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### **Author**

Luna, Guadalupe T.

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# CHICANAS, CHICANOS AND “FOOD GLORIOUS FOOD”<sup>1</sup>

GUADALUPE T. LUNA<sup>2</sup>

## INTRODUCTION

Farming, a capital-intensive enterprise, requires producers to rely on a wide network of economic assistance programs administered by the United States Department of Agriculture (“USDA”).<sup>3</sup> The USDA’s relationship with “socially disadvantaged farmers,” however, reveals a pattern of discrimination in the administration of these assistance programs. Recently, the plaintiffs in *Garcia v. Johanns* sued the USDA, unsuccessfully, for national origin discrimination in the administration of its loan and disaster benefit programs.<sup>4</sup> The outcome of *Garcia* should not be surprising, however, considering the long, documented history of disparate treatment by the USDA against farmers of color.

Discriminatory treatment can be traced to the agricultural insurgency of the past when the nation’s Chicanas/os and other farmers of color were excluded from the nation’s agricultural programs. Dissatisfaction with the unfair economic treatment of family farmers prior to the Great Depression led to various forms of rural unrest and agrarian advocacy. In turn, rural populism “swept across the nation like a cyclone,” and in concrete instances “changed the older democratic rhythms of the time.”<sup>5</sup> Rural insurgency accordingly brought forth federal economic relief and a broad range of farm programs to the agricultural sector.

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1. LIONEL BART, *Food, Glorious Food*, Oliver! (New Theatre, 1960).

2. Interim Associate Dean and Professor, Northern Illinois University, College of Law. The author thanks Professors Linda Crane, Daniel Schneider, and Dennis Valdes for their valuable and much appreciated input.

3. See WILLARD W. COCHRANE, *THE DEVELOPMENT OF AMERICAN AGRICULTURE, A HISTORICAL ANALYSIS* 359 (1993).

4. *Garcia v. Johanns*, 444 F.3d 625 (D.C. Cir. 2006). The plaintiffs’ demands can be referenced at [www.garciaaction.org](http://www.garciaaction.org).

5. LAWRENCE GOODWYN, *THE POPULIST MOMENT, A SHORT HISTORY OF THE AGRARIAN REVOLT IN AMERICA* (Oxford Univ. Press, 1978) [hereinafter “THE POPULIST MOMENT”].

Leaders within the Department of Agriculture, however, ventured away from these reforms, which gave rise to the USDA's current economic policies that emphasize economies of scale. While farmers of color formed their own coalitions, the discriminatory mores of the times precluded diverse communities of color from joining rural insurgents of the dominant population groups. Subsequent legislative changes and policy directives in the USDA cemented this conflict by preventing rural insurgents from structurally changing the nature of food production. This exclusion along with subsequent agricultural laws created an agrarian elite that excluded farmers of color. The USDA's current legal framework thereby favors the vertical integration of agricultural production, a development that led and continues to result in the collapse of small-scale farming and the disappearance of the crop diversity they produce.

The exclusion of farmers of color and the lack of a diverse food agenda has led to several consequences. These include increased consumer exposure to unsafe food products,<sup>6</sup> lack of sustainable food alternatives, and malnutrition in poor communities.<sup>7</sup> The insufficiency and contamination of food, both closely aligned with illness, death and large-scale production models, calls into question the "success" of USDA policies and programs.<sup>8</sup> In sum, a serious reconsideration of the benefits that a diverse rural sector could promote is required to safeguard the nation's health.

Indeed, a new trend that could bring greater diversity in food production is emerging. Domestic and immigrant Latinos are purchasing smaller failed operations and reviving stagnant and retired farming communities.<sup>9</sup> This emerging development could effectuate a return to the earlier goals of rural insurgency. Moreover, demographic changes across the nation have created

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6. For instances of contaminated food see *Salmonella Wandsworth Outbreak Investigation*, (June-July 2007), available at [http://www.cdc.gov/salmonella/wandsworth\\_062807.htm](http://www.cdc.gov/salmonella/wandsworth_062807.htm).

7. Guadalupe T. Luna, *The New Deal and Food Insecurity In The "Midst of Plenty"*, 9 DRAKE J. AGRIC. L. 213 (2005).

8. See, e.g., FOOD DRUG ADMINISTRATION, *FDA Finalizes Report on 2006 Spinach Outbreak* (2007), available at <http://www.fda.gov/bbs/topics/NEWS/2007/NEW01593.html>; Center for Disease Control, *Infectious Disease Information, Food Related Diseases*, available at <http://www.cdc.gov/ncidod/diseases/food/>. See also Neil D. Hamilton, *Agriculture Without Farmers? Is Industrialization Restructuring American Food Production and Threatening The Future of Sustainable Agriculture?*, 14 N. ILL. U. L. REV. 613 (1994).

