), <https://www.npr.org/sections/health-shots/2020/04/02/825730141/the-coronavirus-doesnt-discriminate-but-u-s-health-care-showing-familiar-biases> [attached as **Ex. 94**].

¹²⁶ *Id.*; see also John Gramlich & Cary Funk, *Black Americans Face Higher COVID-19 Risks, Are More Hesitant To Trust Medical Scientists, Get Vaccinated*, PEW RESEARCH CENTER (Jun. 4, 2020), <https://pewrsr.ch/376YXXd> [attached as **Ex. 95**].

¹²⁷ See Adam Gabbatt, *supra* note; Steve Mocarisky, *Why Hazleton? Factors Converge To Make The City A Coronavirus Hotspot*, HAZLETON STANDARD-SPEAKER (Apr. 12, 2020) (noting that “Latinos brought with them a cultural tradition of caring for elderly parents, grandparents and extended family members under the same roof, increasing the likelihood of spreading the disease in the household”), <https://www.mcall.com/news/pennsylvania/mc-nws-pa-why-hazleton-20200412-mve5o6dpi5eb5pq2os3zmrbaq-story.html> [attached as **Ex. 96**].

¹²⁸ See, e.g., *LVHN Responds to Racist Social Media Remarks Going Viral*, HAZLETON NEWS ONE (Apr. 7, 2020), <https://www.hazletonnewsone.com/newsblog/lvhn-responds-to-racist-social-media-remarks-going-viral> [attached as **Ex. 97**].

¹²⁹ Blake Farmer, *supra* note.

rates of serious illness.¹³⁰ Relatedly, language barriers have prevented immigrant workers from receiving crucial updates about COVID-19 outbreaks from meatpacking companies and health care officials.¹³¹

d. Black and Latino people are more likely to experience financial stress than white people.

The financial impacts of the COVID-19 pandemic disproportionately affect Black and Latino workers, who “at greater risk of unemployment and [less able] to weather economic downturns” due to several longstanding inequities, including “occupational segregation, economic exploitation, and employment discrimination.”¹³²

Although the unemployment rate fell to 13.3 percent in May, the unemployment rate for Black people rose to 16.8 percent,¹³³ and more than half of all Black people are unemployed.¹³⁴ Similarly, approximately half of all Latino households have experienced a pay cut or job loss since the pandemic hit, compared with one-third of all U.S.

¹³⁰ *Id.*

¹³¹ Michael Grabell, *supra* note (noting that “[i]n the middle of a fast-moving pandemic, neither the meatpacking plants nor the health departments were prepared to deal with so many patients who didn’t speak English”).

¹³² Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, CENTER FOR AMERICAN PROGRESS (Apr. 14, 2020), <https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color%20> [attached as **Ex. 98**].

¹³³ Katelyn Burns, *The Unemployment Rate Improved In May, But Left Black Workers Behind*, VOX (Jun. 6, 2020), <https://www.vox.com/policy-and-politics/2020/6/6/21282611/black-workers-left-behind-unemployment> [attached as **Ex. 99**].

¹³⁴ *Id.*

households.¹³⁵ Roughly 50 percent of all Black and Latino people have also struggled to pay their bills during the pandemic, more than any other race or ethnic group.¹³⁶

Black and Latino workers who are also immigrants face additional financial impacts. Unlike other low-wage workers, undocumented immigrants are not able to access emergency funding or government aid.¹³⁷ Moreover, even if immigrant workers qualify for assistance, they are less likely to apply for government aid in fear of immigration enforcement, particularly if they are Latino.¹³⁸

In addition, Black and Latino workers face greater financial pressure to continue working, even when they may have been exposed to the virus, because they do not want to lose pay, get deported, or lose their jobs.¹³⁹ As explained above, the Corporations put significant pressure on workers to minimize absenteeism rates, leading to underreported

¹³⁵ See Jens Krogstad, et al., *U.S. Latinos Among Hardest Hit*, *supra* note; Jens Krogstad, et al., *Hispanics More Likely Than Americans Overall To See Coronavirus As A Major Threat To Health & Finances*, PEW RESEARCH CENTER (Mar. 24, 2020), <https://pewrsr.ch/2UicRRI> [attached as **Ex. 100**].

