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Racist Animal Agriculture

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RACIST ANIMAL AGRICULTURE

Courtney G. Lee[†]

ABSTRACT

Industrialized animal agriculture—concentrated animal feeding operations (“CAFOs”) and slaughterhouses—is inherently oppressive of both nonhumans and humans. This Article seeks to expose the human side of that exploitation, specifically examining how industrial animal agriculture was built upon and continues to propagate racism.

The harms to humans of color perpetuated by this system are myriad and serious, ranging from physical to psychological and from troubling to life-threatening. This Article first examines how the animal agribusiness industry has harmed farmers and ranchers of color since the early 20th century through government-sponsored racist policies and practices. Second, the Article studies harms to workers, from those who produce animals in CAFOs to those who process them in slaughterhouses, most of whom are people of color, people whose first language is not English, and undocumented immigrants. Third, the Article considers harms to people who live near agribusiness facilities, so many of whom are people of color that these harms are considered environmental racism. Fourth, the Article assesses harms to consumers who have been shepherded into marginalized regions without access to more nutritious options, and who are forced to support the industrialized animal agriculture system that continues to compromise their health at a disproportionate rate. Finally, this Article explores legal steps that would help begin to redress these harms, but it does not purport to solve the problem or “save” those of whom animal agribusiness has taken advantage; rather, it seeks to contribute another voice to those challenging that industrial model.

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INTRODUCTION

“From farm to fork, America’s food system has been rooted in the exploitation of women, Native Americans and people of color.”¹ Large-scale, industrialized animal agriculture—concentrated animal feeding operations (“CAFOs”) and slaughterhouses—is inherently oppressive to both nonhumans and humans.² The COVID-19 pandemic brought greater media attention to the human side of this exploitation when slaughterhouses experienced some of the worst virus outbreaks in the country,

¹ Nina Lakhani et al., *Revealed: The True Extent of America’s Food Monopolies, and Who Pays the Price*, GUARDIAN (July 14, 2021, 6:00 AM) (quoting Raj Patel), <https://perma.cc/SPR8-A7SD>.

² See generally Ezra Klein, *Farmers and Animal Rights Activists are Coming Together to Fight Big Factory Farms*, VOX (July 8, 2020, 8:10 AM), <https://perma.cc/3Q64-PYA3> (describing industrial agriculture conditions that inspired proposal of the Farm System Reform Act); see also *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 979-80 (4th Cir. 2020) (Wilkinson, J., concurring) (writing separately to highlight the practices and impacts of industrial hog farming in North Carolina).

but it has been a hallmark of the industry for decades.³ This Article seeks to expose that human exploitation further, specifically examining how industrial animal agriculture was built upon, profits from, and perpetuates racism.

This Article concentrates on how people of color have suffered, and continue to suffer, within the animal agribusiness system.⁴ It does not intend to detract from other forms of oppression that also are endemic in this industry, such as nonhuman animal abuse.⁵ White individuals also experience harm as a result of industrialized animal agriculture, and indeed all of humanity is negatively affected by practices that accelerate global warming and the spread of zoonotic diseases.⁶ Human harms also pervade the plant agriculture industry.⁷ But while these certainly are legitimate concerns, their full discussion extends beyond the focus of this Article. Further, this Article does not equate human and nonhuman ex-

³ Courtney G. Lee, *Industrial Animal Agriculture in the Pandemic Spotlight*, COMM. NEWS. (Am. Bar Ass'n, Tort Trial & Ins. Prac. Sec., Chi., Ill.), Winter/Spring 2021, at 1 [hereinafter *Pandemic Spotlight*].

⁴ This Article uses the terms “industrial animal agriculture” and “animal agribusiness” interchangeably. Hereinafter, “animal” refers to nonhuman animals, and the terms “farmers and ranchers of color” and “people of color” refer to members of the global majority. When discussing an issue that disproportionately affects a specific group, however, this Article uses specific terms—such as when discussing the *Pigford* cases and their impacts on Black farmers and ranchers. It does so to centralize and avoid obfuscating the concerns and identities of the people most affected. See Joshua Adams, *Why We Need to Stop Saying ‘People of Color’ When We Mean ‘Black People’*, LEVEL (Oct. 17, 2018), <https://perma.cc/V87C-L6AT> (noting that “[t]he use of ‘person of color’ is absolutely legitimate, and there are plenty of situations where it’s appropriate to use the term,” but that doing so can “evade[] the specific issue” and “erase[] the specific historical wrongdoing” when discussing harms that affect one marginalized group significantly more than others).

⁵ See, e.g., JARRET S. LOVELL, *Understanding Farm Animal Abuse: Legal and Extra-Legal factors*, in THE ROUTLEDGE INTERNATIONAL HANDBOOK OF RURAL CRIMINOLOGY 137, 137-44 (Joseph F. Donnermeyer ed., 2016) (describing both legal and illegal animal abuse in industrial animal agriculture).

⁶ See, e.g., Michelle Johnson-Weider, *From Factory Farming to a Sustainable Food System: A Legislative Approach*, 23 GEO. ENV'T L. REV. 685, 686-87 (2020) (providing a summary of environmentally unsustainable practices and outcomes in the industrial agriculture system); Thomas C. Moore et al., *CAFOs, Novel Influenza, and the Need for One Health Approaches*, 13 ONE HEALTH 1 (2021), <https://perma.cc/NYB2-FN6R> (examining the relationship between industrial agriculture and the spread of disease, specifically novel influenzas).

⁷ See, e.g., CENTRO DE LOS DERECHOS DEL MIGRANTE, INC., RIPE FOR REFORM: ABUSES OF AGRICULTURAL WORKERS IN THE H-2A VISA PROGRAM 4-7, 18-22, <https://perma.cc/TJ3M-8NFT> (last visited June 22, 2021) (describing legal rights violations experienced by Mexican workers on farms in the United States).

ploitation, although arguably the two are connected—perhaps even inextricably so.⁸

The harms animal agribusiness perpetuates against people of color are myriad, and it is not possible to explore them exhaustively in a single research project of this nature. After establishing a brief background of the industrial animal agriculture system in Part I, this Article instead attempts to spotlight selected harms, first examining in Part II those that farmers and ranchers of color have endured since the early twentieth century. Part III studies harm to workers, from those who run individual facilities to employees. Part IV considers harm to people who live in nearby communities. Part V examines harms to people who purchase and consume the final products. Finally, Part VI presents some ideas that may allow society to begin to address and correct these problems, although this Article does not purport to solve them or “save” those harmed; rather, it seeks to contribute another voice to the opposition.⁹

⁸ See APH KO & SYL KO, *APHRO-ISM: ESSAYS ON POP CULTURE, FEMINISM, AND BLACK VEGANISM FROM TWO SISTERS* 70–75 (2017) (arguing that the “not-quite-human,” “social, political, and moral status” of marginalized populations renders their oppression indivisible from nonhuman animal oppression, because they are “inextricably entangled phenomena that are not merely ‘connected’ but all make up the same territory.”); but see Ashitha Nagesh, *Vegans Need to Stop Comparing the Treatment of Animals to Slavery*, INDEPENDENT (June 16, 2015, 8:14 AM), <https://perma.cc/RU5H-274E> (warning against equating the treatment of nonhuman animals in the food system to slavery and “co-opt[ing] another group’s history of brutal oppression.”). Though ostensibly conflicting, however, these arguments both acknowledge a common oppressor who is seen as more “human” than those oppressed, whether the oppressed are human people of color or nonhuman animals; as Syl Ko argues, the real connection is that “in both the narrative of speciesism and the narrative of racism the members of the losing side both fall short of *real* human status and, as a result, their suffering and their deaths are mundane, normal, and expected.” KO & KO, *supra* at 86 (emphasis in original).

⁹ Australian Aboriginal Elder Lilla Watson said: “If you’ve come here to help me, you’re wasting your time. But if you’ve come because your liberation is bound up with mine, then let us work together.” *About*, LILLA: INT’L WOMEN’S NETWORK, <https://perma.cc/ZZP7-EFZY> (last visited May 3, 2021). This Article’s author acknowledges that she is white and privileged, and that these issues do not reflect her lived experience. She recognizes that she benefits from white supremacy and cannot fully understand the pain that systemic racism causes to people of color. *Cf.* JEOMA OLUO, *SO YOU WANT TO TALK ABOUT RACE* 209, 221 (2019) (arguing against tone policing or discounting an accusation of racism from a person of color). As such, the author endeavors not to speak for those harmed, but rather attempts to add her voice to theirs. See generally Linda Alcoff, *The Problem of Speaking for Others*, 20 CULTURAL CRITIQUE, Winter 1991–1992, at 5, 5 (examining the dangers of speaking for others and exploring ways to lessen those dangers if doing so is the best option in a particular situation). The author hopes that her research and comments are received as a sincere effort to work together with the humans who are impacted directly by racist industrial agriculture, in a combined challenge to “a common source of oppression, which is systematic white human violence.” See KO & KO, *supra* note 8, at 11 (arguing that despite this commonality, Black and nonhuman animal oppression should not be compared to draw sympathy for the latter).

I. Industrial Animal Agriculture

CAFO is a legal term, and U.S. law distinguishes between “small,” “medium,” and “large” CAFOs according to how many animals are kept in a facility: a “small” CAFO houses up to 8,999 egg-laying hens, 749 pigs weighing at least 55 pounds, or 299 non-dairy cattle;¹⁰ a “medium” CAFO holds up to 29,999 hens, 2,499 pigs, or 999 cattle;¹¹ and a “large” CAFO contains at least 30,000 hens, 2,500 pigs weighing at least 55 pounds, or 1,000 cattle.¹² To qualify as a CAFO, the facility first must meet the requirements of an animal feeding operation, or AFO: stabling or confining and feeding or maintaining animals for at least 45 days per year, and not sustaining “crops, vegetation, forage growth, or post-harvest residues” during “the normal growing season” anywhere on the premises.¹³ “Factory farm” may serve as a substitute descriptor for “CAFO” in common parlance, although “farm” is a misnomer. To maximize profits, typically animals spend their abbreviated lives in overcrowded buildings without access to the outdoors, or in many cases even to natural light.¹⁴ Often they are raised with the assistance of hormones, enhanced or excess feed, and genetically modified breeding to make them grow unnaturally bigger faster.¹⁵ As soon as possible, they are sent to slaughter to make room for new animals in a constant rotation.¹⁶

Despite increased interest in smaller-farm initiatives in recent years, the vast majority of meat, dairy, and eggs sold in the United States come from CAFOs,¹⁷ and 99% of U.S. farmed animals are estimated to live in CAFOs.¹⁸ By 2020, there were 21,465 CAFOs in the

¹⁰ Concentrated Animal Feeding Operations, 40 C.F.R. §§ 122.23(b)(6)(i)(I), 122.23(b)(6)(i)(D), 122.23(b)(6)(i)(B), 122.23(b)(9) (2022). These are examples; the Code sections referenced in this and the following two footnotes also list parameters for several other types and species of farmed animals.

¹¹ *Id.* at § 122.23(b)(6)(i)(I), (D), (B).

¹² *Id.* at § 122.23(b)(4)(ix), (iv), (iii).

¹³ *Animal Feeding Operations (AFOs)*, U.S. ENV'T PROT. AGENCY, <https://perma.cc/2FU3-ZDB6> (last visited June 26, 2021).

¹⁴ Courtney G. Lee, *From Footnote to Forethought: Considering the Consequences of Large-Scale, Industrialized Agriculture in Developing Nations*, 25 U.C. DAVIS J. INT'L L. & POL'Y, 101, 107–08 (2019) [hereinafter *Footnote to Forethought*].

¹⁵ *Id.*

¹⁶ See *Pandemic Spotlight*, supra note 3, at 22.

¹⁷ Harish Sethu, *Do You Know Someone Who Buys Meat Only from a Small Local Farm?*, COUNTING ANIMALS (June 23, 2014), <https://perma.cc/8T9U-UPNY>; see also Mark Kurlansky, *Inside the Milk Machine: How Modern Dairy Works*, MODERN FARMER (Mar. 17, 2014), <https://perma.cc/B7N7-NW6M> (noting that large farms are responsible for 86% of U.S. dairy production).

¹⁸ Jacy Reese Anthis, *U.S. Factory Farming Estimates*, SENTIENCE INST. (Apr. 11, 2019), <https://perma.cc/9NP6-W2VE>.

United States, up from 18,540 in 2011.¹⁹ The amount of farmed land has remained fairly constant for the past several decades, but the total number of farming operations on that land declined while their sizes increased.²⁰ This decrease in number but increase in size further illustrates the rise of the CAFO.

Industrialized slaughter enables processing of these massive amounts of animals into food and other products extremely—some argue dangerously—quickly.²¹ For perspective, in a single month in 2021, slaughter totals in the United States were 2,698,900 cattle; 25,500 calves; 9,648,900 pigs; 181,300 sheep and lambs;²² 1,898,000 ducks; 17,278,000 turkeys; and 748,170,000 chickens.²³ Industrial slaughter is inextricably linked to CAFOs, particularly in light of increasing vertical integration, an organizational structure in which a single company controls every step of the meat production process: animal birth, feed crop production, raising the animals, slaughter, and finally sale.²⁴ A handful of powerful companies control this system across the United States and many other countries, from seed and feed production to animal raising

¹⁹ *NPDES CAFO Regulations Implementation Status Reports*, U.S. ENV'T PROT. AGENCY (May 19 2021), <https://perma.cc/AKZ7-55LC>.

²⁰ *The Number of U.S. Farms Continues to Decline Slowly*, U.S. DEP'T AGRIC. ECON. RSCH. SERV. (May 10, 2021), <https://perma.cc/U32H-HPR3>.

²¹ See generally TIMOTHY PACHIRAT, *EVERY TWELVE SECONDS – INDUSTRIALIZED SLAUGHTER AND THE POLITICS OF SIGHT* (2011) (describing time spent working in an industrial slaughter facility); see also Matt McConnell, *As Line Speeds Increase, Meatpacking Workers Are in Ever More Danger*, HUM. RTS. WATCH (Sept. 18, 2019, 9:44 AM), <https://perma.cc/P6BV-GMSR> [hereinafter *As Line Speeds Increase*] (summarizing interviews with industrial chicken, hog, and cattle slaughter workers who described dangerously fast slaughter line speeds and the pressure to keep up); see also *United Food & Com. Workers Union Local No. 663 v. U.S. Dep't of Agric.*, 532 F. Supp. 3d 741 (D. Minn. 2021) (vacating a rule that permitted pig slaughterhouses to operate without maximum line speed limits).

²² U.S. DEP'T OF AGRIC. NAT'L AGRIC. STATS. SERV., *LIVESTOCK SLAUGHTER 5* (June 2021), <https://perma.cc/KJ42-655R>.

²³ U.S. DEP'T OF AGRIC. NAT'L AGRIC. STATS. SERV., *POULTRY SLAUGHTER 2* (June 2021), <https://perma.cc/GH6M-UJS2>. For further perspective, the population of the United States on April 19, 2022, was 332,620,916, so the number of slaughtered chickens equates to more than two birds per human. See *U.S. and World Population Clock*, U.S. CENSUS BUREAU, <https://perma.cc/ZG8M-WRMM> (last visited April 20, 2022).

