UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, et al., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF AGRICULTURE, et al., *Defendants*.	C.A. No. 1:20-CV-00119-BAH
BREAD FOR THE CITY, et al., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF AGRICULTURE, et al., *Defendants*.	C.A. No. 1:20-CV-00127-BAH

AMICUS BRIEF OF LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AND NATIONAL WOMEN'S LAW CENTER IN SUPPORT OF PLAINTIFFS

I. INTRODUCTION

In December 2019, U.S. Agriculture Secretary Sonny Perdue announced that the Trump Administration's ("the Administration") purported success in revitalizing the economy and creating jobs had rendered work requirement waivers for able-bodied adults without dependents ("ABAWDs") in the Supplemental Nutrition Assistance Program ("SNAP") unnecessary: "We've got more jobs based on . . . Trump's economy than we've got people to apply for them."[1] Unfortunately, that was a gross overstatement of reality, particularly as applied to Blacks and Latinos, whose unemployment rates were approximately 70% and 30% higher, respectively, than the average rate for all races.[2] And, just six months since Secretary Perdue's statement, Blacks and Latinos in particular, have suffered a string of economically devastating blows. A world-wide pandemic has ravaged communities of color which already face astonishingly low access to quality healthcare services and health insurance. That same pandemic has also forced an unprecedented number of Blacks and Latinos out of the workforce through widespread layoffs across industries and in jobs disproportionately held by people of color.[3] In March 2020, just before the Final Rule was set to be enacted, Secretary Perdue claimed that if ABAWDs "can't find work in an economy of 3.5 percent unemployment, I don't know when they can."[4] Secretary Perdue's comment callously ignored the fact that the unemployment rate for Blacks (5.8%) was 65% higher, and for Latinos (4.4%) was more than 25% higher, at the time than the overall unemployment rate.[5] And just weeks after his comment, the Administration released unemployment data for March showing

[1] https://www.cnbc.com/2019/12/04/agriculture-secretary-sonny-perdue-food-stamp-changes-not-about-kicking-people-out.html

[2] https://www.bls.gov/opub/ted/2019/unemployment-rate-was-3-point-6-percent-in-october-2019.htm

[3] *See, e.g.*, https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state

[4] https://thefern.org/ag_insider/snap-eligibility-rules-will-tighten-despite-coronavirus-outbreak/

[5] https://www.bls.gov/news.release/archives/empsit_03062020.htm

that the overall unemployment rate had jumped more than 25% to 4.4%, with the unemployment rate for Blacks (6.7%) more than 52% higher, and for Latinos (6.0%) more than 36% higher than the overall rate.[6] April saw a staggering jump in the overall unemployment rate which increased to 14.7%—"the highest rate and the largest over-the-month increase in the history of the data (available back to January 1948)."[7] Many of those who have remained employed now serve on the "frontline," in low-income service jobs, forcing them to literally choose life or livelihood.

At the same time the recent pandemic has laid bare the vulnerability and rampant exploitation of communities of color, recent acts of police brutality against Black people have been a stark reminder of the vast extent of longstanding systemic racial injustice and racial inequality across *all* facets of American life, including the criminal justice system, education, transportation, housing, and our economy. This vulnerability has resulted in significant hurdles to employment security for Black people across industries for generations.[8] These economic hurdles, in turn, have resulted in Black people being overrepresented in SNAP, a critical safety net that not only ensures individuals do not go hungry, but keeps millions of citizens out of poverty or from being driven further into poverty.[9] These inequities, which have existed for 400 years, should have factored into Secretary Perdue's assessment of opportunities for the very people who rely on SNAP. They did not.

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[6] https://www.bls.gov/news.release/archives/empsit_04032020.htm

[7] https://www.bls.gov/opub/ted/2020/unemployment-rate-rises-to-record-high-14-point-7-percent-in-april-2020.htm

[8] *See, e.g.*, Josh Bivens & Monique Morrissey, *EPI Comments Regarding SNAP Work Requirements*, ECON. POL'Y INST. 6-10 (Apr. 2, 2019), https://tinyurl.com/Bivens-19 (employment); William Y. Chin, *Racial Cumulative Disadvantage: The Cumulative Effects of Racial Bias at Multiple Decision Points in the Criminal Justice System*, 6 WAKE FOREST J.L. & POL'Y 441, 442-46 (2016) (criminal justice); Rakesh Kochhar & Anthony Ciluffo, *Key findings on the rise in income inequality within America's racial and ethnic groups*, PEW RES. CTR. (Jul. 12, 2018), https://tinyurl.com/Kochhar-18 (income).

[9] *Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 8, 2016), https://tinyurl.com/CarlsonFeb2016

The Final Rule's requirement that states utilize Labor Market Areas ("LMAs"), over-reliance on Bureau of Labor Statistics data, and the implementation of the six percent floor are particularly harmful to ABAWDs of color. As detailed below, these provisions, which eliminate or restrict time-limit waivers, necessarily create a disproportionate effect on ABAWDs of color who face various and compounding barriers to employment.[10] In taking this action, the Department failed to consider, in violation of the Administrative Procedures Act ("APA"), how clear and systemic inequities hinder ABAWDs of color from maintaining their SNAP benefits under existing requirements. The Department also failed to consider how removing these crucial benefits will drive ABAWDs of color further into poverty, thus exacerbating the vast inequities described above. It is precisely because of such prolific inequality that the decision to foreclose time-limit waivers is not a neutral decision divorced from race or ethnicity. Accordingly, this Court should grant Plaintiffs' Motion for Summary Judgment.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a non-partisan, non-profit organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. The principal mission of the Lawyers' Committee is to secure equal justice for all through the rule of law.

The National Women's Law Center (the "Center") is a nonprofit legal organization that is dedicated to the advancement and protection of women's legal rights and the expansion of women's opportunities. Since 1972, the Center has worked to protect and advance the progress of women and their families in core aspects of their lives, including employment, income security,

[10] *See* Danielle Kwon et al., *Using Labor Market Areas to Determine ABAWD Waiver Eligibility Limits SNAP's Local Flexibility*, URBAN INST. 3 (Apr. 2020), https://tinyurl.com/Kwon2020; Gray et al., *Employed in a SNAP? The Impact of Work Requirements on Program Participation and Labor Supply* 24 (Sept. 2019), https://tinyurl.com/Gray-2019.

education, and health and reproductive rights, with an emphasis on the needs of low-income women and those who face multiple and intersecting forms of discrimination.

As leading civil rights organizations, the has amici have a vested interest in opposing limitations to the SNAP program because the Final Rule would deprive low-income people of color, especially women of color, of critical benefits. Amici also have a vested interest in opposing work requirements associated with the SNAP Program as a whole because such requirements fail to consider the ways in which systemic racism and sex discrimination has erected hurdles to gainful and consistent employment for many communities of color.