¹³⁶ Drew Atman, *supra* note; Liz Hamel, et al., *Impact of Coronavirus on Personal Health, Economic & Food Security, & Medicaid*, KAISER FAMILY FOUNDATION (May 27, 2020), <https://www.kff.org/report-section/kff-health-tracking-poll-may-2020-health-and-economic-impacts> [attached as **Ex. 101**].

¹³⁷ See also Jens Krogstad & Mark Lopez, *Americans Favor Medical Care But Not Economic Aid For Undocumented Immigrants Affected By COVID-19*, PEW RESEARCH CENTER (May 20, 2020), <https://pewrsr.ch/2TIMNny> [attached as **Ex. 102**].

¹³⁸ Maanvi Singh & Mario Koran, *'The Virus Doesn't Discriminate But Governments Do': Latinos Disproportionately Hit By Coronavirus*, THE GUARDIAN (Apr. 18, 2020), <https://www.theguardian.com/us-news/2020/apr/18/the-virus-doesnt-discriminate-but-governments-do-latinos-disproportionately-hit-by-coronavirus> [attached as **Ex. 103**].

¹³⁹ See, e.g., Anya Jabour, *Immigrant Workers Have Borne the Brunt of COVID-19 Outbreaks at Meatpacking Plants*, WASHINGTON POST (May 22, 2020), <https://www.washingtonpost.com/outlook/2020/05/22/immigrant-workers-have-borne-brunt-covid-19-outbreaks-meatpacking-plants> [attached as **Ex. 104**]; Daniel Jackson, *Immigrant Meatpackers Feel Pressure to Keep Working Despite Health Concerns*, COURTHOUSE NEWS (May 5, 2020) (noting that “immigrant workers — who make up a significant number of meatpackers — fear going to work but face pressure to show up even if they feel ill and ignore safety concerns”), <https://www.courthousenews.com/immigrant-meatpackers-feel-pressure-to-keep-working-despite-health-concerns> [attached as **Ex. 105**].

illnesses and injuries, and increased risk of COVID-19 spread.¹⁴⁰ Meat processing companies have also encouraged workers to continue going to work when they are sick by failing to provide paid sick leave, adequate wages, and insurance coverage to all hourly workers,¹⁴¹ and penalizing workers who miss a shift.¹⁴²

According a national study, approximately half (47%) of Latino workers say that it would be difficult to cover living expenses without two weeks of pay.¹⁴³ Moreover, nearly three-quarters of Black (73%) and Latino (70%) people say they do not have emergency funds to cover three months of expenses, compared to nearly half of white adults (47%).¹⁴⁴ The vast majority of Black and Latino people without financial reserves also would not be able to cover their expenses by borrowing money, using savings, or selling assets.¹⁴⁵ Thus, without adequate paid leave and health benefits, Black and Latino workers will continue to face significant pressure to work during the pandemic.

¹⁴⁰ See, e.g., Taylor Telford & Kimberly Kindy, *supra* note (explaining how “work while sick” culture leads to exponential spread of COVID-19 among meat processing workers).

¹⁴¹ See, e.g., Michael Puente, *supra* note (noting that workers at meat-processing plants have to make tough choices between going “to work with fears of contracting or spreading COVID-19,” or staying home with risk of “losing a job and health insurance”).

¹⁴² See, e.g., Kate Taylor, *Tyson Reverts to its Pre-Pandemic Absentee Policy*, *supra* note.

¹⁴³ PEW RESEARCH CENTER, U.S. PUBLIC SEES MULTIPLE THREATS FROM THE CORONAVIRUS & CONCERNS ARE GROWING 12-13 (Mar. 18, 2020), https://www.people-press.org/wp-content/uploads/sites/4/2020/03/PP_2020.03.18_Coronavirus_Final-1.pdf [attached as **Ex. 106**].