²⁴ *Exporting Factory Farms*, FOOD EMPOWERMENT PROJECT, <https://perma.cc/W99Z-8X4W> (last visited July 6, 2021) (noting that vertical integration is the standard in the U.S. chicken industry and is growing in the cattle and pig industries); but cf. Jennifer Alyson, *Vertical Integration in the Beef Industry*, HOUS. CHRON., <https://perma.cc/UQ2P-K7H9> (last visited July 6, 2021) (describing the barriers to vertical integration in the beef industry, such as the large spaces required to process cattle and the distribution of beef operations throughout the United States).

and processing.²⁵ In most agribusiness ventures profit is prized above all other concerns, including nonhuman and human welfare.²⁶

II. *Racism Against Farmers and Ranchers*

While slavery was a significant source of wealth in North America from the 16th century, it also provided the means by which white, male landowners amassed substantial wealth in the 1800s.²⁷ The enslaved people who were the principal builders of this wealth were excluded from its benefits, however, and even after emancipation they were left without resources to farm independently.²⁸ As a result, the U.S. government promised to begin attempting to make amends to formerly enslaved people for their and their ancestors' unpaid labor by providing thousands of Black families with 40 acres of land and a mule.²⁹ The government never fulfilled its promise, however, as the order was reversed that same year after the assassination of President Lincoln, and the phrase "40 acres and a mule" now is synonymous with a significant failure of the Reconstruction era.³⁰ Prevented from obtaining skills that would facilitate pursuing other occupations, and without opportunities to obtain their own land, many formerly enslaved people had little choice but to work for white landowners, or as sharecroppers.³¹ Those who were able to purchase land were relegated to less arable areas, often needing to sharecrop as a supplement, because white landowners had already claimed the best properties.³² But despite these obstacles, by the end of the 19th century roughly 14% of U.S. farmers and ranchers were Black, and they owned about 15 million total acres of land.³³

The racist roots of industrial animal agriculture took hold shortly thereafter in the 20th century, when government programs prevented Black farmers and ranchers from retaining the land they and their fami-

²⁵ Shefali Sharma, *Mighty Giants: Leaders of the Global Meat Complex*, INST. FOR AGRIC. & TRADE POL'Y (Apr. 10, 2018), <https://perma.cc/H3X2-TZZJ>.

²⁶ *Footnote to Forethought*, *supra* note 14, at 107-08.

²⁷ Megan Horst & Amy Marion, *Racial, Ethnic and Gender Inequities in Farmland Ownership and Farming in the U.S.*, 36 AGRIC. & HUM. VALUES 1, 3-4 (2019); *see generally African Passages, Lowcountry Adaptations*, LOWCOUNTRY DIGIT. HIST. INITIATIVE, <https://perma.cc/S57V-6KYE> (last visited Jan. 8, 2022).

²⁸ Horst & Marion, *supra* note 27, at 3.

²⁹ DeNeen L. Brown, *40 Acres and a Mule: How the First Reparations for Slavery Ended in Betrayal*, WASH. POST (Apr. 15, 2021, 7:30 AM), <https://perma.cc/MKZ9-SEYX>.

³⁰ *Id.*; *see "Forty Acres and a Mule", a Story*, AFR. AM. REGISTRY, <https://perma.cc/9YM6-Z8LY> (last visited Jan. 8, 2022).

³¹ *See* Horst & Marion, *supra* note 27, at 3.

³² *Id.*

³³ *Id.*

lies owned and worked.³⁴ For example, from the late 1800s through the early 1900s, Black farmers and ranchers possessed approximately 15 million acres of land in the rural United States.³⁵ By the late 1900s, however, they had been divested of over 90% of that land.³⁶ In 1920 there were almost one million Black farmers and ranchers in the United States; in 2020, there were fewer than 45,000.³⁷

Studies suggest that during this time, the Black agricultural community lost more than twice as much land as white farmers and ranchers.³⁸ According to the Census of Agriculture, which the United States Department of Agriculture (“USDA”) assesses every five years, in 1920 there were almost 5.5 million white farm operators in the United States,³⁹ and in 2017 that number had decreased by roughly 40% to just over three million.⁴⁰ The number of farmers and ranchers of color over that same time period, however, fell by over 70%.⁴¹ This extreme decline is due to various factors, including discriminatory practices within

³⁴ *Id.* Harms to Black farmers and ranchers comprise an egregious, large-scale example on which this Article section focuses due to its links to today’s industrial animal agriculture system, but they were not the only minoritized people the U.S. government divested of their land. For instance, many farmers and ranchers of Asian descent, such as Japanese citizens returning from internment camps after World War II, also were prevented from owning or repossessing their farms and ranches. *Id.* And centuries earlier, European settlers began systematically dispossessing indigenous people of their land. *Id.* at 2.

³⁵ Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505, 507 (2001).

³⁶ Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557, 564 (2005) [hereinafter *Rural Black Land Loss*].

³⁷ *Heirs Property Rule*, TRI-STATE LIVESTOCK NEWS (Mar. 5, 2020), <https://perma.cc/KEV8-YG45>; see generally Vann R. Newkirk II, *The Great Land Robbery*, ATLANTIC (Sept. 29, 2019, 2:15 PM), <https://perma.cc/GEF3-XC5P>.

³⁸ Horst & Marion, *supra* note 27, at 5; see also Terri Jett, *The Justice that Justice Denied: The Problematic Case of the Black Farmers Civil Rights Settlement with the Department of Agriculture* 4 (Annual Meeting of the AM. POL. SCI. ASS’N, 2011), <https://perma.cc/PJR5-HKZJ>. “Black farmers are declining at three times the rate of white farmers.” *Id.* at 3 (quoting Congresswoman Eva M. Clayton).

³⁹ U.S. DEP’T OF COM. CENSUS BUREAU, FOURTEENTH CENSUS OF THE U.S. VOL. V: AGRICULTURE 293, 295 (1922), <https://perma.cc/2S5C-DJLQ> [hereinafter 1920 CENSUS].

⁴⁰ U.S. DEP’T OF AGRIC. NAT’L AGRIC. STATS. SERV., 2017 CENSUS OF AGRICULTURE RACE/ETHNICITY/GENDER PROFILE 10 (2017), <https://perma.cc/5ZHL-A9VK> [hereinafter 2017 CENSUS PROFILE].

⁴¹ In 1920, there were 949,889 farmers and ranchers of color in the United States, broken into four categories of Black; American Indian; Japanese; and Chinese. 1920 CENSUS, *supra* note 39, at 293. In 2017 there were 270,952 farmers and ranchers of color, broken into categories of American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Pacific Islander; and Hispanic, Latino, or Spanish. 2017 CENSUS PROFILE, *supra* note 40.

the USDA and the “dramatic consolidation within the agricultural sector” that forced many small-scale farmers, a substantial number of whom were Black, out of business.⁴² One may be tempted to assume that the smaller size of these farms and ranches, and hence their smaller production capacities, caused this decline; in fact, however, the smaller average size of non-white-operated farms is itself attributable to disparate treatment by the USDA.⁴³

A. Racist USDA Policies and Practices

i. *Heirs Property*

In the earlier half of the 1900s the USDA and its agencies systematically denied people of color loans and access to other services and benefits that would help them maintain or expand their farms, frequently (though not exclusively) targeting Black farmers and ranchers in southern states like North Carolina—which by no coincidence is a hub of pig CAFOs today.⁴⁴ Distrusting the legal system or not having adequate access to legal assistance, many farmers and ranchers of color never created wills, allowing their land to become “heirs property” and assuming it would remain within their families.⁴⁵ Heirs property is a type of ownership that does create an inheritable interest in land, but without a will clarifying individual ownership, it becomes increasingly fractured as successive generations of descendants inherit their interests as tenants in common.⁴⁶

Unfortunately most heirs property owners did not realize their land had title problems, and even if they were aware, often it was prohibitively expensive for them to clear title.⁴⁷ Further, heirs property owners are unable to prove ownership to obtain a farm number that would help them apply for vital USDA assistance, and their land is subject to partition and sale if they are unable to pay ever-increasing property taxes, or

⁴² *Pigford v. Glickman*, 185 F.R.D. 82, 85 (D.D.C. 1999); Mitchell, *supra* note 36, at 564-65.

⁴³ Mitchell, *supra* note 36, at 565 n.26 (citing CIV. RTS. ACTION TEAM, U.S. DEP’T OF AGRIC., CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF AGRICULTURE 21-22 (1997) [hereinafter CRAT REPORT], <https://perma.cc/9DYD-XRHV>).

⁴⁴ FIC Staff, *Racial Injustice: The Truth About Industrial Agriculture*, FOOD INTEGRITY CAMPAIGN (June 18, 2020), <https://perma.cc/RRP5-SUSU> [hereinafter *Racial Injustice*].

⁴⁵ Lizzie Presser, *Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It*, PROPUBLICA (July 15, 2019) <https://perma.cc/DXZ4-DM9J>. Heirs property and “land fractionation” is most significantly a problem for Black farmers and ranchers in southeastern states, but it also impacts Appalachian and U.S. tribal communities. *Heirs Property Rule*, *supra* note 37.

⁴⁶ *Heirs Property Rule*, *supra* note 37.

⁴⁷ Presser, *supra* note 45.

if a developer can convince even just one heir to sell her interest—often at a price substantially below market value.⁴⁸ Without clear title, heirs property land is subject to auctions and forced sales that have accounted for hundreds of billions of dollars of lost land in the South.⁴⁹

The USDA itself has recognized that its programs and policies do not serve farmers of color, and that those programs and policies actually may harm those populations.⁵⁰ Over two decades ago, after determining that “discrimination in program delivery and employment has been documented and discussed, [yet] it continues to exist to a large degree unabated,” the USDA tasked its Civil Rights Action Team (CRAT) with studying the problem and issuing recommendations.⁵¹ Among other findings, CRAT concluded, “[m]inority farmers have lost significant amounts of land and potential farm income as a result of discrimination by [the USDA’s Farm Service Agency] programs and the programs of its predecessor agencies”⁵²

Laws including the Uniform Partition of Heirs Property Act (UPHPA) and the federal Agricultural Improvement Act seek to address these injustices, such as by giving family members the first option to purchase land put up for sale, taking steps to ensure sale prices are more equitable, and allowing heirs property owners to apply for USDA programs using alternative documentation.⁵³ But funding is limited, and several states—including North Carolina—have failed to enact the UPHPA.⁵⁴

ii. *Pigford and Related Cases*

For Black farmers and ranchers in particular, owning land in the years between the Civil War and civil rights was not only difficult, but dangerous.⁵⁵ White farmers threatened by Black prosperity took Black farms by means of legal chicanery, intimidation, or outright force and

⁴⁸ *Id.*; *Heirs Property Rule*, *supra* note 37; Kathryn Fidler, *Ask the Expert: Building Upon a Family Legacy, a Q&A About Heirs’ Property with J. Latrice Hill*, U.S. DEP’T OF AGRIC. (May 5, 2021), <https://perma.cc/DE35-DN8V>.

⁴⁹ Presser, *supra* note 45.

⁵⁰ CRAT REPORT, *supra* note 43, at 2; *but see* Fidler, *supra* note 48 (discussing ways in which the USDA is attempting to revise its policies to assist and support heirs property owners).

⁵¹ CRAT REPORT, *supra* note 43, at 2.

⁵² *Id.* at 30.

⁵³ Presser, *supra* note 45.

⁵⁴ *Id.*; *Partition of Heirs Property Act*, UNIF. L. COMM’N, <https://perma.cc/NK57-YDJ7> (last visited July 26, 2021).

⁵⁵ Todd Lewan et al., *Landownership Made Blacks Targets of Violence and Murder*, AUTHENTIC VOICE (Dec. 3, 2001), <https://perma.cc/LA7E-ZS23>; *Rural Black Land Loss*, *supra* note 36, at 564-67.

violence, often with the support of the government.⁵⁶ Especially in southern states, Black farmers lost their land and livelihoods—and a great deal also lost their lives—to these racist machinations, many of which persisted beyond the end of the 20th century.⁵⁷ In addition to that peril, USDA programs meant to protect and support all U.S. farmers and ranchers instead denied applicants of color the same loans and other benefits awarded to white applicants.⁵⁸

This disparate treatment led to the *Pigford v. Glickman* class action lawsuit, in which thousands of plaintiff Black operators of small farms and ranches prevailed in their claims that the USDA improperly denied or delayed their credit and benefit applications on the basis of race from 1983 to 1987, and then failed to address subsequent complaints.⁵⁹ These race-based denials and delays caused many Black farmers and ranchers to fall into foreclosure, forcing them out of their profession, while “[t]hose who managed to stay in farming often were subject to humiliation and degradation . . . and were forced to stand by powerless, as white farmers received preferential treatment.”⁶⁰ The *Pigford* court, acknowledging that it was only a first step toward redressing the plaintiffs’ lost opportunities, approved a consent decree that would provide successful claimants with a minimum of \$50,000 and forgiveness of their debt owed to the USDA.⁶¹

The *Pigford* decision was only the beginning of that saga, however. Although about 16,000 claimants received payments and debt relief totaling over one billion dollars,⁶² they represented only a fraction of those who may have been entitled to compensation.⁶³ Further, the approval rate under the “virtually automatic” settlement track was only 69%, possibly due to the fact that plaintiffs had to demonstrate treatment “less favorable than that accorded to specifically identified, similarly situated white farmers,” despite not having appropriate access to USDA data to

⁵⁶ Lewan et al., *supra* note 55.

⁵⁷ *Id.*; *Rural Black Land Loss*, *supra* note 36, at 565-67; *see also* Presser, *supra* note 45 (quoting the director of the Institute for Urban Research as stating: “There is this idea that most blacks were lynched because they did something untoward to a young woman. That’s not true. Most black men were lynched between 1890 and 1920 because whites wanted their land.”).

⁵⁸ *Pigford v. Glickman*, 185 F.R.D. 82, 85-87 (D.D.C. 1999).

⁵⁹ *Id.* at 86, 92, 94, 113.

⁶⁰ *Id.* at 87-88.

⁶¹ *Id.* at 95, 113. The average minimum award amount per prevailing claimant was estimated to be \$187,500. *Id.* at 108-09.

⁶² *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 11 (D.D.C. 2011).

⁶³ TADLOCK COWAN & JODY FEDER, CONG. RSCH. SERV., RS20430, *THE PIGFORD CASES: USDA SETTLEMENT OF DISCRIMINATION SUITS BY BLACK FARMERS* 5 (2013), <https://perma.cc/YKY2-G4XC>.

help them meet this requirement.⁶⁴ Some also alleged that insufficient notice and deficient legal representation blocked potential claimants from filing.⁶⁵ About 70,000 Black farmers and ranchers attempted to take advantage of an extended claim filing deadline, but only 4% of those late applicants were permitted to proceed.⁶⁶

Because so many affected people did not have the opportunity to pursue their claims to adjudication, a decade later Congress provided a new right to sue, via the 2008 Farm Bill, for *Pigford* claimants who had filed late.⁶⁷ Roughly 40,000 individuals who met that criteria filed complaints according to the new procedures, and to expedite the determination process the court consolidated them into a new class action known as *Pigford II*.⁶⁸ Just under half of those claimants who filed under the settlement approved in *Pigford II* received compensation, with a total value from both settlements amounting to over two billion dollars.⁶⁹

The foregoing is a very brief overview of a very complex set of cases intended to serve as one example of the USDA's disparate treatment of farmers and ranchers of color, and the difficulty with which those affected are able to seek legal remedies. The *Pigford* settlements did not end racism within the USDA, however—after *Pigford I* brought attention to the USDA's racist policies and practices disadvantaging Black farmers and ranchers, complaints continued and persist through the present day.⁷⁰ The Office of Inspector General (OIG) also concluded in a 2000 audit of the USDA's complaint evaluation process that the USDA's Office of Civil Rights failed to address the majority of OIG's recommendations for improvement, and that “no significant changes in how complaints are processed have been made.”⁷¹

The Black agricultural community is not the only group to suffer discrimination at the hands of the federal government. Native American farmers and ranchers participated in a class action lawsuit comparable to

⁶⁴ *Id.*; *Pigford*, 185 F.R.D. at 95, 96-97 (D.D.C. 1999).

