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# The Disappearing Act: How to Prevent the Decline of Black Farmers in the United States

Jordan M. Jennings\*

Tensions between the United States, China, Mexico, and Canada have placed U.S. farmers in a difficult position.<sup>1</sup> The Trump administration's restrictions on trade will likely have considerable implications for the United States' agricultural industry.<sup>2</sup> The tariffs center on the exports of soy, wheat, corn, and other crops, and would potentially total a \$1.8 billion loss.<sup>3</sup> Most importantly, the restrictions will directly impact black farmers who produce a significant amount of tariff-taxed goods.<sup>4</sup> Failure to secure new markets for these items will decrease farm incomes across all demographics.<sup>5</sup> President Trump's tariffs, in addition to the stagnant percentage of black farmers who are aging without a new wave of young black farmers to take their place,<sup>6</sup> highlight a series of challenges black farmers face if they want to be competitive, or simply survive, in the current environment. Black farmers make up less than 2 percent of the U.S. agricultural industry.<sup>7</sup> While this figure is low, it is consistent with previous years.<sup>8</sup> According to the 2007 Census, black farmers made up

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<sup>1</sup> See Amanda M. Countryman, *Despite Billions in Relief Payments, American Farmers are Still Hurting From Trump's Tariffs*, PAC. STANDARD (Aug. 2, 2018), <https://psmag.com/economics/trump-tariffs-are-hurting-farmers> [https://perma.cc/HGW7-BEJ2].

<sup>2</sup> Chuck Abbot, *Four Times New Tariff Pain Than Financial Gain in 'New NAFTA'*, SUCCESSFUL FARMING (Nov. 11, 2018), <https://www.agriculture.com/news/business/four-times-more-tariff-pain-than-financial-gain-in-new-nafta> [https://perma.cc/5TNG-3MQD].

<sup>3</sup> See *id.*; see also MAKSYM CHEPELIEV ET AL., FARM FOUNDATION, HOW U.S. AGRICULTURE WILL FARE UNDER THE USMCA AND RETALIATORY TARIFFS 2 (2018) <https://www.farmfoundation.org/wp-content/uploads/2018/10/Trade-Analysis-10-31-18-Final.pdf> [https://perma.cc/NK8K-LD57].

<sup>4</sup> See CHEPELIEV, *supra* note 3; see also Abbot, *supra* note 2.

<sup>5</sup> Countryman, *supra* note 1.

<sup>6</sup> See Countryman, *supra* note 1; see also U.S. DEP'T OF AGRIC., 2012 CENSUS OF AGRICULTURE HIGHLIGHTS 1 (2014) [hereinafter 2012 CENSUS], [https://www.nass.usda.gov/Publications/Highlights/2014/Highlights\\_Black\\_Farmers.pdf](https://www.nass.usda.gov/Publications/Highlights/2014/Highlights_Black_Farmers.pdf) [https://perma.cc/7M5U-TXYN].

<sup>7</sup> U.S. DEP'T OF AGRIC., *supra* note 6.

<sup>8</sup> See U.S. DEP'T OF AGRIC., 2007 CENSUS OF AGRICULTURE: BLACK FARMERS (2007) [hereinafter 2007 CENSUS], [https://www.nass.usda.gov/Publications/AgCensus/2007/Online\\_Highlights/Fact\\_Sheets/D](https://www.nass.usda.gov/Publications/AgCensus/2007/Online_Highlights/Fact_Sheets/D)

approximately 1.3 percent of the total farm operators within the United States, while in 2012 the number slightly increased to 1.4 percent.<sup>9</sup> Black operators tend to work smaller farms and are older, with an average age ranging in the early sixties.<sup>10</sup> These factors indicate that at the moment, the fate of the black farmer is uncertain.

Historically, black farmers struggled to receive equal treatment in the United States.<sup>11</sup> Throughout the 1990s and shifting into the present, minority and female farmers “demonstrated that they were systematically marginalized by federal farm programs.”<sup>12</sup> These disadvantaged classes of farmers filed class-action discrimination suits and ultimately benefitted from monumental civil rights settlements from the United States Department of Agriculture (“USDA”).<sup>13</sup> Systematic oppression within the agricultural industry is a harsh reminder that the United States has “historically created, reinforced, and reproduced a racial caste structure, by infusing economic, human, and social capital into white communities while denying it to communities of color.”<sup>14</sup> The remnants of oppression are still seen today by the disproportionate number of minority farmers.<sup>15</sup>

One solution to remedy the decline of black farmers would be to increase the implementation of urban agriculture programs.<sup>16</sup>

emographics/black.pdf [https://perma.cc/39K3-HD8P]; see also U.S. DEP’T OF AGRIC., 2012 CENSUS OF AGRICULTURE: RACE/ETHNICITY/GENDER PROFILE, UNITED STATES FARMS WITH BLACK OR AFRICAN AMERICAN OPERATORS COMPARED WITH ALL FARMS, 9–10 (2012) [hereinafter U.S. FARMS WITH BLACK OPERATORS], https://www.nass.usda.gov/Publications/AgCensus/2012/Online\_Resources/Race\_Ethnicity\_and\_Gender\_Profiles/cpd99000.pdf [https://perma.cc/4A5C-HFSX] (showing that in 2012 there were 46,582 black farm operators out of the total 3,180,074 which explains that only 1.46% of the farm operators in this country are African-American).

<sup>9</sup> See 2007 CENSUS, *supra* note 8; see also U.S. FARMS WITH BLACK OPERATORS, *supra* note 8; see also 2012 CENSUS, *supra* note 6.

<sup>10</sup> U.S. FARMS WITH BLACK OPERATORS, *supra* note 8; see also 2012 CENSUS, *supra* note 6.

<sup>11</sup> See Joy Milligan, *Protecting Disfavored Minorities: Toward Institutional Realism*, 63 UCLA L. REV. 894, 902 (2016).

<sup>12</sup> *Id.* at 918.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 901.

<sup>15</sup> See *id.*

<sup>16</sup> See Stephanie A. Maloney, *Putting Paradise in the Parking Lot: Using Zoning to Promote Urban Agriculture*, 88 NOTRE DAME L. REV. 2551, 2559–60 (2013); see also Milligan, *supra* note 11, at 918–36.

Such programs could target minorities in large cities and metropolitan suburbs, while also appealing to a younger generation that could represent the new era of farmers.<sup>17</sup> Generally, experts define urban agriculture as “the growing, processing, and distribution of food and other products through intensive plant cultivation and animal husbandry” in metropolitan areas.<sup>18</sup> Farming in American cities has traditionally centered on private or community-centered agriculture.<sup>19</sup> Today, urban farming expands upon the traditional notion of farming.<sup>20</sup> Modern urban agriculture is much more diverse and is no longer limited to the concept of rooftop gardens or empty lots.<sup>21</sup> Now, the concept of farming includes raising livestock and “the processing, distribution, marketing and sale of food products and food by-products, such as compost.”<sup>22</sup>

Although urban farming appears to be a step in the right direction, it is not a perfect solution to combat the low percentage of black farmers in this country. Some local governments have found success in implementing urban agriculture programs, but programs at the federal level specifically designed to engage young minority farmers do not exist.<sup>23</sup> Funding, space, and viability issues pose additional challenges to urban farming.<sup>24</sup> In order to bolster the number of black farmers, new programs must be implemented to engage individuals that have limited knowledge about the agriculture industry.<sup>25</sup> With some Congressional movement, the disappearance of black farmers can be prevented

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<sup>17</sup> See Khristopher Flack, *Growing Pains: 5 Challenges Facing Urban Agriculture (And How to Overcome Them)*, SEEDSTOCK (Apr. 5, 2016), <http://seedstock.com/2016/04/05/growing-pains-5-challenges-facing-urban-agriculture-and-how-to-overcome-them/> [<https://perma.cc/TN7Z-7JQX>]; 2012 CENSUS, *supra* note 6, at 1 (“Texas has more black farmers than any other state, but they make up only 3 percent of the state’s total farmers. Black farmers make up a larger share of total farmers in Mississippi (12%), Louisiana (7%), South Carolina (7%), Alabama (6%), and Georgia (4%).”).