III. ARGUMENT

In addition to the reasons set forth in Plaintiffs' Motion for Summary Judgment, this Court should vacate the Final Rule for two reasons.

First, the Department gave no consideration to the reliance interests of ABAWDs, and only cursory consideration to the Final Rule's disparate impact upon protected classes, in violation of the APA. As illustrated below, eliminating SNAP benefits for nearly 700,000 individuals would shatter the reliance interests of ABAWDs who live in waived areas. This is especially true for Black and Latinx people, who represent 25% and 20% of ABAWDs, respectively, but only comprise 13.4% and 18.5% of the overall population.[11] *See* Bolen Decl. ¶ 23 (ECF 3-2). This fact is not in dispute, as the government even conceded that "implementation of the final rule may impact Blacks and Latinos at a higher rate due to factors more strongly associated with potential program users in these minority groups." ABAWD00000358; 84 Fed. Reg. 66808. Second, the USDA's Food and Nutrition Services Civil Rights Division noted that it did not have data necessary to evaluate the full extent of the Rule's disparate impact, and also expressly

[11] https://www.census.gov/quickfacts/fact/table/US/PST045219

recommended mitigation strategies to lessen any such impact. The USDA failed to gather additional data or apply a single mitigation strategy. For these reasons, the Final Rule is arbitrary and capricious in violation of the APA.

Second, the record is clear that the Department failed to substantively address comments and evidence demonstrating the direct harm to ABAWDs of color. And, the harm is great. For example, the Final Rule's LMA provision ignores that the sheer size of some LMAs creates unrealistic employment expectations for ABAWDs of color. Because LMAs often group together areas with high unemployment rates with areas of low unemployment, ABAWDs of color who live in areas with high unemployment will be precluded from accessing critical SNAP benefits. This provision is unreasonably burdensome upon ABAWDs living in areas with insufficient jobs, as they must now commute great distances to find part-time employment to sustain their SNAP benefits. Moreover, by implementing a 6% unemployment floor and restricting states to the Bureau of Labor Statics ("BLS") unemployment data, the Final Rule reduces what should be a nuanced analysis of employment prospects to a cursory review of general unemployment rates. Coupled with the LMA provision, the 6% floor will eliminate broad swaths of waived areas, primarily consisting of communities of color. Several experts and stakeholders submitted comments depicting these disparities. The Department did not substantively respond to a single one. Accordingly, the government's failure to consider and address the disparate impact on communities of colors caused by these changes was an abuse of discretion in violation of the APA.

A. The Final Rule is Arbitrary and Capricious Because It Did Not Consider the Reliance Interests of ABAWDs Living in Waived Areas.

The Final Rule violates the APA because it completely ignores the legitimate reliance interest that ABAWDs, specifically ABAWDs of color, have on the current regulatory scheme. When an agency changes a policy, it must "be cognizant that longstanding policies may have

'engendered serious reliance interests that must be taken into account.'" *Department of Homeland Security v. Regents of the University of California*, No. 18-587, 2020 WL 3271746, at *14 (U.S. June 18, 2020) (citing *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016)). "It would be arbitrary and capricious to ignore such matters." *Id*. Once the agency has identified potential reliance interests, it must assess "whether they [are] significant, and weigh any such interests against competing policy concerns." *Id.* at *15. The agency must conduct this analysis regardless of whether the program in question "conferred [any] substantive rights" upon its participants. *Id.* at *14. Identifying and weighing reliance interests may lead the agency to make a "difficult decision," depending on the extent of a population's reliance on a prior policy. *Id.* at *15. But "[m]aking that difficult decision," *id.*, and doing so only after demonstrating that it has "tak[en] account of legitimate reliance" interests," *Smiley*, 517 U.S. at 742, is "the agency's job." *Regents*, 2020 WL 3271746, at *15. If there are serious reliance interests at play, then "[i]t would be arbitrary and capricious" for the agency "to ignore such matters." *Id.*

1. *ABAWDs, Who Are Disproportionately People of Color, Have A Reliance Interest In Work-Requirement Waivers.*

The Final Rule is arbitrary and capricious because the Department adopted the Rule without considering the "legitimate reliance" interests of ABAWDs, who are disproportionately Black and Latino, created by its "longstanding policy." *See Id.* at *14. As the District Court highlighted in its March 13 Order, the government's "conclusory reasoning and summary dismissal" of commenters' concerns are "particularly troubling in light of the reliance interests involved." *District of Columbia v. U.S. Department of Agriculture*, No. 20-119 (BAH), 2020 WL 1236657, at *21 (D.D.C. Mar. 13, 2020) (citing *Encino Motorcars, LLC*, 136 S. Ct. at 2126). This Court also found that these interests are relevant to the most basic of human needs and include those "as fundamental as access to nutrition." *Id.* The sheer extent of the interests involved is

stunning, as 700,000 individuals are expected to lose the SNAP benefits upon which they "have depended . . . to avoid hunger." *Id.* Because USDA took no "care to explain and justify the [rule] change" in light of these interests, the Department's Final Rule is arbitrary and capricious. *Id.*

SNAP is a "critical automatic stabilizer and safety net program," and, at its core, the program ensures that families and individuals who lack resources do not go hungry. Lauren Bauer et al., *Who Stands to Lose if the Final SNAP Work Requirement Rule Takes Effect?*, BROOKINGS INST. 7 (Apr. 2020), https://tinyurl.com/Bauer2020. These benefits "radiate outward" as individuals and families rely on SNAP to free up critical resources to cover the costs of essential expenses such as rent, utilities, clothing, and health care, which likely could not be covered without SNAP's support. *See* Bartfeld et al., *The Basics of Snap Food Assistance*, INST. FOR RES. ON POVERTY 2 (Nov. 2015), https://tinyurl.com/Bartfeld2015; Bauer et al., *supra*, at 1; Steven Carlson et al., *SNAP Works for America's Children*, CTR. ON BUDGET & POL'Y PRIORITIES 14 (Sept. 29, 2016), https://tinyurl.com/CarlsonSept2016; *see also Regents*, 2020 WL 3271746, at *14.

Others who are not ABAWDs also rely on the benefits that ABAWDs receive from SNAP. Counterintuitively, the term "without dependents" in the ABAWD acronym includes adults who are supporting their children who do not live with them. *See* Food and Nutrition Service, *SNAP Work Requirements,* USDA, https://tinyurl.com/FNS-USDA. Indeed, studies have found that significant numbers of ABAWDs stretch their SNAP benefits to provide necessary food support to their families; these individuals, too, will lose out if the Final Rule takes effect. Carlson et al., *Who Are the Low-Income Childless Adults, supra*, at 1, 5 ("Nearly one-quarter [of ABAWDs] are non-custodial parents, and 13 percent are caregivers for a parent, relative, or friend."); *see also* Maggie Dickinson, *The Ripple Effects of Taking SNAP Benefits from One Person*, THE ATLANTIC

(Dec. 10, 2019), https://tinyurl.com/Dickinson19 (noting that many ABAWDs use their SNAP benefits to feed children who reside with another parent).