⁶⁵ COWAN & FEDER, *supra* note 63, at 5.

⁶⁶ *Black Farmers*, 856 F. Supp. 2d at 11.

⁶⁷ *See id.* at 11-12.

⁶⁸ *Id.* at 13.

⁶⁹ AGRI-PULSE STAFF, *Pigford Payouts to Black Farmers Reach \$2.3 B. Will There Be More?*, AGRI-PULSE (July 9, 2014, 10:07 AM), <https://perma.cc/7ZSB-ZYEH> (noting that 17,665 *Pigford II* claims were approved out of over 39,000 submitted).

⁷⁰ *See Rural Black Land Loss*, *supra* note 36, at 566-567; *see* Chuck Abbott, *Equity Commission Will Root Out Systemic Racism in USDA Programs, Says Vilsack*, SUCCESSFUL FARMING (Mar. 2, 2021), <https://perma.cc/6D9Z-7JT4>.

⁷¹ OFF. OF INSPECTOR GEN., U.S. DEP'T OF AGRIC., AUDIT REP. NO. 60801-4-HQ, OFFICE OF CIVIL RIGHTS STATUS OF THE IMPLEMENTATION OF RECOMMENDATIONS MADE IN PRIOR EVALUATIONS OF PROGRAM COMPLAINTS i (Mar. 10, 2000) (emphasis in original), <https://perma.cc/B4QH-7AAS>.

Pigford, Keepseagle v. Vilsack, that alleged race-based denials and delays of USDA loans and benefits, as well as the failure to investigate related complaints, that led to an analogous settlement.⁷² This litigation came many decades after Congress forced Native American tribes to relocate to reservations many miles from their homes, “completely disrupting traditional Native foodways—and all of their traditional food sources.”⁷³

Hispanic⁷⁴ farmers and ranchers also attempted to sue the USDA for denials, delays, and deficient investigation, but those plaintiffs were unsuccessful in achieving class certification.⁷⁵ To its credit, the USDA still established a claim resolution process for them,⁷⁶ but its claims process and the *Keepseagle* settlement both spawned criticisms reminiscent of those lodged by *Pigford* claimants.⁷⁷

As recently as 2021, USDA Secretary of Agriculture acknowledged, “Now, the reality is that we’ve not only had discrimination in the past but we’ve had the cumulative effect of that discrimination, which needs to be addressed.”⁷⁸ But he said this before,⁷⁹ and “[c]omplaints continue of persistent discrimination by USDA.”⁸⁰

⁷² *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98, 105-107 (D.D.C. 2015) (describing a case “hard fought” for ten years and the subsequent settlement).

⁷³ Lois Ellen Frank, *History on a Plate: How Native American Diets Shifted After European Colonization*, HISTORY (Nov. 11, 2021), <https://perma.cc/RW67-62CN>.

⁷⁴ This Article uses the term “Hispanic” to refer to people with Spanish-speaking cultural heritage from any area of the world. See Antonio Campos, *What’s the Difference Between Hispanic, Latino and Latinx?*, UNIV. OF CALIFORNIA (Oct. 6, 2021), <https://perma.cc/6RKW-P6GG> (discussing the different and evolving understandings of the terms “Hispanic,” “Mexican American/Chicano,” “Latino,” and “Latinx”).

⁷⁵ *Garcia v. Veneman*, 211 F.R.D. 15 (D.D.C. 2002). Although this Article focuses on racism, women farmers and ranchers also unsuccessfully pursued a class action against the USDA, alleging the same types of discriminatory practices, but based upon gender. *Love v. Veneman*, 224 F.R.D. 240, 241-42 (D.D.C. 2004) (denying motion for class certification).

⁷⁶ *USDA Notice to Women and Hispanic Farmers and Ranchers: Compensation for Claims of Discrimination*, USDA FARM SERV. AGENCY (July 14, 2011, 11:28 AM), <https://perma.cc/M5WF-YL9J>.

⁷⁷ See Dorscine Spigner Littles, *USDA Hispanic and Women Farmers and Ranchers Claim Process*, BLADENONLINE.COM (June 17, 2015), <https://perma.cc/MTT9-J636> (noting that “many of the current claimants [in the Hispanic and women farmers plaintiff class] feel the award offered does not compensate for their losses and mistreatment and feel the claims process was unfair and eliminated many applicants who were unfairly treated.”); see also Joshua Zaffos, *Big Funds for Native American Farmers and Ranchers on the Way*, HIGH COUNTRY NEWS (May 31, 2016), <https://perma.cc/FRF4-BGER> (noting that 380 million dollars in unclaimed settlement money would be distributed to nonprofit organizations serving Native American farming interests, and highlighting plaintiff Marilyn Keepseagle’s belief that Native Americans’ mistrust of the government caused many not to pursue valid claims).

⁷⁸ Abbott, *supra* note 70.

⁷⁹ See Tom Vilsack, *USDA Announces Claims Process for Hispanic and Women Farmers*, U.S. DEP’T OF AGRIC. (Mar. 12, 2014), <https://perma.cc/3FLW-258A> (referring to the

The few large-scale case examples summarized above illustrate some of the systemic racism ingrained within the USDA, and the apparent trouble the organization has with making meaningful changes, despite repeatedly recognizing the obvious need for significant transformation.⁸¹ But how does this racism and recognition of the problem relate to industrial animal agriculture? In addition to harming farmers and ranchers of color directly, the USDA and the support it provides—from loans and benefits like those described above that were denied to people of color, to access to publicly-funded programs, to allowance of consolidation structures that force smaller-scale operators out of the market—have been and continue to be essential to CAFO and industrial processing entity establishment and expansion.⁸²

B. Racist Effects of Industry Consolidation

While independent farmers and ranchers of color attempted to secure USDA support and redress for the Department's discrimination against them and their predecessors, large-scale animal agribusiness thrived.⁸³ Since their inception during the New Deal era, farm bills—impactful legislation enacted about every five years that focuses on farmers and ranchers, food insecurity, and environmental protection—have favored larger-scale and corporate landowners at the expense of

settlement announcement for Hispanic and women farmers, and noting Secretary of Agriculture Vilsack's "commitment to mend USDA's troubled civil rights record" by "correcting our past errors, learning from our mistakes, and outlining definitive action to ensure there will be no missteps in the future.").

⁸⁰ Abbott, *supra* note 70.

⁸¹ Some argue the USDA has not made *any* changes in its policies and practices affecting civil rights, and that, in fact, the Department intentionally manipulated data to spin a narrative suggesting otherwise. See Nathan Rosenberg & Bryce Wilson Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination Against Black Farmers*, COUNTER (June 26, 2019, 7:00 AM), <https://perma.cc/XVM4-2YVX> (alleging that between 2009 and 2016, the USDA perpetuated five main falsehoods in the media: (1) that "USDA resolved a backlog of civil rights complaints"; (2) that "[n]ew civil rights complaints fell to record lows"; (3) that "USDA reduced funding disparities between Black and white farmers"; (4) that "[t]he number of Black farmers increased;" and (5) that "[t]he *Pigford* settlement closed a 'painful chapter in our collective history'").

⁸² See Ben Lilliston, *What the USDA Could Do on Climate*, INST. FOR AGRIC. & TRADE POL'Y (May 11, 2021), <https://perma.cc/QBD2-JQ2F> (issuing recommendations for how the USDA could positively impact climate change, such as by reducing support of factory farms).

⁸³ See *Racial Injustice*, *supra* note 44 (noting that the industrial animal agriculture model proliferated in the 1960s and 1970s, thanks in no small part to the USDA granting loans and benefits to those larger-scale operations that it denied to farmers and ranchers of color); see also LOVELL, *supra* note 5, at 139-40 (describing the rise of the factory farming model in the latter half of the 20th century).

smaller, independent farmers and ranchers.⁸⁴ At first one may assume the purpose behind farm bills was to bolster small farming and ranching in the U.S., but in reality, the majority of federal funding from the bills was funneled to bigger, more concentrated farming and ranching models.⁸⁵ This of course provided a firm foothold in the market for industrial agriculture, but it simultaneously excluded many small operations from vital governmental assistance, effectively shutting them out and contributing to their ultimate failure.⁸⁶ Meanwhile, sprawling agribusiness corporations gobbled up every aspect of production, vertically integrating everything from seed and feed, to CAFOs, to slaughter and distribution entities.⁸⁷ Farmers and ranchers of color bore the brunt of harm from this exclusion, as white farmers and ranchers were more likely to own the larger operations that benefited most from these government programs.⁸⁸

Of the agricultural operators of color who lost their farms and ranches, many had no choice but to leave.⁸⁹ Of the few who were able to stay and keep their land, almost half are now in the cattle and dairy sector, and most have smaller acreage and significantly lower sales revenue than the national average.⁹⁰ About four times as many farmers and ranchers of color lease their land than own it, which provides less security, minimal authority, and few opportunities to grow wealth.⁹¹ Some had no choice but to buy into the industrial model, literally, and become subject to “very one-sided contracts with . . . vertically integrated corporations” that control every detail of how animals are raised.⁹² Most farm

⁸⁴ See Horst & Marion, *supra* note 27, at 4; Bridget Huber, *What Is the Farm Bill and Why Does It Matter?*, FOOD & ENV'T REPORTING NETWORK (June 12, 2018), <https://perma.cc/D9J7-T59M>.

⁸⁵ Nathan A. Rosenberg & Bryce Wilson Stucki, *The Butz Stops Here: Why the Food Movement Needs to Rethink Agricultural History*, 13 J. FOOD L. & POL'Y, Spring 2017, at 12, 13-14 [hereinafter *Butz Stops Here*].

⁸⁶ *Id.* at 14-15.

⁸⁷ See RAFI Staff, *Big Chicken Companies Own or Control Everything Except the Farm, but Why?*, RURAL ADVANCEMENT FOUND. INT'L (July 14, 2016), <https://perma.cc/L6KX-4T9X> (explaining vertical integration in the chicken industry); *but cf.* Alyson, *supra* note 24 (noting the challenges to vertical integration in cattle production compared to the chicken and pig sectors).

⁸⁸ Horst & Marion, *supra* note 27, at 4.

⁸⁹ *Butz Stops Here*, *supra* note 85, at 15 (arguing that for many in the South, the move was not really voluntary, and that USDA-backed discrimination forced Black farmers and ranchers to leave their land and line of work).

⁹⁰ See 2017 *Census of Agriculture Highlights: Black Producers*, U.S. DEP'T OF AGRIC. NAT'L AGRIC. STATS. SERV. (Oct. 2019), <https://perma.cc/TL44-J8X7>; see also Jett, *supra* note 38 (making similar observations based on 2007 Census data).

⁹¹ See Horst & Marion, *supra* note 27, at 5-7.

⁹² ANIMAL LEGAL DEF. FUND, *Animal Law Symposium 2021: Zoonotic Diseases and Factory Farming*, YOUTUBE, at 40:00 (May 4, 2021), <https://youtu.be/P1KeMCKV-Uk>; *Racial Injustice*, *supra* note 44.

and facility owners, who have the most control over their success and are more likely to control these contracts, are white.⁹³

The most common type of contract in animal agribusiness is a production contract, in which the facility owner, also known as an “integrator,” owns the animals but arranges for an independent farmer or rancher to raise them.⁹⁴ The integrator’s control is exhaustive—from breeding practices, to the type and amount of animal feed and medications administered, to the number of animals raised in a geographic area to prices, to facility upgrades—but the integrator’s control ends where potential liability begins.⁹⁵ Agribusiness production contracts leave the tenant farmer or rancher responsible for onerous obligations like storing and disposing of animal waste, environmental damage, and the cost of any facility enhancements (even if the farmer or rancher already paid out-of-pocket to build to the integrator’s original specifications).⁹⁶

Further, the consolidation of national agribusiness under the umbrella of only a handful of companies reduces farmers’ and ranchers’ contract options and ability to negotiate terms, essentially giving them no choice but to agree if they want to stay in business at all.⁹⁷ Although there may be some benefits to independent producers under the production contract model—such as increased efficiency and not needing to worry about feed formulation, product pricing, or marketing⁹⁸—the producers also have no control over those variables if they need to make adjustments. And making such changes, or amending any other aspects of their businesses, is incredibly difficult; typically producers become so deeply indebted to the integrators that they fear retaliation if they speak out or attempt to organize.⁹⁹ These fears are not specious; it is well known in the industry that those who have complained or even just questioned integrator policies have suffered everything from suspicious

⁹³ See *Racial Injustice*, *supra* note 44; Horst & Marion, *supra* note 27, at 5-7.

⁹⁴ See SIENA CHRISMAN, RAFI-USA, VIEWERS GUIDE: UNDER CONTRACT: FARMERS AND THE FINE PRINT 7, 10 (2017), <https://perma.cc/8YX5-YHLV>.

⁹⁵ See *id.* at 10, 16, 20, 23, 33.

⁹⁶ See *id.* at 16, 24, 33.

⁹⁷ See *id.* at 8, 17-18; see also *USDA Announces \$500 Million for Expanded Meat & Poultry Processing Capacity as Part of Efforts to Increase Competition, Level the Playing Field for Family Farmers and Ranchers, and Build a Better Food System*, U.S. DEP’T OF AGRIC. (July 9, 2021), <https://perma.cc/7XN9-CRCF> (noting that the agricultural market has become “dominated by just a few companies” that “can use their power to engage in abusive practices” and describing USDA funding and rulemaking initiatives intended to increase competition).

⁹⁸ Erik O’Donoghue et al., *Changing Farming Practices Accompany Major Shifts in Farm Structure*, U.S. DEP’T OF AGRIC. ECON. RSCH. SERV.: AMBER WAVES (Dec. 1, 2011), <https://perma.cc/4UCN-W4RQ>.

⁹⁹ CHRISMAN, *supra* note 94, at 22.

“accidents” like receiving sick animals or repeatedly incorrect amounts of feed, to outright threats, to suddenly canceled contracts that lead to bankruptcy and farm loss.¹⁰⁰ Recently, however, six named plaintiff chicken growers brought suit against several market-dominating companies for alleged price-fixing and “anticompetitive behavior that put plaintiffs ‘in a state of indebted servitude, living like modern-day sharecroppers on the ragged edge of bankruptcy,’”¹⁰¹ but such organized actions appear to be the exception rather than the norm.¹⁰²

Overall, tenant farmers and ranchers of color represent a fraction of the non-white populations engaged in agriculture.¹⁰³ The majority of would-be farmers and ranchers of color who remained in the industry instead work in low-wage, perilous agribusiness laborer positions that offer even less security and leave them even more vulnerable to abuse.¹⁰⁴

III. Racism Against Workers

The majority of the industrial animal agriculture workforce is comprised of people of color, people for whom English is not their first language, and immigrants, possibly a quarter of whom are undocumented.¹⁰⁵ Many agribusinesses prefer to hire workers with less bargaining power who are easily intimidated and less likely to advocate for better treatment, including undocumented immigrants and incarcerated individuals in work-release programs.¹⁰⁶ In fact, industrial animal agricul-

¹⁰⁰ *Id.* at 21, 22, 35, 37.