9. See, e.g., The National Agricultural Census, available at <http://www.agcensus.usda.gov/>; USDA, *RURAL HISPANICS AT A GLANCE*, 8 ECON. RES. SERV. (2005), available at <http://www.usda.gov>.

an increased demand for a diverse food palate that an industrialized agriculture cannot produce.<sup>10</sup>

Part I of this article considers the demographic shifts of minority farmers and addresses a conflicted relationship with past agricultural law policies and practices. Part II examines "movement culture" in light of the difficulties inherent in farming for minority communities. Part III considers a potential opportunity for producers of color under agricultural anti-trust legislation. Finally current observations of the strength of the rural vote as a "wild card" in national elections are explored.

## I. SHIFTING DEMOGRAPHICS AND RURAL TRANSFORMATION

Numerous USDA reports assert that rural America is home to a fifth of the nation's people.<sup>11</sup> There is also evidence that immigrant clusters and consumers in general have increasingly demanded ethnic and diverse food products that are not provided by large mono-directed scale enterprises.<sup>12</sup>

This section seeks to demonstrate how the increase of minority owned farming enterprises and current geographic trends can create a more diverse food-producing system and meet the goals of past rural insurgents.

### A. *Rural Transformation: "Saving an American Tradition"*

Since the nation's origins, diverse communities have populated the rural sector, with farmers of color entering farming enterprises in increasing numbers. Despite their diversity, these farmers of color have shared several adverse commonalities: displacement from their lands, lack of equal access to USDA economic programs, and the inability to participate in rural farm committees due to diminishing property ownership and exclusionary measures of non-minority farmers in their regions. New demographic trends, however, may alter the status quo.

The National Agricultural Statistics Service (hereafter referred to as "NASS") census states that "Hispanic-operated farms" grew 51.2 percent between 1997 and 2002, from 33,450 to 50,592. NASS further reports that these farms comprised more than 20.8 million acres of farmland in 2002, an increase of four million acres since 1997.

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10. See, e.g., John Horton, *Amish Profits Beat Modern Farms*, THE PLAIN DEALER, June 5, 2003, at C1.

11. See, e.g., U.S. DEPT. OF COMMERCE, U.S. CENSUS BUREAU, THE HISPANIC POPULATION IN THE UNITED STATES: MARCH 2002, CURRENT POPULATION REPORTS, P20-545 (June 2003).

12. See STEVEN L. DRIEVER, DEMOGRAPHIC AND CENSUS TRENDS OF LATINOS IN THE KANSAS CITY AREA (2003).

In the more recent 2007 Agricultural Census, the figures reveal additional increases in the different population groups.<sup>13</sup> Hispanic operated land in farms, for example, grew to include 24,600,997 acres in farms, an increase of 82,462 operators from the 50, 592 operators during the last agricultural census.<sup>14</sup>

These new demographic trends reveal an increase of minority farmers engaged in the production of food choices that ethnic communities and consumers seek. Despite decreases in farms held by non-minorities, operators of color are “keeping an American tradition alive – the family farm.”<sup>15</sup> More notably, they are responding to the demand for alternative and diverse food products that are not made available by large scale producers.

Yet despite their growing numbers, minority farmers still fall outside the current agricultural regime. Thus, while the value of their agricultural products accrues financial success, their operations remain vulnerable to the current agricultural legislative regime and cases favoring industrialized enterprises.

### B. *Exclusionary Mechanisms and Class Disparities*

Extensive reports enumerate the generous benefits the USDA makes available to “qualifying” farming enterprises. Political assistance further derives from local farm committees. While the farm committees embrace the notion of participatory democracy for local producers, minority producers remain excluded from accessing USDA farm credit and benefit programs.

In administrating farm credit programs, federal law permits local farmers and ranchers to establish county committees consisting of three to five members. The local committees are responsible for approving or denying farm credit and benefit applications as well as appointing a county executive who is supposed to provide farmers with help in completing their credit applications. The appointed county executive makes recommendations to the county committee as to whether to approve or reject a request for assistance.