All of these reliance interests are heightened for people of color, who are overrepresented in the ABAWD population. *See* Carlson et al., *Who Are the Low-Income Childless Adults*, *supra* at 1 (finding that about forty percent of all ABAWDs identify as Black or Latino); CRIA at 9 (same); Quick Facts, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/US/PST045219. Indeed, studies have shown that if the Department's Final Rule had taken effect in 2018, nearly an equal number of white ABAWDs would have lost benefits compared to Black and Hispanic ABAWDs. *See* Laura Wheaton, *Estimated Effect of Recent Proposed Changes to SNAP Regulations*, URBAN INST. 9 tbl.2 (Nov. 2019), https://tinyurl.com/Wheaton-2019 (finding that 274,500 white ABAWDs would lose benefits compared to 273,600 combined Black and Hispanic individuals). Despite making up more than sixty percent of the U.S. population, non-Hispanic White individuals would make up only forty-five percent of the ABAWDs who lost benefits due to the Rule. *See id.*; Quick Facts, *supra*. In contrast, Black and Hispanic individuals, who make up only 32 percent of the U.S. population, would constitute 45 percent of the ABAWDs who lost their SNAP benefits. *See* Wheaton, *supra*, at 9 tbl.2; Quick Facts, *supra*.

For example, in Washington, D.C., where 93% of SNAP participants are Black, the devastating effects of the Final Rule would be far from race-neutral. Declaration of Edward Bolen for Plaintiffs at 9, *District of Columbia v. U.S. Department of Agriculture*, No. 20-119. If the Rule took effect in 2018, white ABAWDs in the West Virginia portion of the Washington-Arlington-Alexandria LMA would have confronted a three-month time limit with an unemployment rate of only 5.2%. By contrast, Black ABAWDs in D.C. would have faced the same limit with more than

double the unemployment rate, at 12.9%. Janelle Jones, *In 14 States and DC, the African American Unemployment Rate Is at Least Twice the White Unemployment Rate*, ECON. POL'Y INST. 1 (May 17, 2018), https://tinyurl.com/Jones-2018.

In sum, people of color have a proportionally more significant reliance interests in maintaining work requirement waivers because the waivers act as a critical safety net in areas where there are limited job opportunities. *See* Bivens & Morrissey, *supra*, at 7. While the Civil Rights Impact Assessment ("CRIA") prepared by USDA recognized that "implementation of the [F]inal [R]ule *may* impact African Americans and Hispanic groups at a higher rate due to *factors more strongly associated* with potential program users in these minority groups," both the CRIA and the Final Rule failed to recognize that these "factors" entail significant reliance interests, which must be taken into account. CRIA at 10 (emphasis added). Because USDA failed to identify, analyze, and weigh these legitimate and serious reliance interests against its own policy preferences, its Rule is arbitrary and capricious. *See Regents*, 2020 WL 3271746, at *14-15; *Encino Motorcars*, 136 S. Ct. at 2126.

2. *The Department's Baseless Justifications and Policy Concerns Do Not Outweigh the Serious Reliance Interests Of ABAWDs, Including ABAWDs of Color.*

Even if USDA had analyzed the reliance interests described above, the policy justifications put forth by the Department in adopting its Final Rule fail to outweigh the reliance interests of ABAWDs in currently or potentially waived areas. *See Regents*, 2020 WL 3271746, at *14.

USDA claims that the Rule is justified based on a concern that waivers are being granted for ABAWDs who do not "truly need them." 84 Fed. Reg. 66,783 (Dec. 5, 2019). However, the Department has provided no meaningful evidence that ABAWDs who live in waived areas have no such "need." USDA cites to the fact that "about half of the ABAWDs on SNAP live in waived areas, despite low unemployment levels across the majority of the country." *Id.* As the District

Court recognized in its March 13 Order, the existence of low unemployment levels *nationally* does not reflect the need for waivers in certain *local areas*. *See District of Columbia v. U.S. Department of Agriculture*, No. 20-119 (BAH), 2020 WL 1236657, at *3 (D.D.C. Mar. 13, 2020); *accord* Bivens & Morrissey *supra*, at 6-7. Given that nearly half of ABAWDs are people of color who bear the burden of systemic racial inequality, while ABAWDs as a whole face outsized barriers to stable employment, it should come as no surprise that individuals who disproportionately face economic distress are more likely to be found in areas that are themselves economically distressed. Moreover, USDA's concern that waivers are being used by ABAWDs who do not "truly need them" is not supported by research. 84 Fed. Reg. 66,783 (Dec. 5, 2019). As detailed above, studies consistently show that ABAWDs who can work do so, despite the severe and disproportionate barriers to employment they must confront. *See* Carlson et al., *Who Are the Low-Income Childless Adults*, *supra*, at 10, 15; Bartfeld et al., *supra*, at 2; Waxman & Joee, *supra*, at 6; Cuffey et al., *supra* at 17; *see generally* Bolen et al., *supra.* If anything, these findings, combined with the fact that half of ABAWDs live in waived areas, supports the inverse of the Department's purported justification: States are using waivers where the need is greatest.

Next, USDA has provided no meaningful evidence that "States have taken advantage" of the SNAP program to provide waivers in areas "where it is questionable" whether there is a "lack of sufficient jobs." *Id.* USDA claims States are "grouping areas in such a way to maximize waived areas," but this also does not outweigh the reliance interests of ABAWDs in these areas. 84 Fed. Reg. 66,794 (Dec. 5, 2019). Even assuming this is true, USDA has not explained how such conduct constitutes a "misuse" of the SNAP program. *Id.* at 66,796. To be clear, USDA does not claim that States are requesting waivers for regions that do not meet the waiver requirements. If so, the Secretary would be well within his authority to decline to waive the work requirement for those

areas and no rule change would be necessary. *See* 7 U.S.C. § 2015(o)(4)(A). Rather, USDA seeks a rule change because it believes the States' ability to obtain waivers within the current parameters of the waiver requirements is a "problem." 84 Fed. Reg. 66,794 (Dec. 5, 2019). Without explaining how the States' conduct actually constitutes a "misuse" of the program, USDA's apparent justification for the rule change is little more than a naked policy preference for fewer waivers.