<sup>18</sup> Stephanie A. Maloney, *Putting Paradise in the Parking Lot: Using Zoning to Promote Urban Agriculture*, 88 NOTRE DAME L. REV. 2551, 2553 (2013).

<sup>19</sup> *Id.* at 2554.

<sup>20</sup> *Id.* at 2554–55.

<sup>21</sup> *Id.* at 2555.

<sup>22</sup> *Id.*

<sup>23</sup> See Symposium, *The Detroit Frontier: Urban Agriculture in a Legal Vacuum*, 92 CHI.-KENT L. REV. 497, 502 (2017).

<sup>24</sup> Flack, *supra* note 17.

<sup>25</sup> See Flack, *supra* note 17.

by restructuring existing programs that aid farmers to significantly increase the number of minorities within the agricultural sector.<sup>26</sup>

This Note discusses the importance of promoting urban farming in order to prevent the disappearance of black farmers. Part I analyzes the historical challenges black farmers have faced when procuring land grants and capital needed to operate viable farms. Part I also discusses the potential longstanding effects the Trump administration's tariff policies may have on the low number of black farmers. Part II explores the obstacles and rewards associated with urban farming and highlights communities that have found success in urban agriculture programs. Finally, Part III suggests ways the federal government can tailor already-existing agricultural programs to benefit a younger demographic of minority farmers, particularly in areas where there are not high concentrations of black farmers.

## I. HISTORICAL BACKGROUND OF THE BLACK FARMER

### *A. Past of Poor Treatment*

The disappearance of black farmers is not a new phenomenon.<sup>27</sup> Since the late 1970s, the USDA has been aware of the decline of black farmers.<sup>28</sup> In 1920, 14.3 percent of farms in the United States were either owned or operated by African-Americans.<sup>29</sup> Today, these farms account for less than one percent of all U.S. farms.<sup>30</sup> Black farmers's history represents an important, and often neglected, part of the nation's "legacy of racial violence and exclusion."<sup>31</sup> The emergence of black farmers began

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<sup>26</sup> *See id.* (stating that if urban agriculture is to answer the call as a solution for the future growers, buyers, and policymakers will need to find a way to integrate the broad set of expectations the field attracts and calibrate those expectations toward what each city's resources can sustain).

<sup>27</sup> *See* Milligan, *supra* note 11, at 947.

<sup>28</sup> *See id.*

<sup>29</sup> COMM. ON GOV'T OPERATIONS, THE MINORITY FARMER: A DISAPPEARING AMERICAN RESOURCE; HAS THE FARMERS HOME ADMINISTRATION ACT BEEN THE PRIMARY CATALYST?, H.R. Rep. No. 101-984, at 1 (1999).

<sup>30</sup> *Id.*

<sup>31</sup> *See* Milligan, *supra* note 11, at 901.

in the 1870s during a period known as the Reconstruction Era.<sup>32</sup> After the Civil War, the Government promised former slaves reparations, but never awarded them.<sup>33</sup> Absent the forty acres and mule they were promised,<sup>34</sup> “black farmers and their advocates petitioned for equal protection from the law and fair treatment within national farm policy.”<sup>35</sup> Black farmers repeatedly asked the federal government to implement agricultural policies awarded to their white counterparts, but to no avail.<sup>36</sup> African-Americans struggled to receive government funding, land grants, tools, seeds, and contracts necessary to operate viable farms.<sup>37</sup>

Throughout the early 1900s, black farmers struggled when it came to obtaining land ownership.<sup>38</sup> Without land ownership, black farmers cannot pass down family farms and ensure a career path for generations to come.<sup>39</sup> While there were approximately 888,000 black-operated farms in 1910, black farmers owned only a fraction of the farms: 175,000 of these farms were fully owned by black farmers, while another 43,000 were partially owned.<sup>40</sup> Black-operated farms, other than those fully or partially owned by black farmers, were sharecropped.<sup>41</sup> Hardship still existed for those black farmers fortunate enough to own their farms.<sup>42</sup> Many black landowners could only purchase land in “areas with less fertile soil, perhaps tucked away in the hills, not too close to the main highways or railroads, nor to white schools or churches.”<sup>43</sup> Even with those constraints, black land ownership in the early 1900s

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<sup>32</sup> U.S. DEP’T OF AGRIC., BLACK FARMERS IN AMERICA, 1865-2000 THE PURSUIT OF INDEPENDENT FARMING AND THE ROLE OF COOPERATIVES 2 (Oct. 2002), <http://www.federationsoutherncoop.com/blkfarmhist.pdf> [<https://perma.cc/3JZM-FTTF>].

<sup>33</sup> See *Pigford v. Glickman*, 185 F.R.D. 82, 112–13 (D.D.C. 1999).

<sup>34</sup> *Id.* at 112.

<sup>35</sup> Milligan, *supra* note 11, at 928.

<sup>36</sup> *Id.* at 928–29.

<sup>37</sup> See *id.* at 929.

<sup>38</sup> See Thomas W. Mitchell, *From Reconstruction to Destruction: Undermining Black Landownership, Political Independence and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505, 526–27 (2001).

<sup>39</sup> See *id.* at 527–28.

<sup>40</sup> *Id.* at 527.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 526.

<sup>43</sup> *Id.*

was higher than it is today, and current ownership continues to decline.<sup>44</sup>

Despite the success of Roosevelt's New Deal in the 1930s, which created a series of agricultural programs to help insulate Americans from the harsh economic losses of the Great Depression, black farmers struggled to access the system developed to aid them.<sup>45</sup> The New Deal's farm programs failed to provide equitable funding for African American centered programs in a time where segregation prevented the equal allocation of government funds.<sup>46</sup> "Though overall farm ownership rose during the New Deal, only a tiny fraction of the new owners were African Americans."<sup>47</sup> This trend has continued, with minority farmer populations declining since the 1920s.<sup>48</sup> Most notably, African American farm ownership experienced an 80 percent decrease between 1950 and 1974.<sup>49</sup> As a result of the steady decline in minority farmers, a civil rights movement within the farming community began in the 1980s and 90s, with black farmers "denounc[ing] racial injustice within the USDA during this period."<sup>50</sup>

In 1997, after a century of unequal treatment, three African-American farmers filed a lawsuit on behalf of a putative class of over 600 African-American farmers against the USDA under the Equal Credit Opportunity Act.<sup>51</sup> The plaintiffs in *Pigford I* contended that the USDA ignored their complaints of racial bias, causing delays in the processing of loan applications and denial of funds to the plaintiffs.<sup>52</sup> Stating that for decades black farmers were the victims of an unjust system designed to ensure their failure, the court held the USDA liable for discriminatory practices.<sup>53</sup> This decision represented a historic first step toward

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<sup>44</sup> Mitchell, *supra* note 38, at 527–28.

<sup>45</sup> See Milligan, *supra*, note 11, at 936.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 939.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 947.

<sup>50</sup> *Id.* at 948.

<sup>51</sup> *Pigford v. Glickman*, 185 F.R.D. 82, 86–89 (D.D.C. 1999) (referred to as *Pigford I*).

<sup>52</sup> *Id.* at 86.