This broad discretionary power and the lack of fundamental standards of fairness have made it possible for local loan officers, who also happen to be local farm operators, to deny loan applications to minority operators. Extensive evidence gathered from USDA reports and case law reveals a broad history of rejecting

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13. USDA, Spanish, Hispanic, or Latino Operators: 2007 Census of Agriculture, Table 50, available at <http://www.nass.usda.gov>.

14. *Id.*

15. See Juan Martinez & Victor Garcia, *New Latino Farmers in the Midwest*, available at <http://www.cambiodecolores.org/2004Papers/Marinez-Garcia.html>.

minority loan applications.<sup>16</sup> In instances where loans were approved to Latino operators, funds often failed to arrive timely, which hindered the economic viability of the farm operations.<sup>17</sup> The relationship to the timing of loans is emphasized below:

Because of the seasonal difficulties or weather conditions, agriculture is timing specific and thus "credit and benefit applications must be processed quickly or the farmer may lose all or most of his anticipated income for an entire year. It does a farmer no good to receive a loan to buy seeds after the planting season has passed."<sup>18</sup>

The county committee system that shuts out minorities and operates for the favored few has consequences on all minority groups, not just Latinos. For example, in USDA hearings, a Cherokee Nation farmer testified, "I have seen the abuses at the county level personally . . . in Cherokee County, [and] I don't know if they're just bigots or ignorant, or if it's just such a tight-knit group there [that] they don't want minorities to participate."<sup>19</sup>

The testimony of several USDA employees on farm program inequities was also coupled with allegations of "intimidation, fear, threats, and retaliation from managers when employees complain[ed] of discrimination."<sup>20</sup> Minority farmers of color repeated accounts of abusive behavior by managers who, rather than being punished, were rewarded with promotions and awards. The lack of fair treatment over "qualification standards" for farm credit and operating loans led to land losses for communities of color.<sup>21</sup> Notwithstanding their extensively denied requests and the subsequent *Garcia* litigation, the USDA remains largely unaccountable to farmers of color.

Although subsequent Farm Bills have included assurances of improving civil rights, full accountability over the range of disparate treatment and remedial relief remains elusive.<sup>22</sup> The nation's most recent farm bill, the Food, Conservation and Energy

16. See EMEDIA MILL WORKS POL. TRANSCRIPTS, *U.S. Rep. Steve Chabot (R-Oh) Holds Hearing on Loan Discrimination Against Black Farmers*, Sept., 28, 2004; U.S. GEN. ACCOUNTING OFFICE, FARM PROGRAMS: EFFORTS TO ACHIEVE EQUITABLE TREATMENT OF MINORITY FARMERS, GAO/RCED-97-41 (1997), available at <http://www.gao.gov.html>.

17. Ryan Gabrielson, *Hispanic Farmers Suing USDA for Discrimination Wait to be Joined Together*, THE MONITOR (McAllen, Tex.), July 12, 2004 at 1.

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

19. U.S. DEP'T OF AGRIC., CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF AGRICULTURE: A REPORT BY THE CIVIL RIGHTS ACTION TEAM (1997) CIVIL RIGHTS ACTION TEAM REPORT 7 (1997) (hereinafter "CRAT REPORT"). See also THE ECONOMIST, *Government in Disgrace: The Last Plantation*, Mar. 13, 1999, at 35.

20. CRAT REPORT, *supra* note 19, at 15.

21. *Id.*

22. The ongoing *Pigford* litigation and difficulties over the Consent Decree is one example. See also TADLOCK COWAN & JODY FEDER, THE PIGFORD CASE:

Act of 2008 (“2008 Act”), for example, addresses socially disadvantaged farmers by offering some assistance through miscellaneous measures. While the 2008 Act offers a measure of reporting mechanisms and keeps intact a small framework of assistance to disadvantaged farmers, a trend remains – the 2008 Act fails to hold the USDA accountable and does not offer reparation for the harm farmers of color have experienced.

In sum, the exclusion of minority groups stemming from uneven federal lending practices transforms the *Garcia* ruling and adopted USDA procedures into formalities. It illustrates the structurally-imposed marginalization of minority operators, which further undermines these farmers’ political capacities. The diminished political standing of minorities systemically prevents them from participating in defining and promoting the nation’s food agenda, rural interests, and values. Such a perspective, moreover, prevents a meaningful food supply from reaching the market place and impedes Latinos along with other farmers of color from participating in rural “democracy.”<sup>23</sup>

### C. “Mean Things Happening”<sup>24</sup>

Communities of color have experienced common federal related disparate treatment and harsh rural histories.<sup>25</sup> Many indigenous farmers have long witnessed and suffered land losses, poverty, and disenfranchisement from USDA funding disparities. While the full measure of white supremacy is beyond the scope of this essay, a few examples illustrate the nature of agrarian marginalization.

