

SETTLEMENT AGREEMENT

LATOYA GILLIAM and KAYLA McCROBIE v. UNITED STATES DEPARTMENT OF AGRICULTURE, et al.

Plaintiffs/Appellees Latoya Gilliam and Kayla McCrobie (“Plaintiffs”) and Defendants/Appellants United States Department of Agriculture and Thomas J. Vilsack, Secretary (including his agents and successors in office) (“Defendants”), hereby enter into this Settlement Agreement effective March 31, 2021 as follows:

RECITALS

A. On July 16, 2020, Plaintiffs commenced the action *Gilliam v. USDA, et al.*, Civil Action No. 2:20-cv-03504 JMY (E.D.Pa.) (the “District Court Action”) to challenge Defendants’ Guidance to states prohibiting payment of Emergency Allotments under the Supplemental Nutrition Assistance Program (SNAP) during the Covid-19 pandemic if those payments, in combination with regular SNAP monthly payments, exceeded the maximum regular SNAP benefit for a household of that size. Plaintiffs sought declaratory and injunctive relief for themselves and all other similarly situated Pennsylvania households, and asserted that Defendants’ Guidance violated the Administrative Procedure Act, 5 U.S.C. §§ 701-706, including that it was contrary to the governing statute, section 2302(a)(1) of the Families First Coronavirus Response Act (FFCRA).

B. On July 27, 2020 Plaintiffs moved for a preliminary injunction. On September 11, 2020, the District Court granted Plaintiffs’ motion and entered a Preliminary Injunction requiring Defendants to approve or deny Pennsylvania’s requests for Emergency Allotments from that date forward, pursuant to the Court’s interpretation of the statute. *Gilliam v. U.S.*

Dep't of Agric., --- F. Supp. 3d ----, 2020 WL 5501220 (E.D. Pa. Sept. 11, 2020) (the “Preliminary Injunction”).

C. On October 21, 2020, Defendants filed an appeal from the Preliminary Injunction in the U.S. Court of Appeals for the Third Circuit (the “Appeal”).

D. The parties hereby agree to settle and compromise the claims and issues in the District Court Action and the Appeal on the terms and conditions set forth herein, for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation.

E. The parties agree that class certification is not necessary in this case.

AGREEMENT

1. Updated Guidance

1.1 USDA will immediately upon execution of this Settlement Agreement cease enforcement of the guidance concerning emergency allotments under the FFCRA, including the guidance issued on March 20, 2020, April 10, 2020, April 11, 2020, April 21, 2020, and April 27, 2020, to the extent that guidance limits the combination of a household’s regular SNAP allotment and its emergency allotment to the maximum regular monthly SNAP benefit for its household size for residents of Pennsylvania.

1.2 Going forward, USDA will issue updated guidance concerning emergency allotments to Pennsylvania (and other states if it so chooses). In accordance with USDA’s determination, the updated guidance will provide for emergency allotments to be available to all SNAP households, including those receiving the maximum. The specific updated guidance to be issued will be determined by Defendants.

1.3 Until it issues the updated guidance, USDA will continue to approve or deny Pennsylvania’s requests for emergency allotments pursuant to the terms of the Preliminary

Injunction, following this Court's interpretation of the statute as it has since the Preliminary Injunction was issued, regardless of any dissolution of the Preliminary Injunction pursuant to this Agreement, and any emergency allotments authorized pursuant to such requests will not be subject to recoupment.

2. Payments of Pennsylvania's Emergency Allotments

2.1 To date, USDA has approved approximately \$712 million in emergency allotments requested by Pennsylvania pursuant to the preliminary injunction entered by the U.S. District Court on September 11, 2020. This represents payments for the period September 11, 2020 through April 30, 2021. By entering this Agreement, and agreeing to dismissal with prejudice of the District Court Action and the Appeal pursuant to Section 4 below, USDA agrees not to seek recoupment of these funds.

2.2 By entering this Agreement, and agreeing to dismissal with prejudice of the District Court Action pursuant to Section 4 below, Plaintiffs withdraw with prejudice and forego any and all claims for injunctive relief identified in Plaintiffs' operative Complaint, including any request seeking emergency allotments for the period from enactment of FFCRA on March 18, 2020 through September 10, 2020.

2.3 Within two (2) days of the execution of this agreement, Defendants will inform the Commonwealth of Pennsylvania Department of Human Services in the notification form attached as Exhibit "A" that they will not seek recoupment of emergency allotments paid pursuant to the terms of the Preliminary Injunction. Defendants will provide counsel for Plaintiffs with a copy of the notification promptly after it is sent.