In the face of serious and legitimate reliance interests on its prior policy, USDA has provided nothing more than "conclusory reasoning" to explain how resolving the "problem" of an unknown number of unnecessary waivers justifies penalizing hundreds of thousands of ABAWDs on SNAP. *District of Columbia v. U.S. Department of Agriculture*, No. 20-119 (BAH), 2020 WL 1236657, at *21 (D.D.C. Mar. 13, 2020). USDA's failure to provide proper reasoning for its Rule is particularly stark in light of the health and economic crises facing our country. If implemented, the Final Rule and its resulting loss of SNAP benefits is expected to exacerbate the impact of these dual crises, particularly for communities of color, by contributing to an unrelenting cycle of poverty with intensified food insecurity, poorer physical and mental health outcomes, and increased levels of housing instability. Bauer et al., *supra*, at 7; Kwon et al., *supra*, at 3. As documented, ABAWDs and their family members rely on SNAP as a vital source of food support and economic stability. Because USDA failed to adequately identify, analyze, weigh, and mitigate the serious reliance interests of ABAWDs of color, as well as the profoundly negative impact that its Rule will have on these communities, its Final Rule is arbitrary and capricious.

B. The USDA Did Not Consider the Final Rule's Disproportionate Impact Upon Communities of Color in Violation of Its Own Regulations and the APA.

In addition to considering ABAWDs' legitimate reliance interests, the USDA was also required by its own regulations to adequately evaluate the impact the Final Rule would have on ABAWDs of color. "Normally an agency rule is considered arbitrary and capricious if the agency

has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 103 S.Ct. 2856, 2867, 463 U.S. 29, 43. Indeed, this issue is so crucial to the Department's rulemaking process that the USDA's own Departmental Regulations call for an extensive 13-step evaluation through a CRIA. Though these Regulations set forth a clear, rigorous evaluation process, the Department ultimately ignored recommendations to mitigate the disparate impact on communities of color in this critical evaluation and issued the Final Rule anyway.

1. *The USDA Departmental Regulations Require a Thorough Analysis of Potential Harms to Protected Classes.*

"Agencies are under an obligation to follow their own regulations, procedures, and precedents, or provide a rational explanation for their departures." *National Conservative Political Action Committee v. Federal Election Commission*, 626 F.2d 953, 959 (D.C. Cir. 1980). The Department was therefore bound to comply with Departmental Regulation 4300-04 ("Departmental Regulation"). Under this Departmental Regulation, the USDA was required to "analyze the civil rights impact(s) of policies, actions, or decisions that will affect the USDA workforce or its federally conducted or federally assisted programs and activities" in its CRIA. USDA DR 4300-04 *Civil Rights Impact Analysis* at 2. The Departmental Regulation further directed the USDA to collect "current race, ethnicity, gender (REG) . . . data collection of program participants from various sources (i.e., U.S. Census, Census of Agriculture, agency internal databases, etc.) to determine if implementation will result in underrepresentation or will disproportionately impact protected groups." *Id*. at 12. And, importantly, the CRIA must include, *inter alia*, analysis of "(1) [w]hether or not the impacts will be disproportionate; and (2) [h]ow the

disproportionate impacts will be manifested." *Id*. Thus, to comply with this Departmental Regulation, the USDA was required to collect data on ABAWDs of color who could be impacted by the rule and analyze the impact of the proposed rule on this affected population.

The CRIA did not even minimally satisfy the Departmental Regulation requirements. The CRIA claimed that "[s]pecific race, ethnicity, and gender data regarding the ABAWDs that will be impacted *are not available*." [CRIA, doc. 26-2 at 76]. The only data included in the CRIA broadly describes the ethnic makeup of current ABAWDs. *See id*. at 75 ("43.8% are White, 27% are African-American, 1.8% are Asian, 11.4% are Hispanic, under 1% are Native Hawaiian or other Pacific Islander, 1.8% are Native American, 12% have an unknown race, and 2.1% are identified as being of multiple races."). As discussed in detail below, several experts submitted extensive race, ethnicity, and gender data detailing the harm to communities of color, which the Department clearly ignored when conducting its CRIA. Second, rather than assess "[h]ow the disproportionate impacts will be manifested," the CRIA observed only that:

> [T]he implementation of the final rule may impact African-Americans and Hispanic groups at a higher rate due to factors more strongly associated with potential program users in these minority groups. Rates of unemployment for members of minority protected groups tend to be higher than rates of unemployment for non-minorities, vary widely from State to State, and as a result any such impacts vary based on factors specific to individual States . . .

Id. at 76.

Contrary to the Department's contention that the CRIA is not subject to judicial review, courts may consider the sufficiency of a departmental CRIA when relevant to a parties' challenge of a final agency action. *See McFalls v. Purdue*, 2018 WL 785866, at *10 (D. Or. 2018) (noting that an agency's practice of "conducting CRIAs using an improper standard" could be considered "wrongful behavior"); *Center for Science in the Public Interest v. Perdue*, 2020 WL 1849695, at *15 (D. Md. 2020) ("Although Plaintiffs may disagree with the results of the Civil Rights Impact

Analysis, the Court is satisfied that the Analysis identifies the relevant issues of concern and USDA's reaction to them . . ."). Here, the Department's CRIA analysis was insufficient because it lacked "[s]pecific race, ethnicity, and gender data regarding the ABAWDs that will be impacted," and entirely fails to address how the disproportionate impacts against communities of color will manifest. In view of these serious shortcomings, the Department failed to comply with its own Departmental Regulations, and the Final Rule was "unlawfully issued." *See National Conservative Political Action Committee,* 626 F.2d at 959.

2. *The Department Failed to Implement the CRIA's Recommendations and Mitigation Strategies.*

In addition to issuing the Final Rule without addressing the racial impact, the Department completely ignored the CRIA's remedial recommendations and mitigation strategies. The CRIA recognized its own deficiencies and recommended that the Department gather data and information necessary to fully evaluate the racial impact. To remediate this issue, the CRIA directed the Department to: (1) "Complete a detailed review of the impact of this final rule on each State Agency and their SNAP participants who are members of protected groups before its implementation to determine whether any specific groups might be disproportionately impacted;" (2) "Encourage States to develop State-specific plans to address any impacts that are identified as a result of the detailed reviews of the final rule;" (3) "Identify the race, sex, and national origin of SNAP beneficiaries impacted by the final rule to evaluate civil rights impacts on protected classes;" (4) "Develop a Factsheet detailing scenarios that would be designated as exceptional circumstances under the final rule;" and (5) "extend the implementation of the final rule from April 1, 2020, to May 1, 2020, to allow additional time to complete the mitigation as outlined above." The Department completed none of these actions yet did not delay implementation of the Final Rule.

Next, the CRIA identified, as a mitigation strategy, that the Department should "[e]ncourage State agencies to develop SNAP Employment and Training (E&T) programs and to make strategic partnerships with private sector entities to facilitate the training and employment of SNAP beneficiaries affected by the final rule." But at a hearing on the matter, the Department conceded it did not fulfill this recommendation because there is not "additional federal funding to help support the E&T programs." [March 5, 2020 Prelim. Inj. Hr'g Tr. at 90:19-91:7, doc. 52]. Remarkably, the Department also suggested it was not necessary to actually implement *any* mitigation strategies identified in the CRIA as long as it "consider[ed] the possibility of a disparate impact." *Id*. at 91:8-12.