Farmers of color have witnessed extensive Jim Crow legislative inequities and immeasurable harms such as race-based terrorism, questionable partitions, and extra-legal actions that led to increased disenfranchisement.<sup>26</sup> Where outright banishment did not succeed, innumerable forms of physical violence displaced

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USDA SETTLEMENT OF A DISCRIMINATION SUIT BY BLACK FARMERS, CRS REPORT FOR CONGRESS, RS0430 (2006).

23. See, e.g., Michael Doyle, *Minorities In Short Supply on Farm Panels, Most of State’s 119 Voting Members Are White*, U.S. Agriculture Officials Say, SACRAMENTO BEE, Sept., 19, 2004, at D1.

24. H.L. MITCHELL, MEAN THINGS HAPPENING IN THIS LAND (Allanheld, Osmun & Company 1979).

25. See, e.g., Paul S. Taylor, *Public Policy and the Shaping of Rural Society*, 20 S.D. L. REV. 475, 476-80 (1975).

26. See, e.g., JANE DAILEY, GLENDA E. GILMORE & BRYANT SIMON, *JUMPIN’ JIM CROW, SOUTHERN POLITICS FROM CIVIL WAR TO CIVIL RIGHTS* (Princeton University Press 2000); Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557 (2005); Phyllis Craig-Taylor, *Through A Colored Looking Glass: A View of Judicial Partition, Family Land Loss and Rule Setting*, 78 WASH. U.L. Q. 737 (2000).

many operators of color from their property interests.<sup>27</sup> Lastly, a non-inclusive regulatory food law framework furthered legal and socio-economic injuries.<sup>28</sup>

Minority farmers of these past times employed various legal means as tools for fighting discrimination. Farm workers instituted civil proceedings in response to the federal government's failure to enforce the National Reclamation Act of 1902.<sup>29</sup> The Act, in violation of its designated mandate, was providing water to large scale operations at the expense of smaller operations.<sup>30</sup>

To survive this broad canvas of federal hardships, many minority farm owners became small truck farmers, sharecroppers, or farm laborers. Yet, even in agricultural employment, minorities faced innumerable challenges. These challenges included injunctions, partitions, and physical violence.<sup>31</sup>

A brief historical excursion into the basis of the current federal regime proving beneficial to large-scale operations is contemplated next.

## II. AN AGRICULTURAL LEGACY: "WE'RE IN THE MONEY"

Generous in its support to qualifying farmers, the federal government offers financial assistance in the form of direct loans or grants to economically distressed operations, or by providing extensive research and marketing support mechanisms. Federal law bolsters qualifying farm operators with assistance from federal agencies such as the Food and Drug Administration and international agencies that monitor the foreign nations that sell their food produce.<sup>32</sup> This aid stems from congressional recognition that federal benefits are instrumental to sustaining farming operations:

Farming is a hard way to make a living. Small farmers operate at the whim of conditions completely beyond their control;

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27. See, e.g., Emma C. Jordan, *The Non-Monetary Value of Reparations Rhetoric*, 6 AFR.-AM. L. & POL'Y REP. 21 (2004).

28. See MIESSA THOMAS, JERRY PENNICK & HEATHER GRAY, WHAT IS AFRICAN-AMERICAN LAND OWNERSHIP? FEDERATION OF SOUTHERN COOPERATIVES (2004), available at <http://www.federationcoop.com/aalandown04.html>.

29. See *Bryant v. Yellen*, 447 U.S. 352 (1980).

30. Paul S. Taylor, *Mexican Migration and the 160-Acre Water Limitation*, 63 CAL. L. REV. 732 (1975).

31. See, e.g., Miriam J. Wells, Don Villarejo, *State Structures and Social Movement Strategies: The Shaping of Farm Labor Protections in California*, 32 POL. & SOC'Y 291 (2004); Renee K. Gadoua, *Blast Survivor Urges Justice For Immigrants Injured Farmworker Speaks At Vigil Outside Federal Building in Syracuse*, POST STANDARD (Syracuse), Apr. 26, 2006, at B1; Vicki Lee Parker, *Study: Workers Injuries Undercounted: Wake Forest Researchers Say More Poultry Laborers Hurt Than Labor Data Shows*, THE NEWS & OBSERVER (Raleigh, N.C.), Sept. 27, 2005.