¹⁴⁴ Mark Hugo Lopez, et al., *Financial & Health Impacts of COVID-19 Vary Widely by Race & Ethnicity*, PEW RESEARCH CENTER (May 5, 2020), <https://pewrsr.ch/2L15rwr> [attached as **Ex. 107**].

¹⁴⁵ *Id.*; see also Jeanna Smialek, *Poor Americans Hit Hardest by Job Losses Amid Lockdowns, Fed Says*, N.Y. TIMES (May 14, 2020), <https://nyti.ms/2X32fq2> [attached as **Ex. 108**].

F. The Corporate Processing Policies Lack a Substantial Legitimate Justification.

The Corporate Processing Policies lack a substantial legitimate justification. In determining whether such justification exists, courts have required the recipient of federal financial assistance to demonstrate that the challenged policy was “necessary to meeting a goal that was legitimate, important, and integral to the recipient’s institutional mission.” Title VI Legal Manual, *supra* note, at 33 (quoting *Elston v. Talladega County Bd. of Ed.*, 997 F.2d 1394, 1413 (11th Cir. 1993); *see also Albermarle Paper Co.*, 422 U.S. 405, 425 (1975); 42 U.S.C. § 2000e-2(k)(1)(A)(i). “Courts have evaluated whether the policy was ‘necessary’ by requiring that the justification bear a ‘manifest demonstrable relationship’ to the challenged policy.” Title VI Legal Manual, *supra* note, at 33 (quoting *Georgia State Conf. of Branches of NAACP v. State of Georgia*, 775 F.2d. 1403, 1418 (11th Cir. 1985).

The Corporations cannot meet this burden. The Policies do not square with the pretext for the designation of meat and poultry by Executive Order 13917 as a critical material for domestic use. The export and cold storage data show that domestic use was never in danger because that data show that the amount of meat exported during the first four months of 2020 and the amount of beef and poultry in cold storage has *increased*, for the year to date and during the pandemic relative to the same period in 2019.¹⁴⁶

And the fact that Executive Order designated meat and poultry as a critical for *domestic use* – not export – further undermines a capacity justification. President Trump found that meat and poultry met the conditions in section 101(b) of the Defense

¹⁴⁶ *See* Letter from Senators Warren & Booker, *supra* note; USDA, COLD STORAGE REPORT, *supra* note.

Production Act for designation as a critical material for national defense. 85 Fed. Reg. at 26313 (“I find that meat and poultry in the food supply chain meet the criteria specified in section 101(b)). Section 101(b), based on its plain language, precludes authority to control a material in the civilian market for national defense unless a finding is made that the need for national defense cannot be met without “significant dislocation of the normal distribution of the material.”) The Defense Product Act’s language reads as follow:

The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

50 U.S.C. § 4511(b). Private exports plainly do not meet the definition of “national defense” in the Act. *See* 50 U.S.C. § 4552(14). Nor did the Executive Order find that the export of meat and poultry was “critical infrastructure assistance to any foreign nation.” *Id.* Instead, by its own terms, the Executive Order concerns meat and poultry as a critical material for *domestic* consumption:

- “It is important that processors of beef, pork, and poultry (meat and poultry) in the food supply chain continue operating and fulfilling orders to ensure a continued supply of protein for *Americans*.” Executive Order 13917 § 1, 85 Fed. Reg. at 26313 (emphasis added).
- “Notwithstanding Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness), the authority of the President to require performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, and to implement the Act in subchapter III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, 4559, 4560), is delegated to the Secretary of Agriculture with respect to food supply chain resources, including meat and poultry, *during the national emergency caused by the outbreak of COVID-19 within the United States*.” Executive Order 13917 § 2(a), 85 Fed. Reg. at 26313 (emphasis added).