Nothing in the Departmental Regulations suggests that a threadbare acknowledgement of the "possibility of a disparate impact" was all that was required. In other instances, the USDA has issued a revised CRIA where affected parties challenged its sufficiency. *See, e.g., McFalls v. Purdue*, 2018 WL 785866, at *8 (D. Or. 2018) (where USDA issued a second CRIA in response to criticism that the first CRIA did not adequately explain minority impact). The USDA failed to take any such action in this case.

For these reasons, the Final Rule is arbitrary and capricious because it did not consider an "important aspect of the problem" in failing to collect and analyze data "regarding the ABAWDs that will be impacted" and "[h]ow the disproportionate impacts will be manifested" as required by its departmental regulations. The Department also abused its discretion by issuing the Final Rule without conducting additional studies, delaying implementation, or implementing the mitigation strategy, as directed by the CRIA.

C. The Department Abused Its Discretion By Failing To Consider Or Respond To Significant Comments On The Disparate Impact On Communities Of Color Caused by the Requirement that States Only Request Waivers for Labor Market Areas.

1. *Labor Market Areas Do Not Adequately Consider Unemployment Rates and Barriers to Employment That Affect ABAWDs of Color in Urban Areas.*

The Final Rule's requirement that States may only request waivers for LMAs fails to account for inherent barriers to unemployment faced by Black and Latino ABAWDS in urban areas. The Department of Labor defines an LMA as "an *economically integrated* area within which individuals can reside and find employment within a *reasonable* distance or can readily change jobs without changing their place of residence." [12] LMA designations, however, do not account for employment hurdles faced by Black and Latino residents living in urban areas. Indeed, LMA designations oftentimes group one low-income urban community, which are sometimes comprised of primarily Black and Latino residents, with wealthier suburban units containing a higher percentage of white individuals—even if those communities are in separate counties or States. The combination of low-income urban areas with well-to-do white suburbia is far from "economically integrated," as the unemployment and poverty statistics in low-income neighborhoods are distorted when grouped with suburban units. For example, the poverty rate in urban areas, such as the Bronx, New York, could be as high as 27.2%, but the LMA only has a poverty rate of 11.2%.[13] Such a decrease in the poverty rate directly correlates with the decrease in the percentage of Black residents, as the Bronx contains a 34.1% Black population, and 55% Latino, while the LMA's Black population is only 16%, and the Latino population is only X.

Similarly, disconnected to reality is the fact that a "reasonable distance" is purely based on the "commuting patterns of the *general* workforce"—the idea that every resident can drive to work.

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[12] "Local Area Unemployment Statistics: Geographic Concepts." U.S. Bureau of Labor Statistics, 20 Mar. 2020, https://www.bls.gov/lau/laugeo.htm. (explaining that "Counties are grouped into an LMA if at least 25 percent of one county's employed residents commute to another county within the LMA or at least 25 percent of one county's workers commuted in from another county.") (emphasis added).

[13] cite

However, the rule fails to recognize that Black and Latino ABAWDs in low-income areas generally rely on public transportation to get to work—three times the amount of residents in the LMA—and for these residents, the commute to work can be between 5-6 hours, comprising 3-4 modes of transportation.[14]

Rather than rely on States' expertise to group similarly situated counties, the use of LMAs drastically distorts both the commuting capabilities and the unemployment and poverty percentages of Black and Latino residents in urban areas. Because LMAs misrepresent these statistics, the rule's reliance on LMAs will "dramatically reduce" the number of areas eligible for waivers, resulting in potentially 301,000 low-income Americans losing their SNAP benefits. *District of Columbia v. U.S. Dep't of Agriculture*, No. 20-119, slip op. at 2 (D.D.C. Mar. 13, 2020). Indeed, "[t]he mismatch between available employment for ABAWDs and available employment across an LMA is starkest in large urban areas." *Id.* 43. Such an arbitrary grouping of counties—based purely on geographical location and the government's warped idea of reasonability—misrepresents unemployment prospects for urban, and particularly Black and Latino, SNAP residents, and will therefore disproportionately affect these individuals.

2. *LMAs Fail to Account for Unemployment Differences Between White Workers and Black and Latino Workers.*

LMA designations that primarily consist of white suburban neighborhoods downplay the unemployment statistics in low-income urban areas with a large percentage of Black and/or Latino ABAWDs. Grouping these low-income areas with wealthier, white, suburban locations distorts the reality of employment prospects for these individuals. For instance, LMAs fail to consider that Black and Latino workers in these areas generally have higher unemployment rates than white

[14] cite

workers. In the fourth quarter of 2018, for example, the unemployment rate for white workers was 3.2%, while the unemployment rate for Black workers was nearly double at 6.1%, and the rate for Latinos was at 4.4%. [15]

Additionally, the LMAs fail to consider that certain units, particularly in urban areas, contain a higher population of Black and Latino residents, and are thus particularly susceptible to increased unemployment and poverty rates. Bronx County in New York is a noteworthy example. The Bronx is part of the "New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area," and is one unit out of 25 units across New York, New Jersey and Pennsylvania. The Bronx itself is comprised of approximately 34.1% Blacks, 55.9% Latinos, and 21.3% Whites[16], while the LMA averages out to a population comprised of only 16% Blacks, 25% Latinos, and 46% White.[17] As the total percentage of Black and Latino residents decrease, the unemployment rate drops (5.8% to 3.8%), the median household-income rises ($38,085 to $78,478)[18], and the poverty rate decreases (27.4%[19] to 12.3%[20]).[21] The disparity in unemployment, poverty, median household-

[15] Decl. Ed Bolen ¶ 24.

[16] https://data.census.gov/cedsci/profile?q=Bronx%20County,%20New%20York&g=0500000US36005&tid=ACSDP1Y2018.DP05.