3. Attorneys' Fees and Costs

3.1 Defendants agree to pay Plaintiffs the amount of \$260,000 in full settlement and satisfaction of all claims for attorneys' fees, costs or expenses which the Plaintiffs may have in this case, pursuant to the Equal Access to Justice Act (EAJA) within sixty (60) days of the effective date of this Agreement. At Plaintiffs' request, Defendants will transmit these funds to Plaintiffs' counsel:

Morgan, Lewis & Bockius LLP	\$175,000.00
Community Legal Services	\$ 85,000.00

3.2 Plaintiffs hereby fully and forever release and discharge Defendants, the United States, any department, agency or establishment of the United States, and their present or former officials, employees, successors, and agents, in their official and individual capacities, from any and all rights or claims for attorney fees and other litigation expenses that have been, or could have been, made as a result of the Civil Action. Without limiting the generality of the foregoing, this release encompasses, resolves, and satisfies all claims for attorney fees and other litigation expenses in connection with all facets of the EAJA, from the initial submission of Plaintiffs' Complaint and including any litigation, as well as any other proceedings involving claims or causes of action that were or could have been raised in the Civil Action.

3.3 Plaintiffs, and Plaintiffs' counsel, assume liability for any tax consequences that may arise from this Agreement. Compliance with all applicable federal, state, and local tax requirements shall be the sole responsibility of Plaintiffs and Plaintiffs' Counsel. This Agreement is executed without reliance upon any representation by Defendants as to tax consequences, and Plaintiffs and Plaintiffs' counsel are responsible for the payment of all taxes that may be associated with the settlement payments. Further, nothing in this Agreement waives

or modifies federal, state, or local law pertaining to taxes, offsets, levies, and liens that may apply to this Agreement or the settlement proceeds, and this Agreement is executed without reliance on any representation by Defendants as to the application of any such law.

3.4 Plaintiffs warrant and represent that no other action or suit with respect to the claims for attorney fees, costs, and litigation expenses advanced in this suit is pending or will be filed in or submitted to any other court, administrative agency, or legislative body. Plaintiffs further warrant and represent that they have made no assignment or transfer of all or any part of their rights arising out of or relating to the claims for attorney fees, costs, and litigation expenses advanced in this suit other than assigning their right to recover attorney fees and costs to their counsel Community Legal Services and Morgan, Lewis & Bockius LLP.

4. Dismissal with Prejudice of Pending Proceedings

4.1 Within two (2) days of the execution of this Agreement, Defendants will file a dismissal with prejudice of their appeal of the Preliminary Injunction, which is currently pending in the Third Circuit Court of Appeals in the form attached as Exhibit “B”.

4.2 Within two (2) days of the execution of this Agreement, Plaintiffs will file a Stipulation and Proposed Order of dismissal with prejudice of the Action in the form attached as Exhibit “C”.

5. Entire Integrated Agreement

This Agreement contains the entire understanding of the parties regarding the subject matter thereof and shall supersede any and all prior or contemporaneous negotiations, promises, covenants, representations, or oral or written agreements concerning any matter directly, indirectly or collaterally related to the subject matter of this Agreement. This Agreement may

not be rescinded, canceled, terminated, supplemented, amended or abrogated other than by a written instrument signed by the authorized representatives of each party to this Agreement.

6. No Admission

This Agreement is not intended and shall not be deemed an admission by any Party of the merit or lack of merit of an opposing Party's claims or defenses. Without limiting the generality of the foregoing, this Agreement does not constitute, and shall not be construed as, an admission of liability or fault on the part of the Defendants or the United States or their present or former officials, employees or agents, or as an admission of any contested fact alleged by Plaintiff. This Agreement may not be used as evidence or otherwise in any civil or administrative action or proceeding against Defendants or the United States or any of their present or former officials, employees or agents, either in their official or individual capacities, except for proceedings necessary to implement or enforce the terms hereof. This Agreement shall not be used in any manner to establish liability for fees, amounts, or hourly rates in any other case or proceeding.

7. Counterparts

This Agreement may be executed in one or more counterparts by each part to this Agreement, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

8. Neutral Interpretation

In any claim to construe the terms of the Agreement, this Agreement shall be considered the product of negotiation by and among the parties hereto. No clause or provision shall be interpreted more strongly in favor or against one party of the other, based upon the source of the draftsmanship, but shall be interpreted in a neutral manner.