32. See, e.g., North American Free Trade Agreement Implementation Act, 19 U.S.C. §§ 3301 *et seq.* (2007) (hereinafter "NAFTA").



weather conditions from year to year and marketable prices of crops to a large extent determine whether an individual farmer will make a profit, barely break even or lose money. As a result, many farmers depend heavily on the credit and benefit programs of the United States Department of Agriculture to take them from one year to the next.<sup>33</sup>

The basis for past and current legislative regimes stemmed from a period in which rural insurgency sought to protect smaller, independent operations.

### A. *Rural Insurgency and Agrarian Betrayal*

Agricultural legal history has seen several moments of insurgence. While its complete legal lineage extends beyond the boundaries of this essay, the focus here is on the insurgency and rural movements that brought forth the New Deal farm programs.<sup>34</sup>

The New Deal legislation directly shaped the nation's food producing systems, and rural insurgency defined and underscored the New Deal legislation. To understand this strand of rural politics, the period of time that preceded the Great Depression in the 1930s must be revisited.

The disastrous economic times and the loss of family farms galvanized a formidable force that resulted in tangible consequences, including the farm bills responsible for expediting the nation's food producing systems.<sup>35</sup> Traversing class lines, rural insurgents included "small capitalist wheat farmers, southern cotton growers and small producers, bourgeois and traditional farm women in a crusade against monopoly capital."<sup>36</sup> Participants included the Grangers, and rural and urban activists who participated in the "populist revolt" of the pre-New Deal era.<sup>37</sup>

Rural insurgents were concerned with the economic and political benefits that were not offered to small-scale farmers but were extended to industrialists and entrepreneurs. Furthermore, activist farmers challenged the credit liens attached to their crops and the repayments for credit that had been extended to them

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

34. See, e.g., WILLIAM E. LEUCHTENBURG, FRANKLIN D. ROOSEVELT AND THE NEW DEAL 1932-1940, 139 (Harper & Row 1963); RICHARD KIRKENDALL, THE NEW DEAL AND AGRICULTURE, IN THE NEW DEAL: THE NATIONAL LEVEL 84 (J. Braeman, R. Bremner & D. Brody, eds 1975).

35. For a general overview of New Deal legislation see Harold F. Breimyer, *Agricultural Philosophies and Policies in the New Deal*, 68 MINN. L. REV. 333 (1983).

36. ALLAN KULIKOFF, THE AGRARIAN ORIGINS OF AMERICAN CAPITALISM 57 (Univ. Press of Va.1992).

37. The Midwest emerged as a significant force in rural movements. See, e.g., THEODORE SALOUTOS & JOHN D. HICKS, TWENTIETH CENTURY POPULISM, AGRICULTURAL DISCONTENT IN THE MIDDLE WEST 1900-1939, 7 (1951).

earlier in the season. Rural activists "coordinated insurgent actions . . . [that] swept across the nation like a cyclone" and at times "changed the older democratic rhythms of the time."<sup>38</sup> Notwithstanding their success in inducing the passage of farm bills, however, several consequences followed that undermined the intent and goals of the movement.

### B. *Structuring an Agricultural Template*

The pre-New Deal rural activism period harbored democratic ideals that excluded Latinos, along with all other groups of color. Some agricultural economists, in promoting the New Deal legislation, argued that they sought to eliminate:

- The ability of speculative gambling to control the welfare of workers and farmers.
- The right of individuals to control great masses of property for their own private profit to the detriment of the public.
- The right of industrial leaders to place the maintenance of interests and profits above the maintenance of human life, employment, and payrolls.
- The right of industrial leaders to pay themselves enormous salaries or bonuses while their workers starve.\*

Price support mechanisms, however, undermined the goals of the rural insurgents.<sup>39</sup> While producers of commodities such as corn, wheat, sugar and milk benefited from these price supports, farming operations that sought alternative forms of agriculture faced higher risks of forfeiting their operations. This resulted in a less than diverse agricultural economy with limited food choices for consumers.

The redirection and limitation of rural legislation and food policies thereafter gave rise to a series of adverse circumstances that structurally precluded diverse input and divested the promise of earlier democratic programs. A potential alternative is contemplated next.