[17] https://censusreporter.org/profiles/31000US35620-new-york-newark-jersey-city-ny-nj-pa-metro-area/

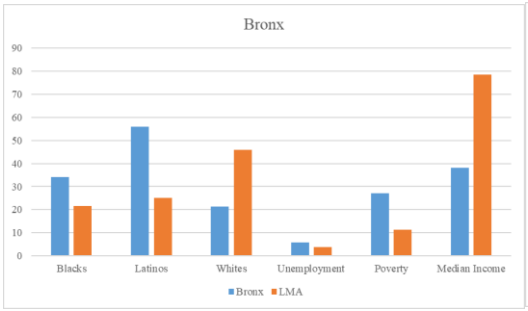
[18] https://data.census.gov/cedsci/profile?q=Bronx%20County,%20New%20York&g=0500000US36005&tid=ACSDP1Y2018.DP05; https://censusreporter.org/profiles/31000US35620-new-york-newark-jersey-city-ny-nj-pa-metro-area/

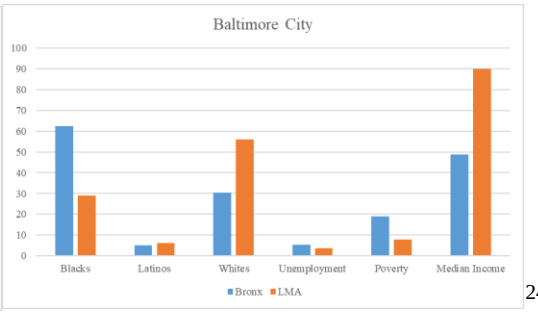
[19] https://censusreporter.org/profiles/05000US36005-bronx-county-ny/;

[20] https://censusreporter.org/profiles/31000US35620-new-york-newark-jersey-city-ny-nj-pa-metro-area/

[21] Note that the numbers in the chart correlate to percentages for all categories, outside of the Median Income category, which correlates to dollars.

income, relative to racial composition, in Baltimore City, Maryland [22] and Washington D.C., [23] is also striking.





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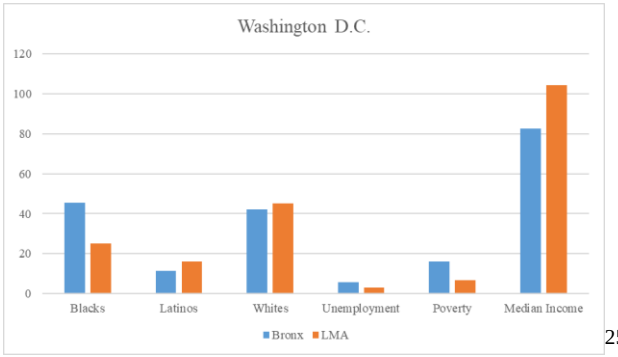

[25]

As the examples above demonstrate, urban areas tend to have more diverse populations and higher unemployment. But by forcing States to combine these urban areas with suburban units that contain less diverse populations and lower unemployment, the government is essentially ignoring the unemployment crisis facing Black and Latino ABAWDs in urban areas across the country. Because LMAs distort the unemployment and economic realities faced by Black and

[22] Baltimore City, Maryland is one of six counties across Maryland, and the LMA is titled, "Baltimore-Columbia-Towson, MD Metropolitan Statistical Area."

[23] Washington D.C. is one of 23 counties across Maryland, Virginia and West Virginia, and the LMA is titled, "Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area."

[24] https://data.census.gov/cedsci/profile?q=Baltimore%20city&g=0500000US24510#; https://censusreporter.org/profiles/31000US12580-baltimore-columbia-towson-md-metro-area/; https://censusreporter.org/profiles/05000US24510-baltimore-city-md/

[25] https://data.census.gov/cedsci/profile?g=0400000US11&q=District%20of%20Columbia; https://censusreporter.org/profiles/31000US47900-washington-arlington-alexandria-dc-va-md-wv-metro-area/; https://censusreporter.org/profiles/16000US1150000-washington-dc/

Latino ABAWDs, the Final Rule will disproportionately affect ABAWDs in lower income areas. The USDA failed to meaningfully consider this issue or address the numerous comments on this issue.

a. The LMAs Fail to Account for the Employment Realities of Women of Color.

While all of the arguments contained herein include concerns faced by women of color, the LMAs also do not consider how women of color with low incomes face additional structural barriers to fulfilling a work requirement. Due to both systemic racism and sex discrimination, Black and Latinx women face higher unemployment rates than white men, and face limited employment opportunities. For example, in February 2019, the national unemployment rate for Black women (5.3%) was almost twice the unemployment rate for white men (3%). During that period, 4% of Latinx women were unemployed.[26] Overall, and across all races and ethnicities, women are overrepresented in the low-wage workforce.[27] These rates are disproportionate for Black and Latinx women. Although Latinx women only account for 7.4% of the workforce, 16% of them are low-wage workers.[28] Black women only account for 6.5% of the workforce but 12% of them are low-wage workers.[29]

The Final Rule also imposes unrealistic employment conditions for ABAWDs who are women of color without considering the barriers that would make fulfilling a work requirement difficult. Black and Latinx women are more likely to be involuntary part-time workers.[30] Women

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[26] https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/04/NWLC-Comment-on-Proposed-SNAP-Time-Limit-Rule-RIN-0584-AE57.pdf at 16.

[27] https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/04/NWLC-Comment-on-Proposed-SNAP-Time-Limit-Rule-RIN-0584-AE57.pdf at 12.

[28] *Id*. at 13.

[29] *Id*.; *See also* https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/04/Women-in-Low-Paid-Jobs-report_pp04-FINAL-4.2.pdf.

[30] *Id*. at 16.

of color in the low-wage workforce face unstable and unpredictable schedules that prevent them from working on average 20 hours per week.[31] Black and Latina women face unemployment periods longer than three months.[32] In February 2019, 270,000 Black women and 207,000 Latina women were unemployed for 15 weeks or longer.[33] Black women are unemployed for an average of 28 weeks and Latina women are unemployed for an average of 16 weeks.[34] In these ways, the LMAs and thus the USDA failed to consider the specific employment realities of women of color and the ways in which the Rule would further harm these communities.

3. *The USDA Failed to Consider How the Size of Each LMA Creates Unrealistic Employment Expectations for Black and Latino ABAWDs That Reside in Urban Areas.*

In addition to the false unemployment realities that LMA designations create by grouping low-income urban areas with wealthier suburbs, the large size of the LMAs ignores employment realities for low-income residents that heavily rely on public transportation. However, USDA claims that because BLS draws LMA borders based on the "commuting patterns of the general workforce" in a given area, it should be possible for a resident in one part of the LMA to "reasonbl[y]" commute to any other part of the LMA for work. *Id.*

Such a contention is unreasonable. The sheer size of each LMA enables the USDA to deflate unemployment percentages in urban communities of color, by grouping these areas with primarily white areas with lower unemployment rates. Even if Black and Latino residents *could* find a job within the LMA, it is nearly impossible for these residents to commute within the LMA, as the commute within each LMA can be over 4 hours each way, comprising multiple modes of

[31] *Id*. at 13.

[32] *Id*. at 16.

[33] *Id*.

[34] *Id*.

transportation. Thus, even if such residents could find a job, they would not actually be able to get there.