<sup>53</sup> See *id.* at 86–87.

righting the wrongs perpetrated by the USDA against black farmers.<sup>54</sup>

As a result of the USDA's prejudice and discrimination, many black farmers suffered damages ranging from the loss of a year's crop to foreclosure on their farms.<sup>55</sup> In response, *Pigford* plaintiffs were offered one of two remedies: \$50 thousand and loan forgiveness or recovery with no cap for those who could provide additional documentation of discrimination.<sup>56</sup> Many *Pigford* plaintiffs sued on behalf of their loved ones's estates and providing the required additional documentation often proved difficult.<sup>57</sup> As a result, many plaintiffs only option was to take the first remedy, a sum not nearly enough to revive a dying farm or make up for decades of financial instability.<sup>58</sup>

Although *Pigford* granted black farmers retroactive remedies for decades of unjust treatment, little changed in the way government programs allocate money to minority farmers, as seen today.<sup>59</sup> The average farm in the United States receives close to \$10 thousand in government aid.<sup>60</sup> Comparatively, the average farm owned by a black farmer receives about half of that amount.<sup>61</sup> New ways to allocate government funding must be implemented in order to eliminate traces of racial bias within the farming industry.

*B. By the Numbers: Analyzing the Adverse Impact of President Trump's Tariffs on the Black Farmer.*

Food, beverage, and feed serve as the United States' top exports and generate approximately \$133 billion per year.<sup>62</sup> The Trump administration's trade tariffs have impacted the United

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<sup>54</sup> *See id.* at 112–13.

<sup>55</sup> *See id.* at 87–88.

<sup>56</sup> *Id.* at 95.

<sup>57</sup> Carolyn M. Brown, *Black Farmers to Receive Payouts In \$1.2 Billion From Federal Lawsuit*, BLACK ENTERPRISE (Oct. 2, 2013), <https://www.blackenterprise.com/black-farmers-to-receive-payouts-in-1-2-billion-from-federal-lawsuit-settlement/> [<https://perma.cc/DV9P-QS4C>].

<sup>58</sup> *Pigford*, 185 F.R.D. at 108.

<sup>59</sup> *See id.* at 112–13; Brown, *supra* note 57.

<sup>60</sup> *See* U.S. FARMS WITH BLACK OPERATORS, *supra* note 8.

<sup>61</sup> *See id.*

<sup>62</sup> Chris Isidore, *These Are the Top U.S. Exports*, CNN (Mar. 7, 2018, 3:23 PM), <https://money.cnn.com/2018/03/07/news/economy/top-us-exports/index.html> [<https://perma.cc/57RW-VFDH>].

States's wheat exports and other crop exports, such as sugarcane and soybeans.<sup>63</sup> In the first half of 2018, the United States's wheat exports plummeted by 21 percent.<sup>64</sup> While the United States farming economy has taken a hit, other countries have taken advantage of the trade war.<sup>65</sup>

President Trump's tariffs hurt U.S. farmers by altering existing supply chains and forcing farmers to find new regions where demand for their goods is high.<sup>66</sup> When farmers cannot export, shipping companies lack freight to transport. Shipping companies dependent on agricultural exports have to find alternative trade routes that exclude the United States in order to circumvent more scarce supply chains.<sup>67</sup> Less demand for U.S. crops means that the products that farmers depend on for revenue (i.e., soy, wheat, corn, and other crops) sits in storage rather than being exported.<sup>68</sup>

Black farmers account for approximately 1.5 percent of farmers, and that number continues to decline.<sup>69</sup> Comparatively, African Americans make up 13.4 percent of the total U.S. population.<sup>70</sup> The disproportionate percentage of black farmers in comparison to the black population within the United States is alarming. What is even more alarming is that the steadily decreasing percentage of black farmers combined with the trade tariffs could potentially wipe out the existence of black farmers altogether. The Trump administration's tariffs pose a major threat to black farmers, specifically because African American farmers produce a high quantity of grains, oilseeds, dry beans, and dry peas.<sup>71</sup> Soybeans, one of the crops most impacted by the tariffs, are

<sup>63</sup> Trevor Kincaid, *Commentary: Trump's Tariffs Could Cripple American Farmers*, REUTERS (Aug. 23, 2018, 10:27 AM), <https://www.reuters.com/article/us-kincaid-tariffs-commentary/commentary-trumps-tariffs-could-cripple-american-farmers-idUSKCN1L81NX> [<https://perma.cc/HUS9-Y8E3>].

<sup>64</sup> *Id.*

<sup>65</sup> *See id.*

<sup>66</sup> *See id.*

<sup>67</sup> *See id.*

<sup>68</sup> *Id.*

<sup>69</sup> *See* Kincaid, *supra* note 63.

<sup>70</sup> *Quick Facts: United States*, U.S. CENSUS BUREAU (July 1, 2018) <https://www.census.gov/quickfacts/fact/table/US/PST045217> [<https://perma.cc/HWU4-EXGV>].

<sup>71</sup> 2012 CENSUS, *supra* note 6.

the second most harvested crop (by acreage) among black farmers.<sup>72</sup>

Black-owned farms are often smaller and bring in significantly less revenue than the average American farm, leaving them more vulnerable to market forces.<sup>73</sup> According to the 2012 Census of Agriculture, the average black-owned farm consists of 125 acres and produces \$36 thousand in revenue (two hundred and eighty-eight dollars per acre),<sup>74</sup> while the national farming averages are 434 acres of farmland and revenues of \$187,097 (four hundred thirty-one dollars per acre).<sup>75</sup> Black farmers struggle to receive equal treatment from the USDA and other government entities, which may explain why the outcome of black farms is significantly poorer than the national averages.<sup>76</sup> The consequences of President Trump's trade practices compound when viewed alongside the demonstrably lower revenue per acre yields of black-owned farms. The long-term impacts of the president's trade policies remain unknown at this point, but based on past trends, they may push black farmers closer to the brink of extinction.

## II. URBAN FARMING AS A SOLUTION TO DISCREPANCIES IN MINORITY FARMING

Today, the vast majority of Americans live and work in cities; in 2015, nearly 83 percent of the total U.S. population lived in urban areas.<sup>77</sup> This percentage will increase over time.<sup>78</sup> Data suggests that by 2050, over 87 percent of the population will live in urban areas.<sup>79</sup> Urban agriculture provides an avenue to reinvent the traditional notion of farming and to promote sustainability within our nation's agricultural industry. The benefits of urban

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<sup>72</sup> *Id.*

<sup>73</sup> *See* 2012 CENSUS, *supra* note 6, at 9.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *See* Milligan, *supra* note 11, at 918.

<sup>77</sup> *Forecast on urbanization in the United States 2000-2050*, STATISTA (2019), <https://www.statista.com/statistics/678561/urbanization-in-the-united-states/> [<https://perma.cc/QRE4-PPGQ>].

<sup>78</sup> *See id.*

<sup>79</sup> *Id.*

agriculture include utilizing vacant property, increasing minority land ownership, eliminating food deserts, and creating jobs in low-income communities.<sup>80</sup>

### *A. Defining Urban Agriculture*

Urban farming is a broad term encompassing a variety of food growing and cultivation techniques in urban geographic locations.<sup>81</sup> The term urban farming grew to popularity in the 1970s in response to environmental problems.<sup>82</sup> Today, modern urban agriculture is changing the face of the average American farmer.<sup>83</sup> A new wave of participants interested in innovative and varying models of farming and gardening practices are changing the farming demographic.<sup>84</sup> Through urban agriculture, those with no farming knowledge or background have the ability to “tak(e) advantage of the vacant land in many of America's deindustrialized cities.”<sup>85</sup> Urban agriculture is a beneficial solution to increase farming for all demographics, but specifically for communities of color that suffer from the adverse effects caused by a history of “redlining;” decades of redlining and “white flight” left minority communities barren, without a local economy or fresh food supply.<sup>86</sup> Promoting urban agriculture could give rise to an increase of minority farmers, and potentially save the black farmer who is slowly aging out and located primarily in rural southern states.