¹⁰¹ *In re Sanderson and Koch Broiler Chicken Grower Litigation*, No. 18-CV-31-D, 2019 WL 206094, at *1 (E.D.N.C. Jan. 1, 2019) (granting in part defendants’ motion to dismiss). Some defendant companies have worked to arrange settlements worth many millions of dollars to avoid future litigation on this issue. Bryan Koenig, *Pilgrim’s to Pay \$76M to Settle Chicken Price-Fixing Claims*, LAW360 (Aug. 6, 2021, 12:36 PM), <https://perma.cc/XFW2-MGRV>.

¹⁰² See CHRISMAN, *supra* note 94, at 22 (describing the reluctance of independent farmers and ranchers to organize or speak out against agribusiness companies).

¹⁰³ Horst & Marion, *supra* note 27, at 7 (using U.S. Census, USDA, and U.S. Department of Labor data to estimate the percentages of people of color who own farms at 3.9%, who work as tenant farmers and ranchers at 13.6%, and who work as employee laborers at 62%).

¹⁰⁴ See *id.* at 11; *Racial Injustice*, *supra* note 44.

¹⁰⁵ Matt McConnell, “When We’re Dead and Buried, Our Bones Will Keep Hurting”: *Workers’ Rights Under Threat in US Meat and Poultry Plants*, HUM. RTS. WATCH (2019), <https://perma.cc/8TEW-SYF3> [hereinafter *Workers’ Rights Under Threat*]; Shawn Fremstad et al., *Meatpacking Workers are a Diverse Group Who Need Better Protections*, CTR. FOR ECON. & POL’Y RSCH. (Apr. 29, 2020), <https://perma.cc/DFC2-MQ6A>.

¹⁰⁶ Will Tucker, *The Kill Line*, S. POVERTY L. CTR. (July 26, 2018), <https://perma.cc/VD37-B5SQ>; Charlie Leduff, *At a Slaughterhouse, Some Things Never Die; Who Kills, Who*

ture companies have been known to actively recruit undocumented workers, some allegedly going so far as to generate false social security numbers for them.¹⁰⁷ Agribusinesses therefore are ripe for Immigration and Customs Enforcement raids, some of which have resulted in hundreds of arrests at a single location, and which some employers use as a way to intimidate their workforces and retaliate against those who attempt to fight for change or report abuses.¹⁰⁸ To better “protect the American labor market, the conditions of the American worksite, and the dignity of the individual,” the Department of Homeland Security recently pledged to cease pursuing these mass worksite raids, focusing instead on the exploitative practices of the employers themselves.¹⁰⁹ Although immigration reform advocates praised this new policy to stop mass raids, as long as individual workers remain undocumented and without clear paths to citizenship and legal protections, they will remain vulnerable.¹¹⁰

Despite conditions in industrial animal agricultural facilities being some of the most deplorable in the country, wages are some of the lowest.¹¹¹ Agribusiness workers earn, on average, roughly \$15 per hour, although that amount varies widely depending on geographic region, com-

Cuts, Who Bosses Can Depend on Race, N.Y. TIMES (June 16, 2000), <https://perma.cc/4XVK-EJGB>.

¹⁰⁷ See, e.g., Michael Grabell, *Exploitation and Abuse at the Chicken Plant*, NEW YORKER (May 1, 2017), <https://perma.cc/R6LK-2JEB> (examining the abusive treatment of undocumented immigrant workers at a U.S. chicken processing plant, most of whom the company travelled across the country to actively recruit); Martha Rosenberg, *What Big Meat Doesn't Want You to Know About Slaughterhouses*, ORGANIC CONSUMERS ASS'N (May 15, 2018), <https://perma.cc/S2AR-5GQX> (summarizing several cases of immigrant exploitation in the meat processing industry). In one of the biggest cases, after a two-and-a-half-year investigation, the Immigration and Naturalization Service accused Tyson Foods, a major poultry processor, of immigrant smuggling and providing false documentation to serve corporate profits, although Tyson successfully argued that any violations were committed by “rogue managers.” *INS Investigation of Tyson Foods, Inc. Leads to 36 Count Indictment for Conspiracy to Smuggle Illegal Aliens for Corporate Profit*, U.S. DEP'T OF JUST. (Dec. 19, 2001), <https://perma.cc/MZ9R-K7A6>; William McQuillen, *Tyson Acquitted of Plotting to Hire Illegal Workers*, INST. FOR AGRIC. & TRADE POL'Y (Mar. 27, 2003), <https://perma.cc/2YXK-GY8R>.

¹⁰⁸ Memorandum from Alejandro N. Mayorkas, Secretary, U.S. Dep't of Homeland Sec., to Tae D. Johnson, Acting Director, U.S. Immigr. & Customs Enf't, Ur M. Jaddou, Director, U.S. Citizenship & Immigr. Servs., & Troy A. Miller, Acting Commissioner, U.S. Customs & Border Prot. at 3 (Oct. 12, 2021), <https://perma.cc/6TVZ-JPKL>.

¹⁰⁹ *Id.* at 2.

¹¹⁰ See Bill Chappell, *Homeland Security Secretary Orders ICE to Stop Mass Raids on Immigrants' Workplaces*, NAT'L PUB. RADIO (Oct. 12, 2021, 3:38 PM), <https://perma.cc/RB56-RRVN>; Grabell, *supra* note 107; Mayorkas, *supra* note 108.

¹¹¹ See *Workers' Rights Under Threat*, *supra* note 105 (noting that wages in industrial animal agriculture have fallen steadily since the 1980s to well below the national average for manufacturing work).

pany, and individual job position.¹¹² Low wages are a key component of industrial agriculture’s quest for profit above all else; for example, recent allegations hold that some of the nation’s biggest chicken processing companies conspired to maintain this arguably unfair pay structure, holding secret meetings and “chastise[ing]” one another if one company deviated from the agreed-upon compensation scheme.¹¹³

Further, many workers earning these low wages—especially those who are undocumented—also do not receive support like health insurance, overtime pay, or unemployment aid.¹¹⁴ Even though people typically agree to work in CAFOs or slaughterhouses because their options are limited, turnover is still high, keeping many workers’ seniority status low and allowing employers to dodge providing benefits.¹¹⁵ Beyond financial support, workers may not even receive adequate training in how to handle the dangerous equipment or chemicals they use every day.¹¹⁶

¹¹² U.S. Bureau of Lab. Stats., *Occupational Employment and Wage Statistics, May 2021: 45-2093 Farmworkers, Farm, Ranch, and Aquacultural Animals* (May 2021), <https://perma.cc/XQL5-ZP2P>; U.S. Bureau of Lab. Stats., *Occupational Employment and Wage Statistics, May 2021: 51-3023 Slaughterers and Meat Packers*, (May 2021), <https://perma.cc/PR28-SX9V>; see also Leduff, *supra* note 106 (noting that in 2000 wages in a pig processing plant ranged from \$7.70 per hour for those who worked on the cutting line to a “top wage,” at least for non-supervisory positions, of \$12 per hour for those who worked on the kill floor).

¹¹³ *Jien v. Perdue Farms, Inc.*, No. 19-CV-2521, 2021 WL 927456, at *1, *5, *7 (D. Md. Mar. 10, 2021) (denying defendants’ motions to dismiss); see also J. Edward Moreno, *Pilgrim’s Reaches \$29M Settlement In Wage Conspiracy Suit*, LAW360 (July 6, 2021), <https://perma.cc/9Y49-3A7K> (noting that one defendant company reached a tentative \$29 million settlement with plaintiffs, including an agreement to cooperate in plaintiffs’ case against the other defendants).

¹¹⁴ See, e.g., Daniel Baker & David Chappelle, *Health Status and Needs of Latino Dairy Farmworkers in Vermont*, 17 J. AGROMEDICINE 277, 281-82 (2012) (noting that 2.9% of 70 surveyed Latino dairy workers had health insurance, and none had dental insurance); MO. COAL. FOR THE ENV’T, WHAT SHOULD YOU KNOW ABOUT CAFOs? (2019), <https://perma.cc/2VNX-JRKH> (noting that half of studied Latino workers in the Missouri pig processing industry did not have health insurance); N.M. CTR. ON L. & POVERTY, HUMAN RIGHTS ALERT: NEW MEXICO’S INVISIBLE AND DOWNTRODDEN WORKERS 6-7 (2013), <https://perma.cc/ZA4B-TL8B> (noting that 88% of studied dairy workers in New Mexico did not have health insurance, that 20% of those who reported a work-related injury did not receive care after requesting it, and that despite almost always working more than 40 hours per week, they are ineligible for overtime pay); *Why Don’t Poultry Workers Just Quit? and Other Frequently Asked Questions*, OXFAM (May 13, 2016), <https://perma.cc/RE2W-BE72> (noting that the “tenuous immigration status” of many agribusiness workers reduces their ability to qualify for unemployment benefits).

¹¹⁵ See Leduff, *supra* note 106; *Workers’ Rights Under Threat*, *supra* note 105.

¹¹⁶ Tucker, *supra* note 106; see also Rich McKay, *After Six Worker Deaths at Georgia Chicken Plant, U.S. Issues \$1 Million in Fines*, REUTERS (July 28, 2021, 10:40 AM), <https://perma.cc/Q85T-K2RC> (describing the investigation of slaughterhouse worker deaths from nitrogen poisoning, following similar deaths in another state several months prior, and noting governmental findings that “this was an entirely preventable tragedy” and “workers

Some engage with unions that attempt to address these conditions, but participation (as reported by employers) is sporadic, fluctuates over time, and varies between animal sectors.¹¹⁷

It is important to note that these issues and those described below apply both on land and at sea.¹¹⁸ Conditions are so terrible for workers on some commercial fishing vessels that the situation is considered modern slavery.¹¹⁹ Most fishers are migrant workers of color who may not understand the language in which their contracts are written, or even that their human rights are being disregarded; like in land-based industrial agriculture, often this makes migrant workers more appealing to the brokers and companies who recruit them.¹²⁰

A. Physical Trauma

Agribusiness workers suffer from excessive rates of respiratory diseases from regularly handling and inhaling large amounts of methane, animal waste, ammonia, dust, and hazardous chemicals like those used for cleaning.¹²¹ One study found that up to 30% of factory farm workers suffer from “[o]ccupational asthma, acute and chronic bronchitis, and organic dust toxic syndrome.”¹²² Another investigation focused on the pig industry found that one quarter to one half of the workers studied reported symptoms of chronic bronchitis, rhinitis, or asthma-like syndrome, an illness that is almost identical to asthma but becomes more pronounced when a worker returns to the worksite after a few days

were not taught about the dangers of nitrogen, and they lacked the training and equipment to save lives.”).

¹¹⁷ See Jeffrey H. Keefe & Mathias Bolton, *When Chickens Devoured Cows: Union Rebuilding in the Meat and Poultry Industry*, in COLLECTIVE BARGAINING UNDER DURESS: CASE STUDIES OF MAJOR U.S. INDUSTRIES 165, 174-77 (Howard R. Stanger et al. eds., 2013).

¹¹⁸ See generally ENV’T JUST. FOUND., BLOOD AND WATER: HUMAN RIGHTS ABUSE IN THE GLOBAL SEAFOOD INDUSTRY (2019) (examining abusive conditions and lack of regulatory enforcement on commercial fishing vessels).

¹¹⁹ *Id.* at 4, 6, 11; *Workers in the Fishing Industry*, FOOD EMPOWERMENT PROJECT, <https://perma.cc/Z2LB-3DKF> (last visited Sept. 4, 2021).

¹²⁰ ENV’T JUST. FOUND., *supra* note 118, at 11, 17, 19.

¹²¹ *Factory Farm Workers*, FOOD EMPOWERMENT PROJECT, [hereinafter *Factory Farm Workers*] <https://perma.cc/RFV9-UZZ3> (last visited Sept. 4, 2021); see generally Sara May et al., *Respiratory Health Effects of Large Animal Farming Environments*, 15 J. TOXICOLOGY & ENV’T HEALTH 524 (2012), <https://perma.cc/DK9E-QHM4> (examining various respiratory tract diseases from which agribusiness laborers suffer, including “rhinitis, sinusitis, mucous membrane inflammation syndrome, asthma, chronic bronchitis, chronic obstructive pulmonary disease (COPD), hypersensitivity pneumonitis, and organic dust toxic syndrome.”).

¹²² CARRIE HRIBAR, NAT’L ASS’N OF LOC. BDS. OF HEALTH, UNDERSTANDING CONCENTRATED ANIMAL FEEDING OPERATIONS AND THEIR IMPACT ON COMMUNITIES 6 (Mark Schultz ed., 2010), <https://perma.cc/TPL3-CJVG>.

away.¹²³ Exposure to large amounts of animal waste and chemicals also causes burns and inflammation of the respiratory tract, skin, and eyes.¹²⁴ This may compromise one's sense of smell,¹²⁵ while prolonged exposure to loud machinery may cause hearing loss.¹²⁶ Pathogens prevalent in animal waste induce abdominal issues, headaches, rashes, skin sores, and other maladies in workers, which may become life-threatening for the immunocompromised.¹²⁷

Moreover, CAFO laborers administer antibiotics to the animals liberally as a prophylactic measure, because unnatural diets and overcrowded conditions facilitate the spread of disease; in fact, the majority of antibiotics used in the United States is administered to food animals, not humans.¹²⁸ For example, in 2012 the animal industry accounted for 32.2 million pounds of antimicrobial sales, compared to 7.25 million pounds sold for human use.¹²⁹ Ninety-four percent of these antimicrobial agents purchased for animals were administered via food or water versus injection—that is, for disease prevention as opposed to treatment.¹³⁰ This overuse creates antibiotic resistance in both nonhumans and humans, complicating matters even further if workers fall ill.¹³¹

The global COVID-19 pandemic brought many of these issues into sharp relief, as slaughterhouses in particular experienced some of the most severe outbreaks in the nation.¹³² Non-white populations already comprise a large amount of workers considered “frontline,” who continued working with the public during the most dangerous periods of contagion,¹³³ and after the President issued an order classifying meat processing as essential—allowing plants previously closed due to infections

¹²³ Steven R. Kirkhorn & Vincent F. Garry, *Agricultural Lung Diseases*, 108 ENV'T HEALTH PERSPS. 705, 709-710 (2000) (“The prevalence of true occupational asthma in agriculture is unknown, varies from country to country, and is influenced by the types of commodities, work practices, and environmental conditions.”).

¹²⁴ HRIBAR, *supra* note 122, at 5-6.

¹²⁵ *Id.* at 7-8.

¹²⁶ Heidi Shierholz & Marni von Wilpert, *EPI Comment on the Modernization of Swine Slaughter Inspection Rule*, ECON. POL'Y INST. (May 2, 2018), <https://perma.cc/6MSU-57PQ>.