Indeed, the percentage of residents who rely on public transportation in urban areas is generally ***three times*** that of residents who rely on public transportation in each LMA. For example, in the Bronx, ***67.3%*** of the ***unit*** population relies on public transportation or walking to work. By contrast, only ***37%*** of the ***LMA*** population relies on such modes of transportation. Similarly, in Baltimore City, ***24.4%*** of the ***unit*** population relies on public transportation or walking to work, whereas only ***8%*** of the ***LMA*** population relies on such commutes. And in Washington D.C, ***47.7%*** of the ***unit*** population uses only public transportation or walking, while ***16%*** of the ***LMA*** population makes use of such transportation.

Although the unemployment percentages in the counties within the LMA are lower than the urban areas, and thus, in theory, have more jobs readily available, public transportation is not a viable option to commute to certain counties within the LMA. For instance, although the other counties in Baltimore City's LMA have a lower unemployment percentage (ranging between 2.9%-3.9%) compared to Baltimore City's unemployment percentage (5.2%), it is nearly impossible to travel the duration of Baltimore City's LMA without taking no less than ***4*** transfers with a commute over ***6 hours***. It is similarly impossible to commute from Baltimore City to one end of the LMA (North Beach, MD), as it is no less than ***4 hours and 11 minutes***, comprising ***5*** separate transfers. The Bronx is another noteworthy example. Although the Bronx has an unemployment percentage of 5.8%, many of the other units in the LMA are under 4%, and it thus appears that a Bronx resident could retain a job in one of these areas. However, traveling the entire distance of that LMA is over ***5*** hours, requiring ***4*** transfers between rail and bus. The commute from the Bronx to one end of the LMA (Stafford Township, NJ) fares no better, as it is over ***4***

hours comprising ***3*** separate modes of transportation, in addition to significant walking time. Finally, the commute in Washington D.C.'s LMA is over ***6*** hours from end to end, comprising ***2*** separate modes of transportation. Thus, although the other counties in the LMA have a significantly lower unemployment rate (all well under 4%), compared to D.C's 5.6% rate, it is not feasible for these residents to travel within the LMA. The commute from Washington, D.C. to one end of the LMA (Frederick, MD), while not as absurd as the foregoing examples, is over ***2*** hours with ***2*** separate modes of transportation.

Beyond the unreasonable commuting time itself, a commute of these lengths will necessarily entail an overly burdensome commuting expense. For instance, in Washington D.C.'s LMA, the cost of a monthly Amtrak ticket is ***$730.00 per month***[35], while the fare for the Metro within D.C ranges ***$2.25-$6.00 per ride***[36]. Additionally, ABAWDs with children will be required to pay for much longer periods of childcare if they are traveling 7+ hours a day to and from work. Even if such residents could make the impossible possible, it is hard to imagine an employer who would hire an individual whose commute is so lengthy and complicated because of concerns about showing up to work reliably.

The foregoing examples demonstrate that LMAs clearly misrepresent the commuting patterns of Black and Latino ABAWDs, as their reliance on public transportation is not similar to that of the "general workforce." The USDA must factor in these considerations in deciding what commuting patterns are "reasonable" for such residents. Indeed, the Department did not refute these contentions, but responded only that, "LMAs remain the best available and most appropriate delineation to address the issue of grouping, as there are no Federally-designated areas that

[35] https://tickets.amtrak.com/itd/amtrak.

[36] https://washington.org/navigating-dc-metro#Metro-Fares

specifically assess commuting patterns and other related economic factors for ABAWDs."[37] The Department then noted that, "if in the future a more robust delineation becomes available from a Federal source, the Department may consider its appropriateness in the context of future rulemaking."[38] But Black and Latino ABAWDs in urban areas do not have time to wait until such a "robust" model becomes available. Rather, they are entitled to have their interests accounted for now, to ensure that they and their families can survive. If the government cannot account for the basic needs of these communities, then it must lift the prohibitions on States' ability to help those that the federal government refuses to consider.

D. The Department Abused Its Discretion by Failing to Consider or Respond to Significant Comments on The Disparate Impact on Communities of Color Caused by Requiring the Use of BLS Data and Implementing a 6% Floor.

Requiring the use of BLS data and implementing a 6% floor will disproportionately harm ABAWDs of color. By considering only BLS unemployment data, the Final Rule would severely restrict the more holistic ways in which States may demonstrate weak job markets. Specifically, BLS data fails to adequately account for the stark differences between the overall unemployment rate of a state and the unemployment rate of Blacks and Latinos within the state. Thus, limiting waivers to areas that have an unemployment of at least 6% will harm ABAWDs of color to a far greater degree than white ABAWDs because overall employment rates obscure the reality that ABAWDs of color face significantly higher unemployment rates.

For example, as of May 2020, the national unemployment rate of Blacks and Latinos is approximately 45% higher than that of Whites.[39] For Black and Latina women, these

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[37] https://www.govinfo.gov/content/pkg/FR-1999-12-17/pdf/99-32527.pdf at 66793.

[38] *Id.*

[39] https://www.pewresearch.org/fact-tank/2020/06/30/unemployment-rate-is-higher-than-officially-recorded-more-so-for-women-and-certain-other-groups [NEED TO BLUEBOOK]/

unemployment rates have remained steadily high. In May 2020, 16.5% of Black women and 19% of Latina women were unemployed.[40]

National unemployment rates and BLS statistics do not adequately reflect the unique circumstances that ABAWDS of color experience on a daily basis. Analyzing unemployment statistics at the state level and by race, then, is critical to truly understanding the disparities in unemployment between these two groups. For example, as of the fourth quarter of 2019, the District of Columbia ("D.C.") had an overall unemployment rate of 5.3%.[41] Because this falls under the 6% floor, D.C. would not be eligible for a waiver under the Final Rule. However, this 5.3% figure woefully misrepresents the unemployment rate for Black ABAWDs who currently rely on SNAP benefits to prevent starvation in Washington D.C.

The estimated population of D.C. as of the fourth quarter 2019 was 705,000; 46% Black, 46% white, and 8% Other.[42] However, the unemployment rate during this time period for white people in D.C. was 1.7%[43], whereas the unemployment rate of Black people was 11.2%—almost 560% higher.[44] There were approximately 37,400 unemployed residents in D.C. during this time, and Blacks accounted for approximately 36,300 of them, compared to just approximately 550 Whites.

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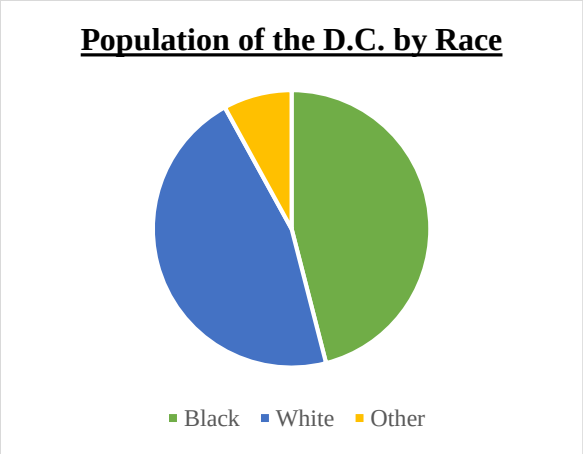
[40] https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/06/May-Jobs-FS.pdf at 12.