## III. DIVERSE FOOD PRODUCTION SYSTEMS

Small farmers remain at risk to a confluence of financing perils and market volatility. Moreover, a fragile relationship exists between the environment and an operator's potential

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38. GOODWYN, *supra* note 5, at 21.

38. See Agricultural Adjustment Act of 1938, 7 U.S.C. § 1281 (2004).

\* Agricultural Economist, Mordakai Ezkiel, who provides that "the New Deal philosophy rests upon restoring and maintaining buying power for the mass of consumers." Ezkiel papers.

profit.<sup>40</sup> Thus, in not qualifying for USDA funding programs, small owner operators face escalating financial risks.

### A. *Eclipsing Bureaucratic Black Holes*

The formidable task of obtaining funding is probative of the hostility directed against otherwise qualifying operators of color. As reported in agency hearings, farmers of color distrust the USDA, which is “perceived as playing a key role in what some see as a conspiracy to force minority and socially disadvantaged farmers off their land through discriminatory loan practices.”<sup>41</sup>

Guadalupe Garcia’s testimony illustrates the disparate treatment she received as compared to Anglo farmers, and the inability to redress discrimination.<sup>42</sup> Garcia recounts how the USDA granted non-minority farmers loans without collateral. The federal assistance enabled non-minority farmers to save and protect their financially vulnerable farming operations. The USDA, however, denied the Garcia family federal loans in spite of the collateral Garcia had offered. The lack of assistance led to the demise of the Garcia farming operation and instigated the *Garcia* litigation against the USDA.

The hesitancy of the agency to implement provisions requiring accountability for past credit and loan inequities provide farmers of color reason to distrust the USDA.<sup>43</sup> In spite of the various subsequent federal efforts to improve civil rights at the USDA, equitable treatment appears elusive for all groups of color seeking parity.<sup>44</sup> Moreover, without their farms, the political opportunities needed to counter discriminatory agricultural laws and policies through participation in farm committees and the possibility of a diverse food production system disappear.

This confluence of legal events mandates additional alternative measures for protecting smaller farm operators.

### B. *An Agricultural Anti-Trust Template*

Notwithstanding the obstacles that operators of color confront, rural communities of color are returning to farming operations in increasing numbers. This stems in large part from their relationship to the land, as the significance of owning a farming

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40. See, e.g., Alan Mauldin, *Warm Then Cold Hurts Fruit Crop*, THE MOULTRIE OBSERVER, Feb. 10, 2009, available at <http://www.moultrieobserver.com>.

41. CRAT REPORT, *supra* note 19, at 2.

42. Testimony of Guadalupe Garcia available at <http://www.garciaclassaction.org>.

43. See CRAT REPORT, *supra* note 19.

44. The ongoing *Pigford* litigation and difficulties over the Consent Decree is one example. See also Lynda Edwards, *Think Tank Champions Black Farmers Fighting USDA*, AP ALERT, July 20, 2004.

operation is directly linked to their identity and cultural norms. But despite the increase as owner-operators, farmers of color remain vulnerable to the economic and environmental demands of food and fiber production. While social and familial capital have facilitated their return and preserved their diverse cultural farming techniques, they nonetheless face high exit forfeiture rates.

To counter forfeiture risk probabilities, this essay promotes the ongoing effort to return to the pre-New Deal era which brought forth agriculture's "golden period." A new blend of agrarian populism and politics, as distinguished from pre-New Deal insurgency, is required to offset large mono-crop productions, the nation's less than diverse food supply system, and the unsuccessful litigation efforts of farmers of color.

In promoting a new agrarian populism, this essay emphasizes a return to the intent and goals of earlier rural insurgency, but with greater inclusion of farmers of color. Not unlike the rural populism of the past that "prompted enormous political and economic tumult," this new form of populism would challenge the ongoing expansion of the industrialized sector.<sup>45</sup> At the onset it would require alliances between farmers of all color.