¹²⁷ HRIBAR, *supra* note 122, at 8-9.

¹²⁸ *Footnote to Forethought*, *supra* note 14, at 124.

¹²⁹ Jerome A. Paulson et al., *Nontherapeutic Use of Antimicrobial Agents in Animal Agriculture: Implications for Pediatrics*, 136 PEDIATRICS e1670, e1671 (2015).

¹³⁰ *Id.*

¹³¹ Melinda Wenner Moyer, *How Drug-Resistant Bacteria Travel from the Farm to Your Table*, SCI. AM. (Dec. 1, 2016), <https://perma.cc/PPJ2-8FRG>.

¹³² *Pandemic Spotlight*, *supra* note 3, at 1, 22.

¹³³ Adie Tomer & Joseph W. Kane, *To Protect Frontline Workers During and After COVID-19, We Must Define Who They Are*, BROOKINGS INST. (June 10, 2020), <https://perma.cc/336M-Y23J>.

to reopen—a new round of outbreaks, illnesses, and deaths followed.¹³⁴ Agribusiness companies amplified the spread by failing to provide protective gear or enforce health and safety policies.¹³⁵ Illustrating the lack of regard for worker welfare, one agribusiness company’s executives famously took bets regarding how many of their workers would contract the coronavirus.¹³⁶ As time progressed, some companies began to implement disease prevention measures, including providing masks and staggering shifts to reduce the number of employees inside at a given time,¹³⁷ and one boasted that a vaccine mandate resulted in 96% of its workers being inoculated against the coronavirus.¹³⁸ These measures do not change the fact that many meatpacking workers lack access to healthcare and testing, however, and therefore they may continue to work and infect others unless physically unable to do so; further, because many also are undocumented, they may be too afraid of potential deportation to work with contact tracers or to get a vaccine.¹³⁹

In addition to increased susceptibility to disease and other internal ailments, industrial animal agriculture workers frequently experience external physical injuries ranging from lacerations to amputations to deaths.¹⁴⁰ Slaughterhouse workers again are especially at risk, as they repetitively wield knives and equipment designed to cut rapidly through bone.¹⁴¹ Using these tools while attempting to maintain the frenzied pace of the processing line leads to accidents, and even if workers can avoid such mishaps, most suffer from musculoskeletal injuries from repeating such forceful movements day after day.¹⁴² A 2014 study of a poultry processing plant found that about 41% of workers performed at levels of hand activity that exceeded government-recommended limits, 42% suf-

¹³⁴ *Pandemic Spotlight*, *supra* note 3, at 1, 21-22; see also *Risk of Exposure to COVID-19: Racial and Ethnic Health Disparities*, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 10, 2020), <https://perma.cc/25EE-S4YQ>.

¹³⁵ *Pandemic Spotlight*, *supra* note 3, at 22.

¹³⁶ Matt Bershadker, *Dangerously Fast Slaughter Speeds Are Putting Animals, People at Greater Risk During COVID-19 Crisis*, HILL (Nov. 28, 2020, 11:30 AM), <https://perma.cc/6GKM-E5Q7>.

¹³⁷ Megan Molteni, *Why Meatpacking Plants Have Become Covid-19 Hot Spots*, WIRED (May 7, 2020, 7:00 AM), <https://perma.cc/L5LP-JY92>.

¹³⁸ The Associated Press, *Covid Vaccine Mandate Led to 96 Percent of Tyson Workers Getting the Shot, Company Says*, NBC NEWS (Oct. 27, 2021, 8:35 AM), <https://perma.cc/P66P-7XW9>.

¹³⁹ See Molteni, *supra* note 137.

¹⁴⁰ *Footnote to Forethought*, *supra* note 14, at 118-19.

¹⁴¹ *Id.* at 119.

¹⁴² *Id.*; Jessica A. Chapman et al., *Slaughterhouse Deregulation: A View of the Effects on Animals, Workers, Consumers, and the Environment*, AM. BAR ASS’N: THE BRIEF (Aug. 25, 2021), <https://perma.cc/45KZ-CMUX>.

ferred from carpal tunnel syndrome, and 57% reported other musculoskeletal issues not related to hand and wrist use.¹⁴³

Line speeds in U.S. meat processing plants are almost impossibly fast, and workers are under tremendous pressure to maintain that pace.¹⁴⁴ CAFO laborers are expected to meet extreme efficiency standards as well, and injuries are common as workers in both environments rush through their dangerous tasks.¹⁴⁵ Meatpacking companies in particular would like line speeds to increase even more, and in the late 2010s many processing plants received waivers either to increase the maximum number of animals processed per minute or to remove line speed limits entirely.¹⁴⁶ Various animal, worker, and consumer welfare advocacy groups brought suit to halt the waivers, which increase production and profit but also injury and product contamination risks.¹⁴⁷ While some of these efforts were successful, the litigation is ongoing,¹⁴⁸ and in late 2021 the USDA again granted several pig processors permission to increase line speeds in a one-year trial program.¹⁴⁹

Many workers are too afraid of retaliation to report injuries, illnesses, or even violations of their basic human rights, but those willing to share have described relieving themselves while simultaneously working on the slaughterhouse processing line—either outwardly at their work stations, in their clothes, or in diapers they wear because they either are not permitted or are too scared to ask to stop and use the restroom.¹⁵⁰ This of course contributes to the unhygienic environment

¹⁴³ KRISTIN MUSOLIN ET AL., NAT'L INST. FOR OCCUPATIONAL SAFETY & HEALTH, EVALUATION OF MUSCULOSKELETAL DISORDERS AND TRAUMATIC INJURIES AMONG EMPLOYEES AT A POULTRY PROCESSING PLANT, at i-ii, 26 (Ellen Galloway ed., March 2014), <https://perma.cc/7A8W-VQ8L>; see also PACHIRAT, *supra* note 21, at 210 (describing how a worker quit his job at a slaughterhouse “kill floor” within a year because “[h]is knees and hands had become inflamed from constantly standing in one place performing the same repetitive motion.”).

¹⁴⁴ Bershadker, *supra* note 136; Chapman et al., *supra* note 142; see Leduff, *supra* note 106 (noting that in one of the country’s largest pork processing plants, workers had to carve shoulder meat off the bone at a rate of “one [carcass] every 17 seconds for each worker for eight and a half hours a day.”).

¹⁴⁵ *Factory Farm Workers*, *supra* note 121.

¹⁴⁶ Chapman et al., *supra* note 142.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Tom Polansek, *Update 2-U.S. to Allow Pork Plants to Operate Faster in Trial Program*, REUTERS (Nov. 10, 2021), <https://perma.cc/6Y2K-5R8N>.

¹⁵⁰ OXFAM AM., NO RELIEF: DENIAL OF BATHROOM BREAKS IN THE POULTRY INDUSTRY 2-5, 7 (2016), <https://perma.cc/JQ7U-UU8P> [hereinafter NO RELIEF]; see also Mark Hawthorne, *Inside the Life of a Factory Farm Worker*, VEGNEWS (Apr. 30, 2013), <https://perma.cc/J6EQ-ZC5C> (noting that it is not uncommon for factory farm workers to urinate and defecate in their clothes to avoid having to slow down the processing line).

where diseases thrive, jeopardizing both worker health and the quality of the food they produce.¹⁵¹

B. Psychological Trauma

Workers suffer both physical and psychological trauma from abuses like this.¹⁵² Another multifaceted form of cruelty is the “rampant” sexual harassment to which female workers are subjected, which frequently escalates to sexual assault and rape; immigrant women in particular are targets because they are more likely to be isolated, unaware of their rights, and disregarded by authority figures as if their claims lack credibility, and those without documentation are reluctant to report the abuse and risk drawing attention and possible deportation.¹⁵³ While some may argue that individual offenders are responsible for assaultive acts and not the industrialized model as a whole, that model encourages the isolation of potential victims that facilitates such high rates of abuse.¹⁵⁴

The social separation renders some more vulnerable to attack, but it harms others as well.¹⁵⁵ Workers from different backgrounds tend to segregate themselves, often in a spirit of competition and divisiveness cultivated by employer job structuring in which race often determines the type of job assigned to each worker.¹⁵⁶ For instance, workers at a pig processing plant reported that white and American Indian workers were given “clean” jobs as supervisors or in the warehouse, while Black and

¹⁵¹ See Hawthorne, *supra* note 150 (quoting a slaughterhouse employee that “the workers were actually urinating right on the equipment”); see also PACHIRAT, *supra* note 21, at 216-17 (noting that supervisors may not enforce and implement sanitation standards because the lines move so quickly).

¹⁵² See NO RELIEF, *supra* note 150, at 5, 7, 9 (describing the humiliation of workers who felt they had no other option but to urinate on themselves, and outlining the health consequences, especially to women, of infrequent urination or attempting to compensate by reducing food and drink intake).

¹⁵³ MARY BAUER & MÓNICA RAMÍREZ, S. POVERTY L. CTR., INJUSTICE ON OUR PLATES: IMMIGRANT WOMEN IN THE U.S. FOOD INDUSTRY 42, 44 (Booth Gunter ed., Gloria Lima et al. trans., 2010), <https://perma.cc/9VWP-G42U>; but see Alejandro N. Mayorkas, *supra* note 108 (pledging to consider on a case-by-case basis using prosecutorial discretion not to charge workers who are victims of or witnesses to exploitation).

¹⁵⁴ See BAUER & RAMÍREZ, *supra* note 153, at 42-47 (describing how undocumented women working in agribusiness become isolated and are “perfect victims” for sexual predators); see generally PACHIRAT, *supra* note 21 (examining the concealment, surveillance, isolation, and “physical, social, linguistic, and methodological” distance cultivated in a processing plant).

¹⁵⁵ See Leduff, *supra* note 106 (describing the race-based and often hate-filled social divisions within a slaughterhouse, and noting, “[e]verything about the factory cuts people off from one another.”).

¹⁵⁶ *Id.*

Hispanic workers were placed in “dirty” jobs on the kill floor or on the animal carcass processing lines.¹⁵⁷ A white ex-management officer confirmed that the company indeed assigned workers to jobs according to their race.¹⁵⁸

Stress from this dissociation and competition—combined with stress from chronic pain, other physical health problems, and the denial of fundamental human decencies like bathroom breaks—leads to anxiety, depression, and related mental health concerns.¹⁵⁹ Employer practices, including preferential treatment and the race-based job assignments described above, manipulate and exploit differences in workers’ race and national origin to maintain greater control and decrease the likelihood that workers will unite and protest.¹⁶⁰ Despite ostensible dissimilarities, however, agribusiness workers from different backgrounds likely would be open to collaboration and empathy—possibly leading to improved mental health—if supported, or at least not discouraged, by their employers.¹⁶¹

IV. Racism Against Surrounding Communities

Industrial animal agricultural facilities often are intentionally sited in rural regions comprised primarily of lower socioeconomic groups and people of color, causing those communities to bear disproportionate burdens of water, air, ground, and noise pollution.¹⁶² Akin to their hiring criteria, many agribusinesses prefer the surrounding communities to consist of people with less political clout to support advocating for

¹⁵⁷ *Id.* This investigation also interviewed a white worker employed in a prison work-release program who reported his surprise and frustration that white incarcerated individuals were considered on the same hierarchical level as Hispanic workers, who were given “dirty” jobs on the processing lines. *Id.*

¹⁵⁸ *Id.* The company denied this allegation, however. *Id.*

¹⁵⁹ *See id.* (detailing the social divisions between slaughterhouse workers and the associated stress); *see Factory Farm Workers*, *supra* note 121 (describing the stresses of factory farm workers); *see Michael Leibold, A Call to Action: Psychological Harm in Slaughterhouse Workers*, YALE GLOB. HEALTH REV. (Jan. 25, 2016), <https://perma.cc/YBH8-CSMB> (examining the mental harms endured by agribusiness workers).

¹⁶⁰ Angela C. Stuesse, *Race, Migration, and Labor Control: Neoliberal Challenges to Organizing Mississippi’s Poultry Workers*, in *LATINO IMMIGRANTS AND THE TRANSFORMATION OF THE U.S. SOUTH* 91, 93, 102-104 (Mary E. Odem & Elaine Lacy eds., 2009) (listing strategies employers use to increase alienation, including increased reliance on contract labor; granting privileges to some workers but not others, such as the ability to wear jewelry or take restroom breaks; and orally perpetuating stereotypes).

¹⁶¹ *See id.* at 102, 105 (noting that workers in a racially divided Mississippi poultry plant were receptive to learning about their coworkers’ backgrounds and empathizing with their struggles with discrimination and job challenges).

¹⁶² D. Lee Miller & Gregory Muren, Natl. Res. Def. Couns., *CAFOS: What We Don’t Know Is Hurting Us 7-10* (2019), <https://perma.cc/K72G-AJPR>.

change.¹⁶³ This does not always work out as intended, however, as evidenced by a recent landmark case where courts agreed with neighbors of a pig CAFO in North Carolina that the facility's operations constituted a nuisance.¹⁶⁴

Presently outcomes like this are the exception rather than the norm, despite the substantial environmental degradation for which industrial animal agriculture is responsible.¹⁶⁵ Agribusiness may rely on "right-to-farm" laws that protect them from nuisance liability, although these laws differ between states.¹⁶⁶ For instance, some laws shield factory farming operations that existed before the surrounding communities changed,¹⁶⁷ while others protect those that were in operation for at least a year without reference to whether they predated the plaintiffs' presence in the area.¹⁶⁸ Some anti-industrial agriculture advocates have labeled these protections "right-to-harm" laws,¹⁶⁹ and the disproportionate impact of agribusiness pollution upon people of color has become a leading example of environmental racism.¹⁷⁰

¹⁶³ *Id.* at 7.

¹⁶⁴ *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 954, 958, 969, 977 (4th Cir. 2020).

¹⁶⁵ *See id.* at 979-84 (Wilkinson, J., concurring) (describing the environmental problems created by CAFOs like the pig facility at issue in that case); *see also* Kitt Tovar, *Update on Right-to-Farm Legislation, Cases, and Constitutional Amendments*, IOWA STATE U. CTR. FOR AGRIC. L. & TAX'N (May 28, 2019), <https://perma.cc/LP47-QT3R> (listing right-to-farm laws in all 50 states and summarizing recent updates and related litigation).

¹⁶⁶ *See generally* Tovar, *supra* note 165 (listing and describing U.S. right-to-farm laws).

¹⁶⁷ *See, e.g.*, OHIO REV. CODE ANN. § 929.04(B)(2) (West 2022) (providing a complete defense against civil nuisance liability if "the agricultural activities were established prior to the plaintiff's activities or interest on which the action is based.").

¹⁶⁸ *See, e.g.*, TEX. AGRIC. CODE ANN. § 251.004(a)-(b) (West 2021) (disallowing nuisance actions against an agricultural operation that has operated for a year or more). Right-to-farm laws also may limit the window of time in which plaintiffs may bring suit and cap damages. *See, e.g., id.* (imposing liability upon a person who brings an action against a facility that has been in operation for a year or longer); N.C. GEN. STAT. ANN. § 106-702(a) (West 2021) (limiting compensatory damages based on fair market value of the plaintiff's property and prohibiting punitive damages outside of narrow circumstances).