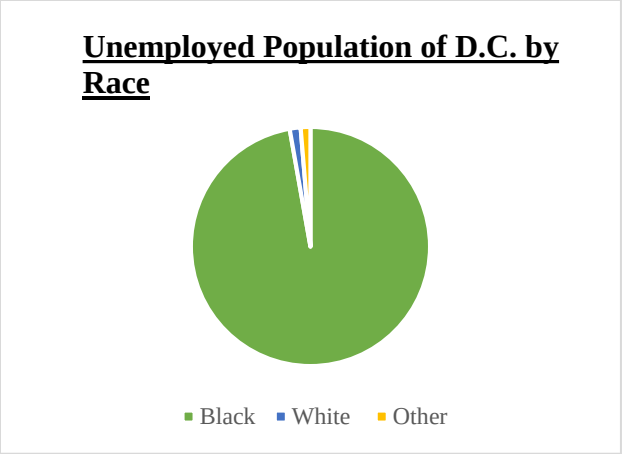
[41] *See* State Unemployment by Race and Ethnicity, Economic Policy Institute, Q4 2019, updated Mar. 2020, https://www.epi.org/indicators/state-unemployment-race-ethnicity/

[42] *See* United States Census Bureau, https://www.census.gov/quickfacts/fact/table/LA,DC/PST045219

[43] *See* State Unemployment by Race and Ethnicity, Economic Policy Institute, Q4 2019, updated March 2020, https://www.epi.org/indicators/state-unemployment-race-ethnicity/

[44] *See id.*





D.C. is not an outlier. This disparity between the overall state unemployment rate and the unemployment rate of Blacks in that same state exists in numerous States, such as Arkansas, Delaware, Illinois, Louisiana, Michigan, Mississippi, Ohio, and Pennsylvania.[45]

*Based on Q4 2019 data	Overall State Unemployment	Unemployment Rate of African Americans	Percentage Difference
Arkansas	3.6%	6.0%	67%
Delaware	3.8%	7.3%	92%
Illinois	3.8%	7.9%	108%
Louisiana	4.7%	7.9%	68%
Michigan	4.0%	6.8%	70%
Mississippi	5.6%	9.1%	63%
Ohio	4.2%	8.0%	90%
Pennsylvania	4.3%	8.1%	88%

Studies have found that ABAWDs face significantly more barriers to obtaining stable employment than the general population.[46] A 2015 study found that one-third of ABAWDs have a mental or physical limitation, nearly half lack access to private or public transportation, and more

[45] *See id.* Note that these metrics are as of the fourth quarter of 2019.

[46] *See generally* Steven Carlson et al., *Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 8, 2016), https://tinyurl.com/CarlsonFeb2016; Ed Bolen et al., *More Than 500,000 Adults Will Lose SNAP Benefits in 2016 as Waivers Expire*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 18, 2016), https://tinyurl.com/Bolen2016.

than half lack a driver's license.[47] Additionally, many ABAWDs do not have post-secondary education and face additional barriers to employment including homelessness, are not native English speakers, unstable employment histories, and criminal records. *Id.* 2, 5. Because of their disproportionate limitations, the average gross income for ABAWDs is 33 percent of the federal poverty level. https://www.urban.org/sites/default/files/publication/100027/reinstating_snap_time_limits_0.pdf at 6.

This high unemployment rate amongst ABAWDs is not for a lack of effort at obtaining work. Studies have consistently found that ABAWDs who can work do so.[48] However, because of ABAWDs' disproportionately low levels of education and disproportionately high levels of housing and transportation instability, among other factors, the jobs that ABAWDs obtain tend to be unstable, low-wage jobs. *Id.* at 14. Thus, most ABAWDs who are working remain below the poverty line. *Id.* And when they are not working, ABAWDs tend to qualify for limited or no assistance from public safety net programs beyond SNAP. *Id.* at 10-12.

The USDA received comments, which were supported by research and analysis, indicating, among other things, that the standard unemployment rate does not accurately reflect "the labor markets prospects for ABAWD's [] and . . . does not fully account for the ability of ABAWDs to find and keep jobs due to lack of skills, training and other barriers." *See District of Columbia v. U.S. Dep't of Agriculture*, No. 20-119, slip op. at 12 (D.D.C. Mar. 13, 2020). In response to these

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[47] Carlson et al., *Who Are the Low-Income Childless Adults*, *supra*, at 5.

[48] *See, e.g.*, Carlson et al., *Who Are the Low-Income Childless Adults*, *supra*, at 10, 15; Bartfeld et al., *supra*, at 2; Elaine Waxman & Nathan Joo, *Reinstating SNAP Work-Related Time Limits*, URBAN INST. 6 (Mar. 2019), https://tinyurl.com/Waxman2019; Joel Cuffey et al., Food Assistance and Labor Force Outcomes of Childless Adults: Evidence from the CPS, at 17 (Econ. Res. Serv., USDA 2015), https://tinyurl.com/Cuffey2015.

comments, USDA stated that it "recognizes that ABAWDs may face barriers to employment and have more limited employment prospects. . .[and] notwithstanding the issues raised by these comments, [USDA] is resolute that establishing an unemployment rate floor . . . is necessary to ensure that the standard is designed to accurately reflect a lack of sufficient jobs in a given area." 84 Fed. Reg. at 66787. USDA asserts that its "position is based on its operational experience, during which it has recognized that, without an unemployment rate floor, areas that do not clearly lack sufficient jobs will continue to qualify for waivers solely because they are 20 percent above the national unemployment rate." *Id*. This response is neither meaningful nor substantive. This is a clear abuse of discretion by USDA. *See District of Columbia*, No. 20-119, slip op. at 16. The USDA was required to critically assess the stark, well-established differences in unemployment rates between non-Whites and Whites when establishing a floor based on BLS data. It failed to do so.

IV. CONCLUSION

Despite Secretary Perdue's bold assertion that "we will feed everyone by ensuring the health and stability of SNAP for those who truly need it,"[49] the overwhelming evidence demonstrates that the Final Rule would do just the opposite. As Representative Jim McGovern stated regarding the Final Rule, "The Trump administration ought to know more about this population before they literally take food off their table."[50] The Administration's failure to meaningfully consider this population and the disparate impact of the Final Rule is a dereliction of its duties under the Administrative Procedures Act and the Department's mission to support those most in need. This Court should therefore vacate the Final Rule.

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[49] cite

[50] https://www.politico.com/news/2020/02/03/trump-agriculture-department-cut-programs-109205