In the past, Jim Crow laws barred farmers of color from joining rural insurgents and the era's activism.<sup>46</sup> The exclusion of sharecroppers and farm laborers from rural reform legislation thwarted their efforts to engage in populist discourse. As a result, minorities were disengaged from the nation's food production systems. To this day, difficulties continue as evidenced by the distribution of federal subsidies and offsets from farm credit programs. A 2008 GAO Report concretely demonstrates that the distribution of subsidies retains deficiencies, with the USDA lacking "management controls" when verifying federal payments.<sup>47</sup> The Report found that "of the 1.8 million individuals receiving farm payments from 2003 through 2006, 2,702 [were] potentially ineligible for farm payments."<sup>48</sup> Further increases of ineligible recipients are considered likely under the 2008 Farm

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45. Benjamin Heber Johnson, *Red Populism? T.A. Bland, Agrarian Radicalism and The Debate Over The Dawes Act*, in *THE COUNTRYSIDE IN THE AGE OF THE MODERN STATE POLITICAL HISTORIES OF RURAL AMERICA*, 15 (Catherine McNicol Stock & Robert D. Johnston eds. 2001).

46. See, e.g., E.M. Beck and Stewart E. Tolnay, *The Killing Fields of the Deep South: The Market for Cotton and the Lynching of Blacks, 1882-1930*, 55 *AM. SOC. REV.* 526 (1990); M. Langley Biegert, *Legacy of Resistance: Uncovering the History of Collective Action by Black Agricultural Workers in Central East Arkansas from the 1860s to the 1930s*, 32 *J. SOC. HIST.* 73 (1998).

47. U.S. GEN. ACCOUNTING OFFICE, *FEDERAL FARM PROGRAMS USDA NEEDS TO STRENGTHEN CONTROLS TO PREVENT PAYMENTS TO INDIVIDUALS WHO EXCEED INCOME ELIGIBILITY LIMITS*, GAO-09-67 (2008), available at <http://www.gao.gov>.

48. *Id.* at 5.

Bill's "lower income eligibility caps" that congress adopted into the next farm bill.<sup>49</sup>

As rural lecturer Mary Summers and others have long advocated, a renewed rural insurgency movement calls "for a more dialectical view of interest group politics."<sup>50</sup> The goal would include legally defined alliances between farmers of color that would focus scrutiny on the longstanding farm committee members responsible for the application of federal farm loan and credit programs. Perils, nonetheless, exist when collective activities are loosely grounded in ad hoc efforts. Accordingly this initial dialogue in calling for a renewed rural populism requires a return to the agricultural exceptionalism that has long protected producers at the expense of those outside of federal benefits.

The use of federal anti-trust legislation can be particularly useful for farmers of color. Authorizing language provides that "[f]armers, planters, ranchmen, dairymen, nut or fruit growers may form associations, corporate or otherwise with or without capital stock to collectively process, prepare for market, handle, and market in interstate and foreign commerce."<sup>51</sup> The purpose is to protect and improve their economic interests against volatile markets. Congressional exclusion of farmers and ranchers from antitrust violations underscores the degree of protection afforded to such ranchers and farmers.<sup>52</sup> The Agricultural Fair Practices Act of 2007 further encourages cooperative organizations to promote the marketing and bargaining positions of owner operators.<sup>53</sup> In protecting producers, the law recognizes and declares that the "efficient production and marketing of agricultural products by farmers and ranchers is of vital concern to their welfare and to the general economy of the Nation."<sup>54</sup>

Efforts to challenge the above exemptions from the collective activity of producers, as seen in *National Broiler Mktg. Ass'n v. United States*, emphasizes the federal strength of the anti-trust exemptions. The exemption from anti-trust legislation stems from the agricultural populism of the past. For example, *National Broiler Mktg.* illustrated how the Clayton Act "linked industrial labor and farmers as the kind of economic units of

49. *Id.* at 6.

50. *Id.* at 394.

51. Associations of Agricultural Products Producers, Authorization of Associations Powers, 7 U.S.C. § 291 (2007) (Capper-Volstead Act).

52. See also Agricultural Fair Practices Act, 7 U.S.C. § 2304 (2007). For an interpretation of impermissible activities see *Butz v. Lawson Milk Co.*, 386 F.S. 227 (1974).

53. John Lauck, *Toward An Agrarian Anti-Trust: A New Direction for Agricultural Law*, 75 N.D. L. REV. 449 (1999).

54. Unfair Trade Practices Affecting Producers of Agricultural Products, 7 U.S.C. § 2301 (2007).

individuals for whom it was thought necessary to permit cooperation . . . in order to survive against the dominant manufacturing supplier, and purchasing interests which they had to interrelate."<sup>55</sup>

A new agrarian populism could thereby facilitate a return to the goals of earlier insurgents by protecting the smaller owner-operator and by offsetting current industrialized food production. Collective action furthermore could reduce small owner-operators' high risk of forfeiture and other threats of farming enterprises. It could additionally forge a renewed call for diversity within federal agencies in charge of the nation's farm bills. A new rural insurgency would permit organized coalitions to formulate a new and diverse food agenda.