¹⁶⁹ *See, e.g.*, Siena Chrisman, *How the Right to Farm Became the Right to Harm*, FOODPRINT (Aug. 5, 2019), <https://perma.cc/9376-TQC9> (summarizing the background of right-to-farm laws as protections for family farmers, and the ensuing problems of now applying those laws to agribusinesses).

¹⁷⁰ *See, e.g.*, David N. Pellow, *Environmental Justice and Rural Studies: A Critical Conversation and Invitation to Collaboration*, 47 J. RURAL STUD., Oct. 2016, at 381, 385 (summarizing studies of the racist effects of CAFO siting and noting some scholars use the term "environmental apartheid" instead of "environmental racism" to indicate committing "environmental abuse in order to marginalize a racially defined group").

A. Environmental Degradation

CAFOs must maintain and dispose of enormous amounts of animal waste, which collects in massive, multi-million-gallon pools known as “lagoons.”¹⁷¹ Lagoons are prone to seepage, rupture, and flooding, which contaminates the soil and water used by the community for drinking, swimming, and washing.¹⁷² Manure from CAFOs also produces dangerous amounts of methane, ammonia, hydrogen sulfide, harmful particulate matter, and noxious odors that can travel several miles.¹⁷³ While deteriorated air quality harms everyone in the area and leads to increased rates of asthma, bronchitis, and cardiac and lung issues, children are even more at risk.¹⁷⁴

When waste lagoons fill, which happens frequently despite their size, CAFO operators must determine ways to empty them.¹⁷⁵ One particularly nefarious tactic is known as the “sprayfield” method which involves industrial sprayers shooting the waste onto nearby fields to use as fertilizer.¹⁷⁶ Winds then carry the untreated waste onto neighboring properties, literally raining untreated excrement down upon homes and anything or anyone outdoors.¹⁷⁷ As for the waste that reaches the ground, the large amounts generated by CAFOs can overwhelm the soil’s absorption capacity, which creates runoff and leeches nitrates, antibiotics, pathogens, hormones, and other contaminants that pollute both groundwater and surface water.¹⁷⁸ The runoff creates toxic algal blooms in streams and rivers, endangering anyone who comes into contact with that water or the fish therein,¹⁷⁹ and also rendering the water unusable for religious ceremonies, such as those vital to Indigenous cultures.¹⁸⁰

¹⁷¹ *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 947 (4th Cir. 2020).

¹⁷² See Wendee Nichole, *CAFOs and Environmental Justice: The Case of North Carolina*, 121 ENV’T HEALTH PERSPS. A 182, A 186, A 188 (2013) (flooding can be catastrophic after natural disasters like hurricanes hit, which pose a constant threat in regions like the Southeast where so many CAFOs are located); see also Wynne Davis, *Overflowing Hog Lagoons Raise Environmental Concerns in North Carolina*, NAT’L PUB. RADIO (Sept. 22, 2018, 7:54 AM), <https://perma.cc/9KJ3-A7B6> (describing effects of flooded waste lagoons after hurricanes).

¹⁷³ HRIBAR, *supra* note 122, at 6-7.

¹⁷⁴ *Id.* at 5-6.

¹⁷⁵ See, e.g., *McKiver*, 980 F.3d at 947.

¹⁷⁶ See, e.g., *id.*

¹⁷⁷ *Id.* at 947, 981.

¹⁷⁸ HRIBAR, *supra* note 122 at 3-5.

¹⁷⁹ See *id.*; see *Algal Blooms*, NAT’L INST. OF ENV’T HEALTH SCIS., <https://perma.cc/6KL6-P6CA> (last visited Sept. 8, 2021).

¹⁸⁰ Rebecca Nagle, *Still Bleeding*, THIS LAND (July 15, 2019), <https://perma.cc/6B9V-R77B> (describing the hardships experienced by members of the Cherokee nation in Oklahoma as a result of surrounding chicken CAFOs).

Surrounding communities also must deal with increased traffic and noise pollution, as well as decreased property values that reduce the likelihood that they would be able to move.¹⁸¹ Because agribusiness facilities are so frequently located in communities of color, these issues plague minoritized people more than those in higher-income, whiter neighborhoods.¹⁸² This contributes to the problem of marginalized populations bearing disproportionately high burdens of pollution and other environmental damage.¹⁸³

B. Diseases and Other Ailments

People living near industrial animal agriculture suffer from high rates of respiratory diseases and other ailments analogous to those that plague workers.¹⁸⁴ Living with odor, insects, noise, chronic conditions, and the inability to enjoy the outdoors decreases quality of life and increases stress, anger, fatigue, anxiety, and depression.¹⁸⁵ The over 150 pathogens found in animal waste, and subsequently in the air, soil, and water near industrial agriculture facilities, can cause physical health issues including skin sores and rashes, muscle spasms, and flu-like symptoms such as severe diarrhea, which can be deadly to immunocompromised individuals.¹⁸⁶ The elevated levels of nitrates often present in surrounding surface and groundwater also can lead to stomach and esophageal cancer, birth defects, miscarriages, and blue baby syndrome.¹⁸⁷ The animal agribusiness industry's overuse of antibiotics im-

¹⁸¹ Chrisman, *supra* note 169; Christine Ball-Blakely, *CAFOs: Plaguing North Carolina Communities of Colors*, SUSTAINABLE DEV. L. POL'Y, Feb. 2018, at 4, 4-6.

¹⁸² Ball-Blakely, *supra* note 181 at 5; *see also* U.S. ENV'T PROT. AGENCY, PRELIMINARY EFFLUENT GUIDELINES PROGRAM PLAN 15, at 6-2 (2021) <https://perma.cc/YA8N-QESZ> (noting that screening analyses found 74% of animal agribusiness facilities that discharge waste into nearby rivers and streams are located within one mile of communities in lower socioeconomic regions or communities of color).

¹⁸³ *See* Aneesh Patnaik et al., *Racial Disparities and Climate Change*, PRINCETON STUDENT CLIMATE INITIATIVE (Aug. 15, 2020), <https://perma.cc/JXS9-6YFC> ("Communities of color are disproportionately victimized by environmental hazards and are far more likely to live in areas with heavy pollution.").

¹⁸⁴ *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 979-80 (4th Cir. 2020) (Wilkinson, J., concurring); *see also supra* notes 121-25 and accompanying text.

¹⁸⁵ *McKiver*, 980 F.3d at 948, 968, 980; Ball-Blakely, *supra* note 181 at 6; Erica Hellerstein & Ken Fine, *A Million Tons of Feces and an Unbearable Stench: Life Near Industrial Pig Farms*, GUARDIAN, (Sept. 20, 2017, 7:00 AM), <https://perma.cc/23Q3-EPJY> (quoting a Black woman who lives near a pig processing facility that "[i]t's like living in prison," because although she does not want to move, she and her family are no longer able to enjoy the outdoors, and that even her childhood during the Jim Crow era was a "happier, healthier time But now, after these hogs came in, everything has gone downhill.").

¹⁸⁶ HRIBAR, *supra* note 122, at 8-9.

¹⁸⁷ *Id.* at 4.

pacts the community as well, fostering antibiotic resistance in both non-humans and humans, and facilitating the spread of antibiotic-resistant superbugs.¹⁸⁸

Overcrowding, antibiotic resistance, and excessive waste that attracts disease-carrying insects make CAFOs ideal environments for spreading disease, whether among nonhumans, humans, or between both groups.¹⁸⁹ Slaughterhouses create comparable conditions for viral and bacterial dissemination, with laborers working so closely to each other in unhygienic surroundings where injuries—and contact with injured or ill people—are practically unavoidable.¹⁹⁰ Workers typically are the first humans to be infected in these situations, but members of the community are close behind.¹⁹¹ Diseases that followed this route from industrialized animal agriculture to communities include the H1N1 “swine flu” and other strains of influenza, as well as COVID-19.¹⁹²

Although regulations and enforcement are lacking,¹⁹³ recent lawsuits and media attention have begun to instigate changes.¹⁹⁴ With respect to water pollution, for example, the U.S. Environmental Protection Agency committed after a lawsuit to update standards controlling water pollution from entities including meat and poultry producers.¹⁹⁵ State

¹⁸⁸ David Hyun, *FDA Must End Unnecessary Long-Term Antibiotic Use on Farms and Feedlots*, PEW CHARITABLE TRS. (June 1, 2021), <https://perma.cc/WRH3-MDFU>; see also Shawn G. Gibbs et al., *Isolation of Antibiotic-Resistant Bacteria from the Air Plume Downwind of a Swine Confined or Concentrated Animal Feeding Operation*, 114 ENV'T HEALTH PERSPS. 1032, 1035 (2006) (finding antibiotic-resistant bacteria up to 150 miles downwind of CAFOs, even four weeks after the CAFOs had administered the antibiotics to their animals).

¹⁸⁹ *McKiver*, 980 F.3d at 980 (Wilkinson, J. concurring).

¹⁹⁰ See *supra* Part III.A (describing working conditions and common injuries in slaughterhouses).

¹⁹¹ *McKiver*, 980 F.3d at 980 (Wilkinson, J., concurring).

¹⁹² *Id.*; Thomas C. Moore et al., *CAFOs, Novel Influenza, and the Need for One Health Approaches*, 13 ONE HEALTH 1, 1-2 (2021); *Pandemic Spotlight*, *supra* note 3, at 1, 21.

¹⁹³ See, e.g., Sarah Graddy & Soren Rundquist, *UPDATE: Exposing Fields of Filth; Factory Farms Disproportionately Threaten Black, Latino and Native American North Carolinians*, ENV'T WORKING GRP. (July 30, 2020), <https://perma.cc/4HTQ-WJWR> (noting the near absence of regulatory oversight of poultry CAFOs in North Carolina and their disparate impacts on communities of color); see also Chapman et al., *supra* note 142 (describing the historically minimal regulatory oversight of slaughterhouses and arguing against efforts to deregulate them further).

¹⁹⁴ See, e.g., *In Response to Lawsuit, EPA Pledges to Strengthen Slaughterhouse Water Pollution Standards*, FOOD & WATER WATCH, (Sept. 9, 2021), <https://perma.cc/EU44-EV32> [hereinafter *EPA Pledges*] (noting that the EPA will update animal agriculture water pollution standards for the first time since 2004 after a recent lawsuit challenged the EPA's refusal to do so); see also Chrisman, *supra* note 169 (describing a documentary film and nuisance lawsuits brought against CAFOs in North Carolina).

¹⁹⁵ *EPA Pledges*, *supra* note 194; U.S. ENV'T PROT. AGENCY, *supra* note 182, at 1-1, 6-3.

courts may be willing to enforce regulations more strictly as well.¹⁹⁶ These are only initial steps, however; while they move in a positive direction, there is far more still to do to address the disparate impacts of industrialized agriculture on communities of color.¹⁹⁷

V. *Racism Against Consumers*

Industrial animal agriculture proponents tout it as an efficient means of supplying inexpensive food to large masses of consumers.¹⁹⁸ It is indeed efficient—at least when it is uninterrupted; the temporary closure of slaughterhouses during the COVID-19 pandemic revealed serious vulnerabilities in the system.¹⁹⁹ But the ultimate costs of “cheap” meat and dairy outweigh any perceived initial benefits.²⁰⁰

A. Food Insecurity

Very briefly defined, redlining was a systemically racist practice that hindered the advancement of people of color through the denial of property loans, mortgages, and other services otherwise accessible by white people.²⁰¹ Although it is illegal today, communities still feel the effects of redlining.²⁰² Redlined neighborhoods are poorer and have less available healthcare, reduced access to healthy food, and less overall food security than predominantly white neighborhoods.²⁰³ So-called “food deserts”—a term the USDA coined to define low-income areas where residents do not have access to wholesome food, supermarkets, or transportation to reach those options—are common within redlined are-

¹⁹⁶ See, e.g., *Food & Water Watch v. U.S. Env't Protec. Agency*, 13 F.4th 896, 898 (9th Cir., 2021) (granting a petition challenging issuance of a permit for Idaho CAFOs, finding that the EPA's issuance was “arbitrary, capricious, and in violation of law because it lacks sufficient monitoring provisions to ensure compliance with its discharge limitations.”).

¹⁹⁷ See *EPA Pledges*, *supra* note 194 (quoting an attorney for the Environmental Integrity Project that the modernization of water pollution standards is “a great first step,” and the Director of Food & Water Watch that “our work is far from over.”).

¹⁹⁸ R. Jason Richards & Erica L. Richards, *Cheap Meat: How Factory Farming is Harming our Health, the Environment, and the Economy*, 4 KY. J. EQUINE, AGRIC., & NAT. RES. L., no. 1, 2011, at 31, 32.

¹⁹⁹ *Pandemic Spotlight*, *supra* note 3, at 21-22.

²⁰⁰ See generally Richards & Richards, *supra* note 198 (discussing the negative economic, environmental, health, and ethical costs of industrial animal agriculture).

²⁰¹ *Redlining and Food Justice in America*, MOVE FOR HUNGER (Aug. 11, 2020), <https://perma.cc/884Y-WM8V>.

²⁰² Tonya Mukherjee, *Redlining's Legacy: Food Deserts, Insecurity, and Health*, MORNING SIGN OUT (Sept. 28, 2020), <https://perma.cc/4BC6-FM4V>.

²⁰³ *Redlining and Food Justice in America*, *supra* note 201.

as.²⁰⁴ If food retailers are present in these regions, they tend to consist of fast food, convenience stores, and other sources of nutritionally-deficient food, a state known as a “food swamp.”²⁰⁵ Some advocates reject these terms, however, instead favoring “food apartheid” because it more appropriately classifies the situation as one controllable by the underlying food system, as opposed to a natural phenomenon.²⁰⁶

Regardless of its descriptors, unequal access to healthy food contributes to hunger, obesity, and related diseases like diabetes and heart disease; it harms people of color at higher rates than white people; and it is linked to the industrial animal agriculture system.²⁰⁷ In 2020, food insecurity affected just over 10% of households in the United States, with Black and Hispanic households experiencing the problem at rates of 21.7% and 17.2%, respectively—roughly double the national average.²⁰⁸

Regarding regions with a lack of nutritious food options, only 55% of food crops grown in the United States feed humans directly, but rather livestock in the industrial system that then eventually feed humans.²⁰⁹ This is terribly inefficient and contributes significantly to human hunger.²¹⁰ To illustrate, one hundred calories of grain, when fed to an animal that eventually supplies a product to feed a human, provide only a fraction of those original calories when converted into an animal product for human consumption. Those one hundred calories of grain become about 40 calories of milk or only three calories of beef.²¹¹ Some argue that using the land that currently supplies crops to feed livestock

²⁰⁴ Mukherjee, *supra* note 202; see Michele Ver Ploeg et al., *Mapping Food Deserts in the United States*, U.S. DEP’T OF AGRIC. ECON. RES. SERV. (Dec. 1, 2011), <https://perma.cc/XK7U-RH2S> (defining “food deserts”).

²⁰⁵ Julian Agyeman, *How Urban Planning and Housing Policy Helped Create ‘Food Apartheid’ in US Cities*, PENNLIVE (Mar. 9, 2021, 7:06 PM), <https://perma.cc/XP3B-SR4Q>.