### *B. Urban Farming Challenges*

For all its benefits, urban farming presents an array of challenges. Economists have questioned whether the benefits

<sup>80</sup> See discussion *infra* Part III. A–C.

<sup>81</sup> Stephanie A. Maloney, *Putting Paradise in the Parking Lot: Using Zoning to Promote Urban Agriculture*, 88 NOTRE DAME L. REV. 2551, 2553 (2013).

<sup>82</sup> *Id.* at 2559.

<sup>83</sup> See *id.* at 2559–60 (stating that the new generation of urban farmers, recent college graduates to local, city-based organizations, are challenging the exclusion of agriculture from city planning).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 2559.

<sup>86</sup> LEAH PENNIMAN, *FARMING WHILE BLACK: SOUL FIRE FARM'S PRACTICAL GUIDE TO LIBERATION ON THE LAND* 205 (2018).

associated with urban farming outweigh the costs, citing difficulties which include space constraints, risky startup costs, and accessibility to clean soil, water, and federal funding.<sup>87</sup> Some even argue that agriculture in a thriving city is an unprofitable use of square footage.<sup>88</sup>

Finding space within the thick cityscape can prove difficult for many farmers.<sup>89</sup> In order to combat the limited availability of space, many urban farmers are scaling their operations upwards.<sup>90</sup> Urban farmers are deploying vertical farming techniques in order to grow 75 percent more food in the same area.<sup>91</sup> Vertical farming is an advanced technological process.<sup>92</sup> Components of traditional farming, such as the sun and soil, are replaced with LED lights, mineral solutions, and other artificial resources.<sup>93</sup> Vertical farming can be expensive; therefore, finding clean water and soil for urban farmers looking to use less expensive traditional farming methods in an urban setting is vital.<sup>94</sup>

Perhaps one of the biggest challenges to urban farming is access to soil, water, and other similar resources. Black cityscape farmers may struggle to farm within their communities because accessing water and soil free from pollutants that are harmful to both producers and consumers can be difficult.<sup>95</sup> Soil and water supply in minority neighborhoods are often contaminated with arsenic, cadmium, copper, lead, nickel, selenium, and petroleum.<sup>96</sup> This pollution is due, in part, to the demolition of buildings containing toxic materials, the atmospheric deposit of air pollution within a city, and industrial sewage.<sup>97</sup> Despite these daunting growing resources, it is still possible to produce viable crops within

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<sup>87</sup> See Leon Neyfakh, *If Urban Farming Took Off, What Would Boston Look Like?*, THE BOSTON GLOBE (January 19, 2014, 12:00 AM), <https://www.bostonglobe.com/ideas/2014/01/19/urban-farming-took-off-what-would-boston-look-like/uCbjPMTfWVGb7i4Qxyf6uJ/story.html> [https://perma.cc/8SUH-SDKA].

<sup>88</sup> *Id.*

<sup>89</sup> See Flack, *supra* note 17.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See *id.*

<sup>95</sup> Maloney, *supra* note 81, at 2567.

<sup>96</sup> Penniman, *supra* note 86, at 210.

<sup>97</sup> *Id.* at 210.

cities.<sup>98</sup> Implementing drip or underground irrigation systems is one solution to help city farmers who may have a difficult time accessing a clean water supply.<sup>99</sup> These systems allow farmers to stream specific amounts of water directly to a crop's roots rather than spraying a hose, which "waters the air more than the crops" and uses an increased amount of water.<sup>100</sup> Alternatively, hydroponic growing systems are a soil-less method of growing that researchers say uses 90 percent less water than field farming.<sup>101</sup> This method of growing presents another way to combat a city's contaminated water and soil problem simultaneously.<sup>102</sup>

Another challenge urban farmers face is avoiding liability for nuisances. A nuisance is defined as an "invasion of another's interest in the private use and enjoyment of their land."<sup>103</sup> As urban farming begins to depart from traditional agriculture and shift to livestock and compost efforts, black farmers could face legal challenges when combatting noise and odor nuisances.<sup>104</sup> These nuisances are particularly unfriendly in compact residential areas.<sup>105</sup>

Urban farmers are especially susceptible to nuisance liability when it comes to animal husbandry. Livestock is an untapped area of urban agriculture that many urban agriculture-friendly ordinances prohibit.<sup>106</sup> In 2012, "nearly half of the farms with a black principal operator specialized in beef cattle,"<sup>107</sup> and, while cows are not ideal livestock to incorporate into urban farms, many cities that incorporate livestock into their urban agriculture

<sup>98</sup> *See id.* (stating that it is possible to grow in moderately contaminated areas so long as you follow certain safety precautions).

<sup>99</sup> Flack, *supra* note 17.

<sup>100</sup> *Id.*

<sup>101</sup> Brandon Merrill, *Hydroponics system grows crops with less water, no soil*, THE UNIV. OF ARIZONA (May 9, 2011), [https://swes.cals.arizona.edu/environmental\\_writing/stories/2011/merrill.html](https://swes.cals.arizona.edu/environmental_writing/stories/2011/merrill.html) [<https://perma.cc/6RPY-AKEF>].

<sup>102</sup> *See id.*

<sup>103</sup> RESTATEMENT (SECOND) OF TORTS § 821D (AM. LAW INST. 1979).

<sup>104</sup> Maloney, *supra* note 81, at 2561–62.

<sup>105</sup> *See id.* at 2562.

<sup>106</sup> *See The Detroit Frontier: Urban Agriculture in a Legal Vacuum*, *supra* note 23 ("[I]t shall be unlawful for a person to own, harbor, keep, or maintain, sell, or transfer any farm animal, or any wild animal, on their premises or at a public place within the City; provided, that farm animals or wild animals may be kept in circuses, zoos, or laboratories, subject to approval of the City...").

<sup>107</sup> 2012 CENSUS, *supra* note 6.

development permit “hens and ducks, honeybees, rabbits, and goats, with an option for farmers to request special permitting for ‘miscellaneous’ other animals.”<sup>108</sup> Therefore, opening the door for animal husbandry in city settings could allow black farmers to expand the variety of commodities they produce and ultimately increase the number of black farmers.<sup>109</sup> Products like goat milk, sheep’s wool or livestock slaughter and meat processing present opportunities for black farmers that not only combat the implications of President Trump’s tariffs but also create a supply for a niche market of city consumers (for example, chefs and restaurateurs).

*C. Taking a Local Approach: Urban Agriculture Zoning and Cities that Adopt these Zoning Measures.*

Rethinking land use regulations and zoning ordinances are imperative for the expansion of urban agriculture. As suburbs and commercial housing developments grew to popularity in the early twentieth century, many cities throughout the United States passed zoning ordinances which limited and even banned agricultural uses outside the confines of a home.<sup>110</sup> These zoning ordinances often prohibited larger, and particularly commercial, farm enterprises in major industrialized cities and suburbs.<sup>111</sup>

However, recently some of the nation’s major cities have found creative ways to zone for urban agriculture activities.<sup>112</sup> In 2013, Boston adopted Article 89, a citywide zoning code designed

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<sup>108</sup> *The Detroit Frontier: Urban Agriculture in a Legal Vacuum*, *supra* note 23, at 514.

<sup>109</sup> See 2012 CENSUS, *supra* note 6 (demonstrating that black farmers top produced commodities include cattle and grain, but raising other the livestock like hens and ducks, honeybees, rabbits, and goats might increase the overall average black farm operator income).