- “The Secretary of Agriculture shall use the authority under section 101 of the Act, in consultation with the heads of such other executive departments and agencies as he deems appropriate, to determine the proper *nationwide* priorities and allocation of all the materials, services, and facilities necessary to ensure the continued supply of meat and poultry, consistent with the guidance for the operations of meat and poultry processing facilities jointly issued by the CDC and OSHA.” Executive Order 13917 § 2(b), 85 Fed. Reg. at 26313 (emphasis added).

At no point does the Executive Order designate meat and poultry as a critical material for a foreign nation, or designate meat and poultry processing infrastructure in a foreign nation as critical infrastructure. Exporting meat and poultry does not and should not justify sacrificing workers’ health, lives, and civil rights.

G. There are Less Discriminatory Alternatives.

Meat Processing Corporations can adopt a less discriminatory alternative because coronavirus infections are preventable. “Title VI requires recipients to implement a ‘less discriminatory alternative’ if it is feasible and meets their legitimate objectives.” Title VI Legal Manual, *supra* note, at 39 (citing *Elston*, 997 F.2d at 1407, 1413; *Georgia State Conf.*, 775 F.2d at 1417); *see also Albermarle Paper Co.*, 422 U.S. at 425 (1975); 42 U.S.C. § 2000e-2(k)(1)(A)(i).

Such alternative would reduce the processing rate, increase the physical space between workers on the processing line to a minimum of six feet, increase the number of processing shifts per day, and operate shifts on weekends and federal holidays. This alternative would help the Corporations meet their processing capacity objective while

eliminating the risk of COVID-19 exposure through social distancing on the processing line.¹⁴⁷
The CDC guidance recognizes the extra-shift alternative as feasible.¹⁴⁸

Additional shifts stand out as reasonable and feasible alternatives when compared to the health and social impacts associated with COVID-19 infections among workers and subsequent community spread. Furthermore, the Food Safety Inspection Service offers its inspectors to allow Corporations to increase shifts at a reasonable cost. 84 Fed. Reg. 66871 (Dec. 6, 2019).¹⁴⁹ A third daily shift, shifts on weekends, and shifts on federal holidays to allow for a minimum of 6-feet between workers and reduced processing rates is a less discriminatory alternative, even if the Corporations incur additional costs.

H. The Corporate Processing Policies Violate Title VI: Disparate Treatment.

This Complaint alleges a pattern or practice of discrimination in violation of Title VI. The facts and circumstances described above surrounding (1) the Corporations' disregard for the risk of exposure to COVID-19 through their policies; (2) the failure to ensure that workers, the majority of whom are Black, Latino and Asian, receive protection from coronavirus transmission; and (3) the social distancing afforded majority white management provide indicia of disparate treatment prohibited by Title VI. 42 U.S.C. § 2000d; 7 C.F.R. §15.3(a). Furthermore, because additional evidence are in the

¹⁴⁷ See Perry Declaration, *supra* note.

¹⁴⁸ See CDC Guidance, *supra* note.

¹⁴⁹ The FSIS is the public health agency in the USDA responsible for verifying that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and accurately labeled. The cost of inspection for two shifts per week day is borne by taxpayers. See 21 U.S.C. §§ 468, 695. The cost of those services, amount to at least an hourly rate of \$64.84 for each FSIS employee. See 84 Fed. Reg. 66871 (Dec. 6, 2019) [attached as **Ex. 109**].

possession and control of the Corporations, Food Chain Workers therefore allege disparate treatment and request the Office of Civil Rights to investigate the Corporations for disparate treatment of meat processing workers.

I. Relief Requested

Food Chain Workers request that the U.S. Department of Agriculture suspend, terminate, and refuse to provide financial assistance to Corporations and refer this matter to the U.S. Department of Justice for enforcement pursuant to 7 C.F.R. § 15.8. Food Chain Workers further request that, during any efforts to secure voluntary compliance, the Office of Civil Rights includes Food Chain Workers in any negotiations and communications with the Corporations.

VIII. CONCLUSION

The Office of Civil Rights should immediately investigate and remedy the Corporations' racial discrimination.

Dated: July 8, 2020

Respectfully Submitted,

/s/ Brent Newell

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