²⁰⁶ *Id.*

²⁰⁷ See LINDSEY HAYNES-MASLOW, UNION OF CONCERNED SCIENTISTS, THE DEVASTATING CONSEQUENCES OF UNEQUAL FOOD ACCESS, 1, 2-4 (2016), <https://perma.cc/C5AN-S2RJ> (describing the correlation between race and lack of access to healthy food options and the resulting health problems disproportionately borne by people of color); see Moore, *supra* note 6 at 5-6 (connecting food insecurity and the harms caused by industrialized animal agriculture).

²⁰⁸ *Key Statistics & Graphics*, U.S. DEP’T OF AGRIC. ECON. RSCH. SERV. (Sept. 8, 2021), <https://perma.cc/FKW4-MAY7>.

²⁰⁹ Jonathan Foley, *A Five-Step Plan to Feed the World*, NAT’L GEOGRAPHIC, <https://perma.cc/NYY8-DN2A> (last visited May 8, 2020); see also RICHARD OPPENLANDER, FOOD CHOICE AND SUSTAINABILITY: WHY BUYING LOCAL, EATING LESS MEAT, AND TAKING BABY STEPS WON’T WORK 39, 306 (2013) (noting that the majority of U.S. farmland is used to graze livestock, not to grow crops for direct human consumption, and that this grazed livestock represent less than 1% of all livestock raised for food purposes).

²¹⁰ Foley, *supra* note 209.

²¹¹ *Id.*

to grow crops to feed humans directly instead could eradicate world hunger.²¹²

Native American tribes in particular had so few food options and farming opportunities after Congress forced them onto unfamiliar lands that many became dependent on government food rations, even though these rations did not provide necessary nutrition or traditional tribal ingredients central to their cultures, and some even arrived spoiled.²¹³ Rations have been linked to illness, starvation, and diabetes in Native American communities.²¹⁴ There may be cause for hope, however. About a quarter of Native Americans still receive federal food assistance today, but provisions in the 2018 Farm Bill enabled several tribes across the country to source their own foods—including fresher, more culturally appropriate options from local and tribal producers—by using the Indian Self-Determination and Education Assistance Act of 1975, which authorizes tribes to administer government services for their own members, in conjunction for the first time with the Food Distribution Program on Indian Reservations (“FDPIR”), which was designed in the 1970s as an alternative to the federal food stamp program.²¹⁵ Future farm bills may provide additional opportunities to increase tribal sovereignty via the FDPIR.²¹⁶

Regarding regions with an excess of unhealthy food options, fast food chains often concentrate in communities of color, obtaining the inexpensive animal products that dominate their menus, ensure their profitability, and befoul the diets of their customers from industrial agriculture.²¹⁷ Animal products from the industrial system tend to be less healthy and may even be unsafe to consume.²¹⁸ Overcrowding in CAFOs and extremely fast processing speeds in slaughterhouses can result in contamination of the meat and dairy products that ultimately reach consumers, a degree of which is permissible under U.S. law.²¹⁹ Additionally, the same antibiotics, pesticides, and other chemicals used by many agribusiness operations that contaminate the air, land, and water also may be present in the animal products that find their way to con-

²¹² *Id.*; See OPPENLANDER, *supra* note 209, at 306-07.

²¹³ Frank, *supra* note 73; Andi Murphy, *After a Fraught History, Some Tribes Finally Have the Power to Rethink ‘Commodity Foods’*, CIVIL EATS (Nov. 1, 2021), <https://perma.cc/F6YB-FSZV>.

²¹⁴ Frank, *supra* note 73.

²¹⁵ Murphy, *supra* note 213.

²¹⁶ *Id.*

²¹⁷ *Fast Food*, FOOD EMPOWERMENT PROJECT, <https://perma.cc/2RR8-BKE8> (last visited May 8, 2020); Agyeman, *supra* note 205.

²¹⁸ Richards & Richards, *supra* note 198, at 43-46, 47-48.

²¹⁹ Chapman et al., *supra* note 142.

sumers' plates.²²⁰ Kitchens across the United States and world may contain meat and dairy produced by industrial animal agriculture, but in areas affected by food apartheid, consumers may not have any other choices.²²¹ Even if they do, fast and other “junk” food producers target their marketing toward communities of color, specifically Hispanic and Black consumers.²²² Food apartheid and targeted marketing both contribute to the higher frequency of nutrition-related health problems in communities of color.²²³

B. Market Concentration

As discussed above in Part II.B, the consolidation of animal agriculture within the control of only a few companies harms independent farmers and ranchers,²²⁴ but it harms consumers as well.²²⁵ Less competition empowers the conglomerates dominating the animal agribusiness industry to pay farmers and ranchers less and charge consumers more for fewer choices.²²⁶ This is hugely profitable and generates considerable political clout for those in control, who are “mostly white men, who make money by dictating who farms, what gets farmed[,] and who gets to eat. Consumer choice is an illusion”²²⁷

That consumer choice—or the lack thereof—in communities of color often consists of the unhealthy fast and convenience food described above.²²⁸ Even in communities fortunate enough to have a larger grocery store or public transportation to enable residents to reach one, that store is more likely to be part of a chain of superstores that squeezed smaller, independent purveyors out of the market.²²⁹ The lack of competition benefits these “mega markets” much like it does “mega meat pro-

²²⁰ Footnote to *Forethought*, *supra* note 14, at 124.

²²¹ See *Food Deserts*, FOOD EMPOWERMENT PROJECT, <https://perma.cc/4VVK-BUEV> (last visited Sept. 28, 2021) (describing the disparate impacts of food deserts and swamps).

²²² JENNIFER L. HARRIS ET AL., RUDD REPORT: INCREASING DISPARITIES IN UNHEALTHY FOOD ADVERTISING TARGETS TO HISPANIC AND BLACK YOUTH 8 (2019), <https://perma.cc/QYZ7-NGYE>.

²²³ *Food Deserts*, *supra* note 221; see also Peter Riley Bahr, *Race and Nutrition: An Investigation of Black-White Differences in Health-Related Nutritional Behaviors*, 29 SOC. HEALTH & ILLNESS 831, 836-38 (2007) (noting that the health gap between Black and white populations exists even after adjusting for socioeconomic status).

²²⁴ See *supra* Part II. B (describing the harm industry consolidation causes to farmers and ranchers of color).

²²⁵ Lakhani et al., *supra* note 1.

²²⁶ *Id.*

²²⁷ *Id.* (quoting Joe Maxwell).

²²⁸ See *supra* Part III A (describing the food typically available in areas impacted by food apartheid).

²²⁹ Lakhani et al., *supra* note 1.

cessors” by entitling them to impose prices that ensure generous profit margins at the expense of consumers.²³⁰ Thus, while building a superstore in an area affected by food insecurity may seem like a viable solution to that problem—and doing so may indeed provide at least some additional food options to communities if they previously did not have many—that tactic will not succeed in the long-term without addressing and attempting to rectify the systemic racism of the food industry.²³¹

VI. Possible Improvements

A. Proposed Legislation

Remedying systemic discrimination requires systemic change, and these wounds run so deep that even sweeping legal transformation is unlikely to result in complete healing.²³² Acknowledging that a great deal more is necessary, the following briefly summarizes some of the ideas and nascent attempts to begin addressing the problem of racist industrial animal agriculture.

i. Justice for Black Farmers Act

Legislators have proposed several bills designed to address the problems created by industrial animal agriculture. One such bill that directly addresses the systemic racism of that production model is the federal Justice for Black Farmers Act (“JBFA”), which would purge discriminatory governmental policies to protect the few remaining Black farmers and ranchers and provide land grants to encourage the establishment of new farmers and ranchers of color.²³³

The JBFA would establish USDA reforms including an independent oversight board to handle discrimination complaints and recommend policy and procedure improvements, as well as an Equity Commission to study and develop recommendations to eliminate discrimination against Black farmers and ranchers.²³⁴ It would establish credit and

²³⁰ *Id.*

²³¹ See *Food Deserts*, *supra* note 221 (acknowledging that only accounting for the proximity of community members to food providers is insufficient and ignores vital considerations like racism and the availability of culturally-appropriate food).

²³² See KO & KO, *supra* note 8, at 127-37 (addressing minoritized groups and arguing that true liberation requires reevaluating one’s entire worldview and reimagining a social hierarchy and conceptual framework that themselves are products of white supremacy). “Moreover, as long as animals are oppressed, as long as ‘animal’ means something degrading, we will never be set free.” *Id.* at 135.

²³³ Justice for Black Farmers Act, S. 300, 117th Cong. §§ 202–03, 401–04, 522 (2021).

²³⁴ *Id.* at §§ 102-05.

funding, including forgiveness of the debt of *Pigford* claimants,²³⁵ and it would authorize the USDA to purchase land and convey up to 160 acres to at least 20,000 eligible Black applicants through 2030.²³⁶ Further, the JBFA contains provisions that would amend the Packers and Stockyards Act to give more power to smaller-scale farmers and ranchers,²³⁷ and that would support more sustainable agricultural practices that also would contribute to the decline of CAFOs and large-scale, industrial slaughter.²³⁸

Supporters lauded the JBFA as “historic,” “essential,” “incredibly important,” and “long overdue.”²³⁹ When questioned about its ostensible exclusion of other groups harmed by the USDA’s exclusionary policies, such as Native American and Hispanic farmers and ranchers, one of the JBFA’s congressional sponsors acknowledged those harms and confirmed that the “bill is not exclusive of those other urgent areas where we need to work and focus.”²⁴⁰ Originally introduced in Congress in 2020, the JBFA did not progress to enactment, however.²⁴¹ After its re-introduction in 2021, the JBFA appears to have once again stalled after its introduction in the Senate.²⁴²

ii. American Rescue Plan Act

In the wake of the COVID-19 pandemic, the federal American Rescue Plan Act (“ARPA”) sought to provide economic relief to the public via stimulus checks, rental assistance, small business grants, tax credits, and other support.²⁴³ Echoing some of the provisions of the JBFA, the ARPA also attempted to acknowledge and begin rectifying some of the past harms inflicted upon farmers and ranchers of color by enabling the USDA to pay up to 120 of the loan debt of each “socially

²³⁵ *Id.* at §§ 402-03.

²³⁶ *Id.* at § 203.

²³⁷ *Id.* at § 502-06.

²³⁸ *Id.* at §§ 521-24.

²³⁹ Booker, Warren, Gillibrand, Smith, Warnock, and Leahy Announce Comprehensive Bill to Address the History of Discrimination in Federal Agricultural Policy, CORY BOOKER (Feb. 9, 2021), [hereinafter *Booker Bill*] <https://perma.cc/F3XT-P5Z4>.

²⁴⁰ Ximena Bustillo, *Farming is a Racial Justice Issue. Just Ask Cory Booker*, POLITICO (Feb. 26, 2021, 1:00 PM), <https://perma.cc/9YGS-NGCE>.

²⁴¹ See *Booker Bill*, *supra* note 239.

²⁴² See *Actions Overview S.300, 117th Cong. (2021–2022)*, LIB. OF CONG. <https://perma.cc/2JUG-DHLV> (last visited Oct. 9, 2021) (listing the most recent action as introduction in the Senate on Feb. 8, 2021).

²⁴³ *American Rescue Plan*, WHITE HOUSE, <https://perma.cc/UL2L-22HL> (last visited Oct. 11, 2021).

disadvantaged farmer or rancher,”²⁴⁴ defined as a member of a group that has been “subjected to racial or ethnic prejudice” not due to any “individual qualities” of that person, but as a result of the person’s membership in that group.²⁴⁵ Socially disadvantaged farmers and ranchers also are eligible under the Act for additional financial assistance, loans, grants, training, scholarships, and other support for which the Act made over a billion dollars available.²⁴⁶

The Secretary of the USDA extolled these developments as “long overdue” to start building more equity between farmers and ranchers of color and White farmers and ranchers, who have benefitted the most from USDA aid payments that were based on operation size and productivity—a “system [that] is stacked against farmers of color,” enabling the larger, often white-run farms and ranches to grow even more, while providing less support to the smaller agricultural enterprises where more operators of color attempted to keep a foothold.²⁴⁷ Not everyone saw the ARPA’s debt forgiveness provisions as equitable, however.²⁴⁸ Banks expressed concern about lost loan interest proceeds, and white farmers and ranchers sued the USDA, alleging that §1005 unconstitutionally rendered them ineligible for debt relief payments based solely on their race.²⁴⁹ Though forced to pause the process, the USDA stands behind the loan repayment program and as of late 2021 is not requiring payments on otherwise-eligible loans while awaiting the outcome of the litigation.²⁵⁰

²⁴⁴ American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 1005 (a)(2), 135 Stat. 4 (2021) (accounting for the loan balance, as well as any applicable taxes and fees); *American Rescue Plan Debt Payments*, U.S. DEP’T OF AGRIC. FARMERS.GOV, <https://perma.cc/JM73-3YGJ> (last visited Oct. 14, 2021).

²⁴⁵ Food, Agriculture, Conservation, and Trade Act of 1990 § 2501, 7 U.S.C. §§ 2279 (a)(5)-(6).

²⁴⁶ American Rescue Plan Act, Pub. L. No. 117-2, § 1006 (2021).

²⁴⁷ Tom Vilsack, *Tom Vilsack: Why Debt Relief for Black and Minority Farmers is a Major Civil Rights Victory*, USA TODAY (May 21, 2021, 1:19 PM), <https://perma.cc/8R9X-P2SX>.

²⁴⁸ See, e.g., Jack Healy, ‘You Can Feel the Tension’: A Windfall for Minority Farmers Divides Rural America, STAR TRIBUNE (May 22, 2021, 1:40 PM), <https://perma.cc/TEQ2-38BQ>.

²⁴⁹ *Id.*; see, e.g., Faust v. Vilsack, 519 F. Supp. 3d 470, 478 (E.D. Wis. 2021) (granting motion for temporary restraining order); Wynn v. Vilsack, No. 21-CV-514, 2021 WL 2580678, at *17 (M.D. Fla. June 23, 2021) (granting motion for preliminary injunction); Holman v. Vilsack, No. 21-1085, 2021 WL 2877915, at *13 (W.D. Tenn. July 8, 2021) (granting motion for preliminary injunction).

²⁵⁰ Healy, *supra* note 248; *American Rescue Plan Act Section 1005 Litigation FAQs*, U.S. DEP’T OF AGRIC. FARMERS.GOV, <https://perma.cc/2CMB-PANW> (last visited Oct. 14, 2021).

iii. *Farm System Reform Act*

Another federal bill, the Farm System Reform Act (“FSRA”), would place a moratorium on large CAFOs by 2040, shift liability for pollution and other harms to the overseeing company, and provide grants to landowners to transition away from the industrial model.²⁵¹ Although the FSRA does not explicitly mention racial discrimination like the JBFA, the same senator introduced both bills and considers it one arrow in the quiver of legislation aimed at addressing the injustices inherent in the nation’s food system.²⁵² The FSRA also contains similar provisions to the JBFA, such as identical proposed amendments to the Packers and Stockyards Act.²⁵³

But like the bills discussed above, the FSRA is not without opposition. Some argue that the bill would eradicate all animal agriculture, not just CAFOs, and that its prohibitory language would include slightly larger family-run farms as well; others contend that even abolishing the largest agribusiness conglomerates would create calamitous supply chain interruptions and drastic price increases for consumers.²⁵⁴ On the other side, proponents argue that the FSRA would improve employment and vibrancy in rural communities where the industrial model has forced out independent producers, encourage a more sustainable production

²⁵¹ Farm System Reform Act of 2021, S. 2332, 117th Cong. §§ 102–104 (2021).