<sup>110</sup> *The Detroit Frontier: Urban Agriculture in a Legal Vacuum*, *supra* note 23, at 499; *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 397 (1926) (holding that zoning is a valid exercise of police power).

<sup>111</sup> *The Detroit Frontier: Urban Agriculture in a Legal Vacuum*, *supra* note 23, at 499.

<sup>112</sup> See PIONEER VALLEY PLANNING COMMISSION, ARTICLE 89 MADE EASY: URBAN AGRICULTURE ZONING FOR THE CITY OF BOSTON 1 (2013), <http://www.pvpc.org/sites/default/files/doc-municipal-strategies-increase-food-access2594.pdf> [<https://perma.cc/K2CV-N3SD>].

to help create a diverse array of urban farming activities.<sup>113</sup> This zoning regulation blocks out land for the cultivation of plants, horticulture, and other activities such as composting.<sup>114</sup> Farming in various parts of Boston is permitted, depending upon three determining factors: “the zone in which the property is located, the size of the proposed farm, and the nature of agricultural operations.”<sup>115</sup> However, Article 89 often allows urban farming outright, meaning no additional zoning permits or public zoning hearings will be needed.<sup>116</sup> This unique zoning program enables Boston residents to “grow and access healthy foods while ensuring farming activities remain compatible with their urban surroundings.”<sup>117</sup>

Article 89 provides specific allotments of land for urban farming at the ground level, as well as rooftop spaces for rooftop farms in a variety of farming structures ranging from farm sheds to greenhouses.<sup>118</sup> The zoning ordinance encourages both individual and corporate farming opportunities.<sup>119</sup> Participants interested in establishing ground-level farms within Boston city limits must submit a permit specifying the size of the farm.<sup>120</sup> Generally, the city zones all small to medium-sized farms ranging from 10,000 square feet to one acre for residential, commercial, industrial, or institutional use.<sup>121</sup> Article 89 is especially friendly to commercial and industrial farmers looking to utilize rooftop urban farming techniques.<sup>122</sup> According to the zoning code, small to large sized rooftop farms generally apply as large-scale commercial use or institutional use.<sup>123</sup>

<sup>113</sup> *Id.*

<sup>114</sup> *See id.* (stating that urban agriculture is not solely based on farms. “Through the addition of Article 89, the City of Boston has updated its Zoning Code to facilitate the development of the many diverse urban agriculture activities”); *See also* ARTICLE 89 – URBAN AGRICULTURE, §§ 89-1–89-3 (Dec. 20, 2013), <http://www.bostonplans.org/getattachment/a573190c-9305-45a5-83b1-735c0801e73e> [<https://perma.cc/4C76-4AC4>].

<sup>115</sup> *Article 89 Made Easy*, *supra* note 112, at 3.

<sup>116</sup> *Id.* at 2–3.

<sup>117</sup> *Id.* at 2.

<sup>118</sup> *Id.* at 3–5.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Article 89 Made Easy*, *supra* note 112, at 4.

<sup>122</sup> *See id.* at 4–5.

<sup>123</sup> *Id.* at 5.

Despite economist's skepticism of urban farming,<sup>124</sup> Boston has become one of the nation's hubs for urban agriculture due to the adoption of Article 89.<sup>125</sup> Now, because of Article 89, local farmers can sell their food inside Boston city limits.<sup>126</sup> Boston has incorporated urban agriculture into a slew of spaces where the average person would never suspect.<sup>127</sup> From shipping freights and containers to alleyways to the top of Fenway Park, practitioners creatively utilize overlooked cityscape and turn it into a farming enterprise.<sup>128</sup> Article 89 benefits both consumers and producers.<sup>129</sup> Boston's rise in the national urban farming movement helped make locally grown produce more available to low-income residents.<sup>130</sup> Despite these benefits, operating a successful urban farm does not come without a price.<sup>131</sup> The startup cost for a freight container farm is \$85 thousand, with operating costs reaching approximately \$13 thousand each year.<sup>132</sup>

Along with Boston, Detroit incorporated special zoning ordinances for urban agriculture.<sup>133</sup> However, Detroit's unique zoning features focus more on garnering minority participation and placing farms in low-income areas.<sup>134</sup> Detroit's ordinance models and amends Michigan's Right to Farm Act, which "protect(s) currently operating farms from being displaced by non-farm residences."<sup>135</sup> Similar to Boston's Article 89, Detroit's

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<sup>124</sup> See Neyfakh, *supra* note 87.

<sup>125</sup> See Oset Babur, *Is Boston the Next Urban Paradise*, THE GUARDIAN (Apr. 16, 2017), <https://www.theguardian.com/sustainable-business/2017/apr/16/boston-organic-food-farming-agriculture-startups> [<https://perma.cc/L2N9-TZXQ>].

<sup>126</sup> *Id.*

<sup>127</sup> See *id.* at 7, 9–10 (listing various farm structures such as freight containers, hoop houses, and pavilions).

<sup>128</sup> See *id.*

<sup>129</sup> See *id.*

<sup>130</sup> See *id.*

<sup>131</sup> See *id.*

<sup>132</sup> *Id.*

<sup>133</sup> See *generally* Hand, *supra* note 23, at 502.

<sup>134</sup> See *generally id.* (stating that "organizations like the Detroit Black Food Security Network (made official in 2006)...launch[ed] a variety of small urban farms and community gardens").

<sup>135</sup> See *id.* at 507–08.

ordinance is friendly toward the use of greenhouses, hoop houses, urban farms, and urban gardens within city limits.<sup>136</sup>

Detroit's uniquely tailored urban agriculture ordinances have given rise to minority-owned and operated farming training initiatives.<sup>137</sup> The Detroit Black Community Food Security Network ("DBCFSN") aims to improve policy and localized food systems focused on Detroit's African-American Community.<sup>138</sup> DBCFSN sponsors several minority-owned urban farms, including D-Town Farm.<sup>139</sup> D-Town Farm is an organic farm in Detroit's Rouge Park, consisting of seven acres of land.<sup>140</sup> This urban farm produces over "[thirty] different fruits, vegetables, and herbs that are sold at farmers markets and to wholesale customers."<sup>141</sup> Although programs like this exist due to innovative urban farming ordinances, said programs still have to be funded, causing black farmers run into another distinct hurdle.<sup>142</sup> While online crowdfunding platforms have helped black farmers harness the resources and support through social media, the unpredictability of crowdfunding does not give inexperienced minorities interested in farming the financial stability to take a risk.<sup>143</sup> Federal government funding must be advertised and accessible to better the existing and new era of black farmers.

### III. LEGISLATIVE ACTION

#### *A. Introduction to the Farm Bill*

The Farm Bill authorizes the USDA to create agriculture and food programs through government grants and is the largest

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<sup>136</sup> *See id.* at 511 (stating that the modification of the application of the Right to Farm Act was followed relatively quickly by amendments to the Detroit Zoning Ordinance, which authorized many forms of urban agriculture).

<sup>137</sup> *See* Penniman, *supra* note 86, at 207.

<sup>138</sup> DBCFSN, *About Us*, <https://www.dbcfsn.org/about-us> (last visited Jan. 25, 2019) [<https://perma.cc/W44A-NYDN>].

<sup>139</sup> *See id.*

<sup>140</sup> D-TOWN FARM, <https://www.d-townfarm.com> (last visited Jan. 25, 2019) [<https://perma.cc/5Z9N-AF4S>].

<sup>141</sup> *Id.*

<sup>142</sup> *See* Penniman, *supra* note 86, at 19.