An additional lesson emerges from agricultural history. Farm ownership is directly linked to national politics. Currently, rural politics are characterized as a "wild card" in national elections. The Congressional Quarterly defines rural districts as districts with over sixty percent of their population residing outside a metropolitan area.<sup>56</sup> The Midwest and the South have the most rural congressional districts and have been successful in having Congress address their regions' issues.<sup>57</sup> Census population estimates report thirteen states have a rural population majority. A renewed effort towards the politics of insurgency could facilitate coalitions and break from trends that have traditionally precluded diverse groups from participating in rural democratic movements.

Texas based Chicana/os, known as *La Raza Unida Party* ("LRUP"), are an example of past political rural activism. The party was born in a small rural community in Crystal City, Texas known as the "winter garden district" because of its production of vegetables during the winter months. From Crystal City, LRUP grew into a national political effort engaging Chicana/o communities in Colorado, Michigan, California and New Mexico to elect Chicana/os in city and state offices.<sup>58</sup> LRUP, however, disappeared from the national landscape as a result of the physical threats and extra-legal charges from government officials.<sup>59</sup> While LRUP still exists in various configurations, the challenges

55. Nat'l Broiler Mktg. Ass'n v. United States, 436, U.S. 816, 830 (1978).

56. Rural Policy Research Institute, *available at* <http://www.rupri.org/>.

57. See U.S. CENSUS BUREAU, 110TH CONGRESSIONAL DISTRICT SUMMARY FILE, 2000 CENSUS DATA SETS, *available at* <http://www.census.gov> (enumerating rural congressional districts).

58. See DOUGLAS E. FOLEY ET AL., FROM PEONES TO POLITICOS, CLASS AND ETHNICITY IN A SOUTH TEXAS TOWN, 1900-1987 (Univ. of Tex. Press 1977).

59. JESÚS SALVADOR TREVIÑO, EYEWITNESS, A FILMMAKER'S MEMOIR OF THE CHICANO MOVEMENT (2001).

from state and local law enforcement officials ultimately derailed the electoral emphasis of LRUP.<sup>60</sup>

Promoting diversity in food production nonetheless requires several other conditions. First, a return to the initial ideal of rural insurgency is necessary as the original goals of rural activism for the protection of smaller operations must be advanced. Second, all federal assistance should aim to eradicate hunger across the nation. Present USDA reports continue illustrating the broad scope of increasing hunger impacting children and their families, and render federal subsidies suspect because of their inability to quell this epidemic. Third, any recipient of federal funds should promote the diverse food products that consumers seek in order to advance diversity in the nation's diet. Limiting food production to large scale production models reduces choice in the marketplace, and further limits who controls domestic food production.<sup>61</sup> A final condition would thus link farming operations to sustainable practices that protect the environment.

In totality, these conditions draw attention to the urgent need for diversity in both farming operations and within the bureaucratic agencies facilitating food production.

#### CONCLUSION

The obstacles that confront litigants who complain about the USDA render whatever relief is made available for Latinas/os and other farmers of color ineffective. Legal remedies, moreover, remain elusive. A return to the ideals of past rural insurgency is vital to protect smaller operations against systemic exclusion from federal farm programs and high risk factors. Ultimately, including all rural participants in food production would provide diverse nourishment and promote democratic ideals. It would also yield benefits for consumers and ultimately diminish the ongoing increases of the nation's hungry and malnourished populations.

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60. *See, e.g., Aranda v. Van Sickle*, 600 F.2d 1267, 1268 (1979) ("During the 1972 elections certain members of the Mexican-American community were subjected to harassment by the police."). Other LRUP litigation also demonstrates their focus for inclusion. *See, e.g., Confederacion de la Raza Unida v. Brown*, 345 F. Supp. 909 (1972) (class action challenging census reporting data); *La Raza Unida Party v. Dean*, 462 S.W. 2d 570 (1970).

61. DOUG O'BRIEN, POLICY APPROACHES TO ADDRESS PROBLEMS ASSOCIATED WITH CONSOLIDATION AND VERTICAL INTEGRATION IN AGRICULTURE (2003), available at <http://www.farmfoundation.org>.