²⁵² Bustillo, *supra* note 240.

²⁵³ Farm System Reform Act of 2021, *supra* note 251 at §§ 201-06; *see also* Justice for Black Farmers Act of 2021, *supra* note 233 at §§ 501-06.

²⁵⁴ *See, e.g.*, Katie Pinke, *Speak Out Against Animal Rights Activist Legislation*, AGWEEK (July 23, 2021, 4:30 AM), <https://perma.cc/DYZ7-LC67> (arguing that the FSRA represents interests harmful to all agriculture, and that “[t]here are no ‘factory farms.’ And if an agribusiness chooses to legally incorporate for business and tax purposes like any other non-ag business in America, we should stop [labeling them] as if they are somehow not contributing quality food and fiber to our economy.”); *see also* Michael Cox, *Column: “Farm System Reform Act of 2019” Senate Bill’s Definition of ‘Monopoly’ is Problematic*, MONTROSE DAILY PRESS (Dec. 24, 2021), <https://perma.cc/LZ3C-HCLY> (“I know a lot of family ranches that will have no place to ship cattle. The supply chain will have kinks like you wouldn’t believe. Consumer prices will rise. Some more family ranches will go out of business.”).

model, and combat environmental racism.²⁵⁵ Like the JBFA, however, the FSRA has not proceeded in Congress beyond its introduction.²⁵⁶

iv. State Measures

At the state level, in 2021 Utah enacted the Large Concentrated Animal Feeding Operations Act, which requires the institution of CAFO land use ordinances and standards for granting CAFOs access to requested locations.²⁵⁷ Other states have proposed as-yet-unenacted bills regulating CAFOs to varying degrees, ranging from more frequent inspections to moratoriums, including Indiana, Iowa, Oregon, and Rhode Island.²⁵⁸ A North Carolina bill would phase out traditional lagoon and sprayfield waste management practices at pig production facilities;²⁵⁹ a Minnesota bill would attempt to improve conditions for meat processing workers;²⁶⁰ and a California bill would incentivize animal product producers to transition to plant-based agriculture.²⁶¹ Although only two of these measures propose to ban new CAFOs²⁶² and none explicitly addresses the racism inherent in the industrial animal agriculture system, the fact that some state lawmakers are at least open to pursuing greater regulations for that industry—especially considering the strength of the agribusiness lobbies²⁶³—may provide a modicum of hope for those advocating to curb industrial agriculture.

²⁵⁵ See, e.g., Jacqueline Covey, *Proposed Bill May Aide Small-, Medium-Sized Farms*, FOOD TANK, <https://perma.cc/QVH9-7CWS> (last visited Oct. 17, 2021) (arguing that the moratorium on CAFOs would permit smaller farms to prosper and that the encouragement of more sustainable production methods would improve quality of life in the surrounding communities); see also Julie Cappiello, *The Meat Industry Hurts BIPOC Communities. Here's How.*, WORLD ANIMAL PROTECTION (Feb. 11, 2021), <https://perma.cc/7CVT-4ELF> (arguing that fewer CAFOs would lead to less environmental racism).

²⁵⁶ See H.R.4421 - Farm System Reform Act of 2021, LIBR. OF CONG., <https://perma.cc/J3X7-2ZR3> (last visited Oct. 17, 2021) (listing the most recent action as introduction in the House on July 13, 2021).

²⁵⁷ S.B. 130, 2021 Gen. Sess. (Utah 2021).

²⁵⁸ S.B. 29, First Reg. Sess., 122d Gen. Assemb. (Ind. 2021); S.F. 282, 89th Gen. Assemb. (Iowa 2021); H.B. 2924, 81st Or. Leg. Assemb., Reg. Sess. (Or. 2021); H.B. 5761, Jan. Sess., Gen. Assemb. (R.I. 2021).

²⁵⁹ H.B. 863, 2021 Gen. Sess. (N.C. 2021).

²⁶⁰ S.F. 1598, 92d Sess. (Minn. 2021).

²⁶¹ A.B. 1289, 2021–2022 Reg. Sess. (Cal. 2021).

²⁶² H.B. 2924, 81st Or. Leg. Assemb., Reg. Sess. (Or. 2021) (applying to dairy operations); H.B. 5761, Jan. Sess., Gen. Assemb. (R.I. 2021); see also S.F. 282, 89th Gen. Assemb. (Iowa 2021) (proposing to ban the construction or expansion of “confinement animal feeding structure[s],” but exempting “small animal feeding operation[s],” which the bill language does not define, and construction that began prior to enactment).

²⁶³ See *Sector Profile: Agribusiness*, OPENSECRETS, <https://perma.cc/TNK5-JVKU> (last visited Oct. 14, 2021) (noting that agribusiness lobbyists spent over \$140 million in 2020); see also Sigal Samuel, *It's Not Just Big Oil. Big Meat Also Spends Millions to Crush Good*

B. Government Subsidies

U.S. taxpayers support animal agriculture through billions of dollars each year in governmental subsidies.²⁶⁴ These subsidies keep the cost of animal products lower for both producers and consumers—arguably artificially so, particularly when considering the cost to society of the industrial production model—while empowering animal agribusiness to grow even stronger.²⁶⁵ This deflated consumer cost also supports food apartheid by stimulating continued production of less nutritious food and failing to encourage the establishment and prosperity of healthier options in less wealthy communities and communities of color.²⁶⁶

Furthermore, the traditional system of awarding subsidies based on production capacity has ensured that the majority of aid money went to white farmers and ranchers with more successful operations—the greater success of which had been bolstered by decades of discriminatory policies and practices.²⁶⁷ This inequity persists today.²⁶⁸ For example, although farmers and ranchers of color were disproportionately harmed by effects of the coronavirus pandemic, they received only a small percentage of governmental assistance.²⁶⁹ Similarly, when trade sanctions against China negatively impacted agricultural producers, the U.S. government authorized the USDA to distribute billions of dollars to offset

Climate Policy., VOX (Apr. 13, 2021, 3:01 PM), <https://perma.cc/6MHH-F6JY> (describing how industrial animal agricultural companies influence politics and policy through lobbying, campaign involvement, and research funding).

²⁶⁴ *U.S. 2020 Farm Subsidy Breakdown*, AGRIC. FAIRNESS ALLIANCE (Apr. 18, 2021), <https://perma.cc/K23Q-V4EP>.

²⁶⁵ *See id.* (arguing that subsidies should support more sustainable, climate-friendly agriculture models); Christina Sewell, *Removing the Meat Subsidy: Our Cognitive Dissonance Around Animal Agriculture*, COLUM. SCH. INT'L & PUB. AFF. J. INT'L AFF. (Feb. 11, 2020), <https://perma.cc/JJ8Q-GHXN>.

²⁶⁶ Sewell, *supra* note 265.

²⁶⁷ *See Vilsack, supra* note 247.

²⁶⁸ *See id.*; *see also* U.S. GOV'T ACCOUNTABILITY OFF., FINANCIAL SERVICES: FAIR LENDING, ACCESS, AND RETIREMENT SECURITY (2021), <https://perma.cc/CBQ4-AHXM> (“[W]omen and minority farmers and ranchers received a disproportionately small share of farm loans and agricultural credit overall.”).

²⁶⁹ Jared Hayes, *USDA Data: Nearly All Pandemic Bailout Funds Went to White Farmers*, ENV'T WORKING GROUP (Feb. 18, 2021), <https://perma.cc/UM8Q-8XVA> (“In total, white farmers received \$6.7 billion in [pandemic aid] payments, and Black farmers received just \$15 million. Latin[x] farmers received \$100 million, Native American farmers received \$76 million and Asian American farmers received \$17.6 million”); 167 CONG. REC. S1219, 1265 (Daily ed. March 5, 2021) (statement of Sen. Booker) (“The cumulative effect of all the past systemic racism and discrimination is that Black farmers and other farmers of color were in a far more precarious financial situation before the COVID-19 pandemic hit us, and so many of them have simply not been able to weather the storm.”).

lost revenues; again, only a tiny fraction of these payments went to farmers and ranchers of color.²⁷⁰

One motivation for the provisions of the ARPA was to begin to level this imbalance.²⁷¹ Other bills like the JBFA attempt to remedy this inequity by proposing land grants, debt forgiveness and increased access to credit, and other support for marginalized farmers and ranchers,²⁷² but some argue that it would be more effective to reallocate the governmental subsidies that currently buttress industrial animal agriculture to more sustainable farming practices.²⁷³ This idea applies to the meat, dairy, and egg industries, but also to the farming of crops, like soy and corn, used to feed the animals in the industrial system.²⁷⁴ Subsidy reallocation would support smaller-scale producers—including those transitioning away from industrial agriculture—which would increase competition, help break the stranglehold of market consolidation, and reduce the number of unsustainably large CAFOS and slaughterhouses.²⁷⁵

One might argue that reducing the number of industrial facilities would increase unemployment in those communities because smaller operations require fewer workers,²⁷⁶ but enabling more independent, sustainable producers to prosper, especially farmers and ranchers of color, would strengthen local economies and contribute to improved consumer health, particularly in areas impacted by food apartheid.²⁷⁷ Increased competition would allow healthier food options to be more reasonably priced, even if prices of the less nutritious products of the industrialized system increased to more accurately reflect their non-

²⁷⁰ Hayes, *supra* note 269; Nathan Rosenberg & Bryce W. Stucki, *USDA Gave Almost 100 Percent of Trump's Trade War Bailout to White Farmers*, FARM BILL L. ENTER (July 24, 2019), <https://perma.cc/W74D-DWMY>.

²⁷¹ 167 Cong. Rec., *supra* note 269 (quoting Senator Booker as he described how Sections 1005-06 of the ARPA are necessary to help address decades of racism in the food system); see also *supra* notes 241-244 and accompanying text (providing background for enactment of the ARPA).

²⁷² See *supra* notes 231-236 and accompanying text (summarizing selected provisions of the JBFA).

²⁷³ Sewell, *supra* note 265.

²⁷⁴ See Lakhani et al., *supra* note 1 (noting that “subsidies incentivize farmers to grow just a handful of cash crops, a practice that floods the market, depresses prices and keeps them hooked on government aid.”).

²⁷⁵ See generally Sewell, *supra* note 263; see also FAMILY FARM ACTION ALL., USHERING IN A BETTER FUTURE FOR FOOD AND AGRICULTURE: POLICY RECOMMENDATIONS TO THE 117TH CONGRESS 4-5, 8 (2020), <https://perma.cc/YD6T-M6SD>.

²⁷⁶ See 2019 *Economic Impact of the Meat and Poultry Industry*, N. AM. MEAT INST., <https://perma.cc/Y832-3JCA> (last visited Oct. 23, 2021) (noting that the U.S. meat and poultry industry employed over six million people in 2019).

²⁷⁷ Sewell, *supra* note 265; see also FAMILY FARM ACTION ALL., *supra* note 275, at 7 (arguing that “mega-food chain employers” should be required to contribute to a federal fund to assist exploited workers in obtaining alternate employment).

subsidized costs.²⁷⁸ And fewer industrial animal agriculture facilities would benefit communities further by improving regional air, soil, and water quality, as well as the overall environment.²⁷⁹ While this Article focuses on the United States, these ideas are relevant elsewhere as well. Global authorities have called for similar changes in governmental agriculture subsidization around the world.²⁸⁰

In addition to reducing food apartheid indirectly by enabling more sustainable producers to find a viable place in the market, reallocated subsidies also could actively incentivize local governments, especially those in less food-secure areas, to attract regional grocery stores, mobile providers, restaurants with healthier menus, and even urban agriculture programs.²⁸¹ By coordinating with these incentives, urban planning initiatives could help address the harms of racist practices like redlining and establish greater food sovereignty among community members.²⁸² Increased funding for education about nutritious eating and cooking can help a culture of good health take root and thrive, even in communities previously saturated with fast and convenience food.²⁸³ Some have suggested that imposing “behavior taxes” on animal-based food products—akin to a tax on sugary drinks or tobacco—could supplement a subsidy shift and provide even more funding for these programs, but such proposals typically are met with derision by the public and politicians alike, and arguably would not even be necessary after subsidy reallocation.²⁸⁴

²⁷⁸ See Sewell, *supra* note 265.

²⁷⁹ See *Supra* Part IV.A (describing the environmental degradation fostered by industrialized animal agriculture).

²⁸⁰ See generally FOOD & AGRIC. ORG. OF THE UNITED NATIONS, A MULTI-BILLION-DOLLAR OPPORTUNITY: REPURPOSING AGRICULTURAL SUPPORT TO TRANSFORM FOOD SYSTEMS (2021), <https://perma.cc/7MY9-VT3K> (calling for global governments to redistribute agricultural subsidies and support to more sustainable, nutritious production).

²⁸¹ See Lakhani et al., *supra* note 1 (quoting Amanda Starbuck) (“Alternatives already exist. We just need to boost public funding and resources to help sustainable, affordable, more equitable food systems take root.”); see also Becky L. Witt, *Towards a Human Right to Food: Implications for Urban Growing in Baltimore City, Maryland*, 43 FORDHAM URB. L.J. 405, 406, 414-21 (2016) (arguing that reforming property law to allow non-owner residents to cultivate vacant city lots would help fight food injustice).

²⁸² Agyeman, *supra* note 205.

²⁸³ See Bob Curley, *How to Combat ‘Food Deserts’ and ‘Food Swamps’*, HEALTHLINE (Sept. 24, 2018), <https://perma.cc/24TJ-QM2Q>.

²⁸⁴ Sewell, *supra* note 265 (“[N]o tax is necessary, only a removal of the billions of dollars in subsidies Americans already provide animal agriculture every year.”); see generally Charles Passy, *Should You Pay a ‘Meat Tax’ on Your Burger? Some Environmentalists Say it’s a Necessary Step to Save the Planet*, MARKETWATCH (Nov. 6, 2021, 1:02 PM), <https://perma.cc/G6FM-FHEC> (comparing arguments for and against a tax on animal-derived food products and quoting the USDA Secretary that currently there are no plans to impose a tax or otherwise discourage meat consumption).

CONCLUSION

These ideas barely scratch the surface of what is necessary to begin addressing the human harms perpetuated by industrial animal agriculture.²⁸⁵ With the exception of coronavirus outbreak coverage, what media attention agribusiness receives often focuses primarily on its non-human animal victims.²⁸⁶ But understanding, acknowledging, and sharing that this system was founded upon and continues to propagate racism are vital first steps of the many necessary to prompt changes that can finally benefit the farmers and ranchers, workers, communities, and consumers of color that have borne the brunt of harms from the broken food system for far too long.

²⁸⁵ See generally FAMILY FARM ACTION ALL., *supra* note 275 (providing a series of governmental policy intervention suggestions to avoid “the harrowing consequences of a failed food system”).

²⁸⁶ See, e.g., Yuval Noah Harari, *Industrial Farming is One of the Worst Crimes in History*, GUARDIAN (Sept. 25, 2015, 2:59 PM), <https://perma.cc/J7HV-7C6G> (describing the suffering humans cause to industrially farmed animals); see also *Pandemic Spotlight*, *supra* note 3, at 23 (noting that the pandemic brought more attention to agribusiness worker exploitation).