<sup>143</sup> *See id.* at 24.

source of federal aid dollars for farming.<sup>144</sup> <sup>145</sup> The bill's purpose is to strengthen rural economies by implementing programs that help individuals make sound financial management decisions, discover new economic opportunities, develop successful agricultural and nonagricultural enterprises, take advantage of new and consumer-driven markets, and understand the implications of public policy on these activities.<sup>146</sup>

The Farm Bill is an essential tool for bolstering urban agriculture projects with federal funds.<sup>147</sup> Congress has improved the Farm Bill to make it flexible to remedy issues in the farming industry, so additional provisions of the bill could increase the number of black farmers by utilizing urban agriculture.<sup>148</sup> However, Farm Bill programs have typically supported small-scale rural agriculture to the exclusion of urban agriculture.<sup>149</sup>

Initially, the Farm Bill intended to save small farms in rural locations.<sup>150</sup> Farm Bill programs define "rural" as "any area other than...any urbanized area," which echoes the United States Census Bureau's definition of "rural" as being land "not included within an urban area."<sup>151</sup> The 2014 Farm Bill focused primarily on modifications to farm loan programs that benefited producers and provided additional support for beginning farmers.<sup>152</sup> The USDA defines a "beginning farmer" as "an individual or entity who: has

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<sup>144</sup> See USDA, *Farm Bill Priorities*, <https://nifa.usda.gov/farm-bill-priorities> (last visited Mar. 29, 2019) [<https://perma.cc/KPK5-S6LW>]; Amy E. Mersol-Barg, *Urban Agriculture & The Modern Farm Bill: Cultivating Prosperity in America's Rust Belt*, 24 Duke Envtl. L. & Pol'y F. 279, 281 (2014).

<sup>145</sup> Amy E. Mersol-Barg, *Urban Agriculture & The Modern Farm Bill: Cultivating Prosperity in America's Rust Belt*, 24 Duke Envtl. L. & Pol'y F. 279, 281 (2014).

<sup>146</sup> See *id.* at 294 (stating that "urban agriculture is a means to secure a more equitable federal-state relationship to attain food democracy, which confirms '[the] rights [of] consumers to have more satisfying food choices and alternatives in the rights of farmers, chefs and marketers to produce and market foods reflecting their diversity and creative potential; and our nation's ability to have a food system that promotes good health, confidence, understanding, and enjoyment as well as economic opportunity").

<sup>147</sup> *Id.* at 301.

<sup>148</sup> See *id.*

<sup>149</sup> *Id.* at 310.

<sup>150</sup> *Id.* at 295 (internal citations omitted).

<sup>151</sup> *Id.* at 310.

<sup>152</sup> See *Agricultural Act of 2014: Highlights and Implications*, USDA, (last visited Dec. 23, 2019),

<https://www.ers.usda.gov/agricultural-act-of-2014-highlights-and-implications/> [<https://perma.cc/ABJ6-NKFA>].

not operated a farm for more than 10 years; [...] substantially participates in the operation; and [...] does not own a farm greater than 30 percent of the average size farm in the county,” as determined by the most current Census for Agriculture at the time of application.<sup>153</sup> However, the 2014 Farm Bill lacked an adequate framework for an urban environment.<sup>154</sup>

The lackluster definition for the term “urban” has created a problem for those seeking to incorporate urban agriculture with Farm Bill programs.<sup>155</sup> The 2014 Farm Bill distinguishes urban and rural areas by “population size, housing density, and proximity to an urbanized area,” but these parameters as a means to distinguish eligibility are becoming less reliable.<sup>156</sup> With the quick adoption of urban farms, Congress is facing difficulties creating effective legislation as they struggle to determine what is not “rural.”<sup>157</sup> However, two issues stem from the previous Farm Bill’s definition of urban: (1) a large majority of Americans live in urban areas, according to the Census Bureau definition; and (2) many traditionally rural areas are becoming urban.<sup>158</sup>

### *B. The 2018 Farm Bill’s Inclusion of Urban Agriculture*

USDA policies or programs specifically dedicated to meeting the needs of the local and regional food development while simultaneously increasing the number of black farmers are limited. In order for the USDA to develop programs and policies that support the urban agriculture sector within black communities, it is essential to understand the relevant needs, opportunities, and barriers. The newest Farm Bill’s recognition of urban agriculture will allow easier access to government grants.<sup>159</sup> The 2018 Farm Bill will allocate \$867 billion to spend over the next

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<sup>153</sup> *Farm Loans Fact Sheet*, USDA, 1 [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/archived-fact-sheets/loans\\_for\\_beginning\\_farmers\\_and\\_ranchers\\_march2017.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/archived-fact-sheets/loans_for_beginning_farmers_and_ranchers_march2017.pdf) (last visited Mar. 2017) [<https://perma.cc/TR5E-FUW9>]

<sup>154</sup> Mersol-Barg, *supra* note 144, at 308.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 311.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 312.

<sup>159</sup> Agriculture and Improvement Act of 2018, Pub. L. No. 115-334, §12302, 132 Stat. 4490 (2018).

decade.<sup>160</sup> The bill creates an Office of Urban Agriculture and Innovative Production to boost aquaponics, hydroponics, and other sustainable growing methods within cities.<sup>161</sup> As well, the bill designates assignments for rooftop gardens and indoor farms, while also providing competitive grants to operate urban agriculture programs in hopes of establishing pilot projects to increase compost and reduce food waste.<sup>162</sup> Local and tribal governments, nonprofit organizations, and schools serving kindergarten through twelfth grade are eligible to apply for urban agriculture grants.<sup>163</sup> The Farm Bill authorized \$10 million for urban agriculture research over the next five years.<sup>164</sup>

Although the Farm Bill does not aggressively allocate funding for urban agriculture when compared to other programs, there are still funding opportunities for individuals seeking to start city farms in other parts of the bill.<sup>165</sup> The Farm Bill also focuses on food insecurity and nutrition incentives (“FINI”).<sup>166</sup> The FINI program intends to enhance low-income communities’ ability to purchase fresh produce.<sup>167</sup> Legislators contend that consumers participating in the Supplemental Nutrition Assistance Program (“SNAP”) purchase more fresh produce through “cash incentives that increase their purchasing power at locations like farmers markets.”<sup>168</sup> The FINI program allows organizations to engage in either one-year or multi-year projects and are eligible to

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<sup>160</sup> Jeff Stein, *Congress just passed an \$867 billion farm bill. Here’s what’s in it.*, THE WASHINGTON POST, (Dec. 12, 2018), [https://www.washingtonpost.com/business/2018/12/11/congress-billion-farm-bill-is-out-heres-whats-it/?utm\\_term=.17aeb5e5407f](https://www.washingtonpost.com/business/2018/12/11/congress-billion-farm-bill-is-out-heres-whats-it/?utm_term=.17aeb5e5407f) [https://perma.cc/7XWL-CVW9].

<sup>161</sup> Agriculture and Improvement Act of 2018, Pub. L. No. 115-334, §12302(a)(3), 132 Stat. 4490 (2018).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* §12302(c)(1–4).

<sup>164</sup> *2018 Farm Bill Drilldown: Research and Plant Breeding*, NATIONAL SUSTAINABLE AGRICULTURE COALITION, (last visited Dec. 14, 2018), <http://sustainableagriculture.net/blog/2018-farm-bill-drilldown-research/> [https://perma.cc/776V-HWCC].

<sup>165</sup> *See id.*

<sup>166</sup> *Food Insecurities Nutrition Incentives*, NATIONAL SUSTAINABLE AGRICULTURE COALITION, <http://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/food-insecurity-nutrition-incentives/> [https://perma.cc/ZY4E-BLNQ]; *see also* Agriculture and Improvement Act of 2018, Pub. L. No. 115-334, §4205, 132 Stat. 4490 (2018).

<sup>167</sup> *Food Insecurities Nutrition Incentives*, *supra* note 166.