9. Authorization

Each signatory to this Agreement represents and warrants that he, she, or it is fully authorized to enter into this Agreement on behalf of the persons or entities indicated below, and has done so freely and voluntarily, without any degree of duress or compulsion. This Agreement is effective when signed by the undersigned counsel of all Parties hereto.

Date: March 31, 2021



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Timothy J. Geverd
Adina D. Bingham
Caitlin McKenna
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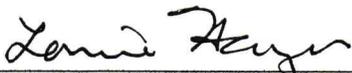
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Date: 3/31/21

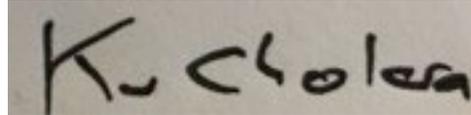


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Attorneys for Plaintiffs

Date: 3/31/21



K. Cholera

Kuntal Cholera
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW, Room 11304
Washington, D.C. 2005

Attorney for Defendants



EXHIBIT A

Food and Nutrition
Service

March 31, 2021

1320 Braddock Place
Alexandria, VA
22314

The Honorable Teresa D. Miller
Secretary
Pennsylvania Department of Human Services
Commonwealth of Pennsylvania
Room 333 Health and Welfare Building
625 Forster Street
Harrisburg, PA 17120

Dear Secretary Miller,

This correspondence is being sent to confirm that the USDA, Food and Nutrition Service, will not seek recoupment for emergency allotment funds approved under the terms of the preliminary injunction and clarification orders of the United States District Court for the Eastern District of Pennsylvania in *Gilliam, et al. v. United States Department of Agriculture, et al.*, Case No. 20-cv-3504-JMY.

Sincerely,

Jessica Shahin
Associate Administrator
SNAP

EXHIBIT B

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

LATOYA GILLIAM, KAYLA MCCROBIE,
and all others similarly situated,

Plaintiffs-Appellees,

v.

No. 20-3152

U.S. DEPARTMENT OF AGRICULTURE
and THOMAS J. VILSACK, in his official
capacity as Secretary of Agriculture,

Defendants-Appellants.

UNOPPOSED MOTION TO DISMISS APPEAL

Pursuant to Federal Rule of Appellate Procedure 42(b), defendants-appellants the U.S. Department of Agriculture and the Secretary of Agriculture respectfully move for voluntary dismissal of their appeal in the above-captioned case. Plaintiffs-appellees do not oppose this motion.

On March 31, 2021, the parties to this case entered into a settlement agreement. Pursuant to the terms of that agreement, USDA will bear its own costs and will pay an agreed-upon amount of attorneys' fees and costs to plaintiffs-appellees. In addition, plaintiffs-appellees will move for dismissal of their action in the district court, and USDA will seek dismissal of this appeal.

For the foregoing reasons, USDA respectfully requests voluntary dismissal.

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

MICHAEL S. RAAB

s/ Joshua K. Handell

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March 31, 2021

CERTIFICATE OF COMPLIANCE

I certify that the foregoing opposition complies with the requirements of Federal Rule of Appellate Procedure 27(d). This document contains 108 countable words.

/s/ Joshua K. Handell
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CERTIFICATE OF SERVICE

I certify that on March 31, 2021, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

/s/ Joshua K. Handell
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EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LATOYA GILLIAM and KAYLA McCROBIE,	:	
individually and on behalf of all others similarly	:	
situated,	:	
	:	
Plaintiffs,	:	Case No. 2:20-cv-03504-JMY
	:	
v.	:	
	:	
UNITED STATES DEPARTMENT OF	:	
AGRICULTURE and	:	
GEORGE ERVIN PERDUE III, in his official	:	
capacity as Secretary of the United States	:	
Department of Agriculture,	:	
	:	
Defendants.	:	

STIPULATION FOR DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41(a), in view of the settlement of this matter, the parties hereby stipulate and agree that:

1. This action is dismissed with prejudice, and
2. The preliminary injunction entered by this Court on September 11, 2020 is now dissolved as moot.

Dated: March 31, 2021

/s/ John P. Lavelle, Jr.

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Timothy J. Geverd (PA I.D. No. 324802)
Adina D. Bingham (PA I.D. No. 89860)
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Attorneys for Plaintiffs

Dated: March 31, 2021

/s/ Kuntal V. Cholera

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Attorneys for Defendants