<sup>168</sup> *Id.*

receive \$100 thousand or \$500 thousand, respectively, in funding to help produce food for low-income areas.<sup>169</sup> Although the FINI program is not available to individual farmers, programs like this incentivize minority farmers to form coalitions and create organizations that benefit underserved minority communities.<sup>170</sup>

Additionally, the 2018 Farm Bill strengthens the diversity of American agriculture by supporting jobs at the root of the nation's farm and food economy.<sup>171</sup> The bill provides aid to the socially disadvantaged, veterans, and farmers of all skill levels by combining several initiatives to create \$435 million in funding.<sup>172</sup> To help rectify the long history of discrimination by the USDA, the 2018 Farm Bill continues an outreach and assistance program, commonly referred to as 2501, which prioritizes support for Black, Latino, Native American, and other minority farmers.<sup>173</sup> The 2018 Farm Bill also enables veterans to benefit from these outreach programs.<sup>174</sup> The 2501 program ensures that both farmers of color and veterans have opportunities to participate in agriculture successfully and to be benefitted by all USDA programs.<sup>175</sup> Over the past three decades, 2501 has seen significant achievements.<sup>176</sup> 2501 grants in Alabama and Georgia allowed African-American farmers to bolster their farm management and marketing skills, helping "to increase farm income and enhance the quality of life in farm families and distressed rural communities across the

<sup>169</sup> *Id.*

<sup>170</sup> *See id.*

<sup>171</sup> *See 2018 Farm Bill Drilldown: Beginning and Socially Disadvantaged Farmers*, NATIONAL SUSTAINABLE AGRICULTURE COALITION, (Dec. 12, 2018), <http://sustainableagriculture.net/blog/2018-farm-bill-drilldown-beginning-farmers/> [<https://perma.cc/L645-DQ8R>]; *see also Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers (Section 2501)*, NATIONAL SUSTAINABLE AGRICULTURE COALITION (last visited Mar. 11, 2018), <http://sustainableagriculture.net/publications/grassrootsguide/farming-opportunities/socially-disadvantaged-farmers-program/> [<https://perma.cc/B3TT-FTX5>].

<sup>172</sup> *2018 Farm Bill Drilldown: Beginning and Socially Disadvantaged Farmers*, *supra* note 171.

<sup>173</sup> *Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers (Section 2501)*, NATIONAL SUSTAINABLE AGRICULTURE COALITION (last visited Mar. 11, 2018), <http://sustainableagriculture.net/publications/grassrootsguide/farming-opportunities/socially-disadvantaged-farmers-program/> [<https://perma.cc/Y8F9-V3B4>].

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *See id.*

South.”<sup>177</sup> However, a broader application of the program needs proper implementation in order to reverse the decreasing rate of black farmers.

Although the newest Farm Bill seems to promote farm diversity, the current funding is simply not enough. The Section 2501 Program was first authorized in the 1990 Farm Bill, which included \$10 million in annual discretionary funding.<sup>178</sup> Despite Section 2501 receiving funding increases in the past in order to address discrimination faced by minority farmers, the current program funding authorization is the same as it was nearly three decades ago.<sup>179</sup> Prices in 2018 are 92.12 percent higher than they were in 1990.<sup>180</sup> Further, the U.S. dollar experienced an average inflation rate of 2.36 percent per year between 1990 and 2018.<sup>181</sup> In other words, \$10 million in 1990 is equivalent in purchasing power to approximately \$19.2 million in 2018.<sup>182</sup>

The 2018 Farm Bill promotes outreach programs that appeal to three groups: minority, veteran, and female farmers.<sup>183</sup> However, the outreach program is only one program, limited in funding, and designed to help three categories of disadvantaged farmers without expanding the budget allocation. Since 1982, minority farmers have experienced a loss of almost 1.5 million acres of farmland.<sup>184</sup> Although well-intentioned, the Farm Bill’s outreach programs are significantly underfunded and act as a quick fix by the government, which attempts to gloss over unsolved diversity problems in United States agriculture.

Allocating funds for urban agriculture through federal programs other than the Farm Bill may spur the resurgence of black farmers. More federal programs would create additional

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<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *See Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers (Section 2501)*, *supra* note 173.

<sup>180</sup> CPI INFLATION CALCULATOR, <http://www.in2013dollars.com/us/inflation/1990?amount=25000>; then input 2018 as the end year (last visited Jan. 4, 2019) [<https://perma.cc/533E-W3JG>].

<sup>181</sup> *Id.*

<sup>182</sup> *See id.*

<sup>183</sup> *Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers (Section 2501)*, *supra* note 173.

<sup>184</sup> Comm. on Gov’t Operations, *supra* note 29, at 8.

streams of funding open to minority farmers.<sup>185</sup> Urban agriculture would help eliminate food deserts in underserved communities.<sup>186</sup> Additionally, incentivizing urban agriculture aids in the betterment of the public as a whole.<sup>187</sup>

In 1974, the Federal Government created the Community Development Block Grant (“CDBG”) program.<sup>188</sup> The CDBG program’s purpose is to help cities and states meet the needs of low and middle-income residents by providing better housing, suitable living spaces, and enhancing these resident’s economic opportunities.<sup>189</sup> Integrating urban agriculture into similar federal and state programs may also help lead to the revival of black farmers.

Though Farm Bill programs target organizations rather than individual farmers, individual farmers can compete for microloans.<sup>190</sup> These microloans focus on aiding small, new, and unique farms, including “farms participating in direct marketing and sales such as farmer’s markets.”<sup>191</sup> Microloans may be used in two ways: (1) to directly purchase a farm or (2) to directly operate a farm.<sup>192</sup> The maximum loan amount for a microloan is \$50 thousand.<sup>193</sup> Direct farm microloans can make down payments on land, build or repair structures, or purchase soil.<sup>194</sup> Direct operating microloans can purchase the capital assets necessary to operate a farm, such as tools, feed, livestock, and other equipment.<sup>195</sup> Repayment of a microloan depends on the type of loans received.<sup>196</sup> Direct Ownership microloans have a maximum

<sup>185</sup> See Mersol-Barg, *supra* note 144144, at 314 (stating that Farm Bill improvements require “crafting programs that are flexible enough to meet community needs and determine how much federal supports these programs require[d]”).

<sup>186</sup> *Id.* at 288–89.

<sup>187</sup> *See id.*

<sup>188</sup> *Community Development Block Grant Program – CDBG*, HOUSING & URB DEVELOPMENT, [https://www.hud.gov/program\\_offices/comm\\_planning/communitydevelopment/programs](https://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs) (last visited Mar. 29, 2019). [<https://perma.cc/C7BK-P7NK>].

<sup>189</sup> *Id.*

<sup>190</sup> *Farm Loans*, *supra* note 153.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Farm Loans*, *supra* note 153.

term of twenty-five years.<sup>197</sup> The repayment period for the Direct Operating Microloan differs depending upon the particular loan's purpose but typically will not exceed seven years.<sup>198</sup>

Urban farming is an expensive venture.<sup>199</sup> Urban producers must spend money to address different challenges than non-urban producers, particularly those related to resource and nuisance concerns.<sup>200</sup> Microloans geared specifically toward minority farmers that include reduced interest rates would help black farmers combat the high startup costs associated with owning and operating urban farms.

*C. Educating a New Demographic of Farmers: "Land is the basis for Freedom, Justice, and Equality"*

In 1963, Malcolm X delivered his *Message to the Grass Roots* speech.<sup>201</sup> Revolution is "based on land," he said.<sup>202</sup> "Land is the basis for freedom, justice, and equality."<sup>203</sup> By this, he meant that land ownership affords opportunities to black Americans that were not traditionally given to them. Education of African American youth in topics such as land ownership and modern agricultural techniques is imperative to the survival of the black farmer. A majority of black farmers fall between the 49–64 age range and live in the Southeast.<sup>204</sup> An opportunity to expand urban farming among younger African Americans in both metropolitan and suburban areas of the Midwest and West is a step in the right direction.

An additional feature of the 2018 Farm Bill provides a financial stimulus to the nation's Historically Black Colleges

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<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> See Oset Babur, *Is Boston the Next Urban Paradise*, THE GUARDIAN (Apr. 16, 2017), <https://www.theguardian.com/sustainable-business/2017/apr/16/boston-organic-food-farming-agriculture-startups> [<https://perma.cc/L2N9-TZXQ>].

<sup>200</sup> See Flack, *supra* note 17.

<sup>201</sup> Malcolm X, *Message to the Grass Roots* (Nov. 10, 1963), available at <http://xroads.virginia.edu/~public/civilrights/a0147.html> [<https://perma.cc/J9JP-ZLQC>].

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> See 2007 Census, *supra* note 8; see also Comm. on Gov't Operations *supra* note 29, at 8.

and Universities (“HBCUs”).<sup>205</sup> The Farm Bill will specifically aid Black land-grant universities,<sup>206</sup> like North Carolina A&T and Florida A&M University, which focus on agriculture and technical sciences.<sup>207</sup> The newest version of this bill eliminates a “decades-old provision,” which only permitted land-grant HBCUs to rollover 20 percent of federal funding that was not used in a calendar year.<sup>208</sup> Such a rule did not apply to “predominantly white land-grants” universities.<sup>209</sup> HBCUs will now be able to accumulate whatever percentage of federal farm bill funding that was not used in the previous academic school year.<sup>210</sup>

HBCUs can expect to receive at least \$2 million in additional funding for scholarships to attract students over the next five years.<sup>211</sup> The bill also includes \$10 million annually to establish research facilities on at least three HBCU campuses, which are to be selected by the Secretary of Agriculture.<sup>212</sup> With these additional funds, HBCUs will have the opportunity to conduct research, implement new programs, and grant scholarships designed to recruit a younger generation of black farmers.

## CONCLUSION

Simply legalizing urban agriculture is not sufficient enough to “promote equity and justice” to combat the disproportionate

<sup>205</sup> Donna M. Owens, *Congress Passes Farm Bill That Will Help Black Farmers and HBCUs*, ESSENCE (Dec. 19, 2018), <https://www.essence.com/news/congress-passes-farm-bill/> [<https://perma.cc/RP82-PB6F>]; see also Kimberly Hefling, *Farm Bill to Boost Historic Black Colleges, Universities* POLITICO (Dec. 13, 2018), <https://www.politico.com/newsletters/morning-education/2018/12/13/farm-bill-to-boost-historically-black-colleges-universities-454662> [<https://perma.cc/5Z48-YYY5>].

<sup>206</sup> Hefling, *supra* note 205.

<sup>207</sup> Agriculture is America, *19 Historically Black Land-Grant Universities Commemorate 125<sup>th</sup> Anniversary of 1890 Morrill Act*, PR NEWSWIRE (Apr. 23, 2015), <https://www.prnewswire.com/news-releases/19-historically-black-land-grant-universities-commemorate-125th-anniversary-of-1890-morrill-act-300071176.html> [<https://perma.cc/FZ2M-YPC4>].

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *See id.*

<sup>211</sup> *See id.*

<sup>212</sup> *Id.*

number of black farmers in this country.<sup>213</sup> “Creating incentive zones for certain types of UA [urban agriculture] practices is not the same as creating supportive policies” that encourage the existence and evolution of diverse urban farming programs specifically designed to help black farmers.<sup>214</sup> Currently, major cities are responsible for the most significant developments of urban agriculture programs and policies.<sup>215</sup> In contrast, comprehensive urban agriculture programs at the federal level need to be largely improved. The federal government has failed black farmers. Historically, federal agencies, like the USDA, discriminated against black farmers by failing to give these individuals the same opportunities afforded to their white farmer counterparts.<sup>216</sup> The *Pigford* court went so far as to say:

Forty acres and a mule. The government broke that promise to African American farmers. Over one hundred years later, the USDA broke its promise to Mr. James Beverly...Because he was African American, he never received that loan. He lost his farm because of the loan that never was. Nothing can completely undo the discrimination of the past or restore lost land or lost opportunities to Mr. Beverly or to all of the other African American farmers whose representatives came before this Court. Historical discrimination cannot be undone... But the Consent Decree represents a significant first step. A first step that has been a

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<sup>213</sup>Alana Siegner, Jennifer Sowerine & Charisma Acey, *Does Urban Agriculture Improve Food Security? Examining the Nexus of Food Access and Distribution of Urban Produced Foods in the United States: A Systematic Review*, *SUSTAINABILITY* 10, no. 9: 2988, 2018 at 16.

<sup>214</sup> *Id.*

<sup>215</sup> See e.g., ARTICLE 89 – URBAN AGRICULTURE, §§ 89-1-15, (Dec. 20, 2013), <http://www.bostonplans.org/getattachment/a573190c-9305-45a5-83b1-735c0801e73e> [<https://perma.cc/4C76-4AC4>] (stating that the “purpose of this Article is to establish zoning regulations for the operation of Urban Agriculture activities... in the City of Boston”; Hand, *supra* note 23, at 502 (stating that “[o]rganizations like the Detroit Black Food Security Network (made official in 2006)...launch a variety of small urban farms and community gardens”).

<sup>216</sup> See *Pigford*, 185 F.R.D. at 112–13.

long time coming, but a first step of immeasurable value.<sup>217</sup>

As the court stated in *Pigford*, nothing can undo the discriminatory practices rooted in our nation's history.<sup>218</sup> What can change, however, is the prospective treatment of minority farmers. Although the 2018 Farm Bill includes provisions for minority farmers, the bill's allocation of funding to minorities is not aggressive enough to combat the disappearance of black farmers. The disproportionate number of African American farm operators, along with the vast wealth gap disparity between black and white farm operators, is alarming.

Urban farms have an important role to play within American society.<sup>219</sup> Urban agriculture holds the promise of boosting food access in underserved communities, providing new opportunities for local business growth, and developing knowledge and education about healthy eating.<sup>220</sup> Urban farms can be a source of fresh produce for neighborhoods, local restaurants, shops, as well as an opportunity for community-supported enterprises to fill valuable educational and social roles. Urban farming would lead to a better future for minority farmers because, as a practice, it allows individuals to serve their communities while simultaneously promoting minority enterprise. Furthermore, urban farming fosters "dialogue between the localized and situated, and national and overarching food systems."<sup>221</sup>

Education about innovation in farming is critical. Minorities must be informed about federal farming programs that exist in order to venture into a new and unfamiliar industry. Currently, black farmers make up less than 2 percent of the U.S. agricultural industry.<sup>222</sup> Urban farming will appeal to a younger demographic of minorities and push the black farming demographic out from the Southern states<sup>223</sup> and into major cities in other regions. President Trump's tariffs, combined with the low

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> See Siegner *supra* note 213, at 21.

<sup>220</sup> *See id.*

<sup>221</sup> *See id.*

<sup>222</sup> 2012 Census, *supra* note 6.

<sup>223</sup> *Id.*

percentage of aging black farmers without a new wave of younger farmers to replace them, presents a crucial problem.<sup>224</sup> Programs must address this issue through their design and implementation or black farmers will face a questionable fate. Without federal and local governments quickly moving to address these concerns, the black farmer will cease to exist. Based on the nation's history of reinforcing unjust racial caste structures, this is not a risk that America can leave to chance or afford to take.

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<sup>224</sup> Countryman, *supra* note 1; *see also* 2012 Census, *supra* note 6.