

GOOD INTENTIONS FALL SHORT: WHY THE SOUTHEAST ASIAN COMMUNITY IS PRECLUDED FROM OBTAINING FARM LOANS

I. INTRODUCTION

It is increasingly common to see the words “pot growers” and “Southeast Asians” linked in the news today.¹ The cultivation of marijuana has become prevalent among Southeast Asian farmers in California.² There has been an increase in illegal marijuana farms across the San Joaquin Valley of California (“Central Valley”) because of the changes in medical marijuana laws and the desperation of Southeast Asian farmers who have had a difficult time adapting their skills to the area.³ This surge in illegal marijuana cultivation has diminished the Central Valley’s agricultural reputation.⁴

The majority of Southeast Asian farmers are refugees who are uneducated and speak little to no English, negatively impacting their ability earn a living.⁵ While a high percentage of Southeast Asians rely on government assistance,⁶ some are farmers operating small family

¹ Gosia Wozniacka, *Laotians Top Growers of Marijuana on California Farms*, NW. ASIAN WKLY., Feb. 16, 2013, at 1-3, available at 2013 WLNR 7515996; Associated Press, *CA Pot Farms Target of Crackdown*, S.F. GATE, Sept. 26, 2012, <http://www.sfgate.com/crime/article/CA-pot-farms-target-of-crackdown-3897664.php>. See generally Staff Reports, *Illegal Marijuana Grow Raided Today; Four Arrested, 206 Plants Seized*, CHICOER NEWS, Aug. 5, 2014, http://www.chicoer.com/news/ci_26281681/illegal-marijuana-grow-raided-today-four-arrested-206 (arresting only people with last names common to Southeast Asians).

² Wozniacka, *supra* note 1, at 1; Associated Press, *supra* note 1.

³ Wozniacka, *supra* note 1, at 1-2. See Mark Arax, *As Prices Fall, Farmers Turn to Illegal Cash Crops*, L.A. TIMES, May 12, 2004, at 3, available at 2004 WLNR 19749137 [hereinafter Arax, *Illegal Cash Crops*].

⁴ See Associated Press, *supra* note 1.

⁵ Arax, *Illegal Cash Crops*, *supra* note 3, at 3.

⁶ Wozniacka, *supra* note 1, at 2; Arax, *Illegal Cash Crops*, *supra* note 3, at 3.

farms which cultivate su choy, ong choy, basil, cucumber, squash, and a variety of eggplants to sell at farmers markets.⁷

The operation of small family farms has reduced poverty for some members of this community; however, the profits from selling produce often do not cover the cost of the farm leases or living expenses.⁸ Additionally, when some Southeast Asian farmers begin to make a meager profit, their farmlands are sold to developers to build residential communities.⁹ At that point, they are left with the challenge of searching for a new plot of land to farm and adjusting to the new soil and climate, depending on the region to which they relocate.¹⁰ Most of these small family farmers are dually employed, performing other types of work during the day and tending to their farms in the evening to support their farming business.¹¹ Even with both sources of income, the money earned is insufficient to make ends meet.¹² Despite the struggles that Southeast Asian farmers have faced, they have contributed to the Central Valley's economy by introducing specialty crops into the market.¹³ Such crops include ong choy, bok choy, and Chinese eggplant, and have been the main source of produce for the Central Valley's Southeast Asian communities.¹⁴

A shift occurred, however, with the legalization of medical marijuana.¹⁵ Since qualified patients of medical marijuana are

⁷ Arax, *Illegal Cash Crops*, *supra* note 3, at 1; Nat'l Inst. of Food and Agric., U.S. Dep't of Agric., *Sustainable Econ. and Envtl. Dev. (SEED) Southeast Asian Farmer Entrepreneur Program – Hmong Am. P'ship*, REEIS.USDA.GOV, <http://www.reeis.usda.gov/web/crisprojectpages/0229308-sustainable-economic-and-environmental-development-seed-southeast-asian-farmer-entrepreneur-program.html> (last visited Nov. 17, 2014) [hereinafter Nat'l Inst. of Food and Agric., *Hmong Am. P'ship*].

⁸ Arax, *Illegal Cash Crops*, *supra* note 3, at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.*

¹³ Jennifer Sowerwine & Christy Getz, *The Changing Face of California Agric.: Identifying Challenges and Providing Opportunities for Southeast Asian and Other Minority Farmers*, RURAL CONNECTIONS, 2011, at 26, available at http://wrdc.usu.edu/files/publications/publication/pub__900409.pdf.

¹⁴ Arax, *Illegal Cash Crops*, *supra* note 3, at 1.

¹⁵ See Compassionate Use Act of 1996 §11362.5, HEALTH & SAFETY (2003), available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0401-0450/sb_420_bill_20031012_chaptered.html (beginning November 6, 1996, medical marijuana law permits "seriously ill residents" to use and plant medical marijuana

permitted to cultivate a certain amount of marijuana plants on their own land,¹⁶ Southeast Asian farmers took advantage of this opportunity;¹⁷ they turned to cultivating marijuana plants as cash crops.¹⁸ For Southeast Asian refugees living in poverty and dependent upon government assistance, a marijuana farm among legitimate fruits and vegetables is a feasible method to make quick money and climb the economic ladder.¹⁹ As a result, a large amount of marijuana plants are hidden among the rows of cherry tomatoes, Chinese bitter melon, su choy, kohlrabi, daikon, and Thai chili, to be sold as an illegal cash crop, and not for medicinal purposes.²⁰

Cities and counties have noticed an increase in marijuana grown on agricultural land, as well as an increase in armed robberies and violence near these sites.²¹ The danger involved in cultivating marijuana led federal and local law enforcement agencies to implement Operation Mercury in March of 2012, in order to eradicate marijuana farms in the Central Valley.²² From the time that Operation Mercury was first implemented up until January 2014, there have been approximately a half-million marijuana plants confiscated, yet only eighty-four criminal defendants were federally prosecuted in Fresno County.²³ A number of people caught during this operation have been released without prosecution and with no explanation.²⁴

without criminal liabilities so long as the number of plants does not fall below either six mature plants, twelve immature plants, or one half pound of processed marijuana).

¹⁶ See Compassionate Use Act §11362.5, at 1 (setting guidelines for cultivation).

¹⁷ Associated Press, *supra* note 1.

¹⁸ See *id.* (cultivating marijuana to make money); Arax, *Illegal Cash Crops*, *supra* note 3, at 1.

¹⁹ See Wozniacka, *supra* note 1, at 2; Arax, *Illegal Cash Crops*, *supra* note 3, at 1, 3.

²⁰ See Associated Press, *supra* note 1.

²¹ See Press Release, Drug Enforcement Admin., Operation Mercury Targets Large-Scale Agric. Marijuana Grows in Six Cent. Valley Counties: More than 400,000 Plants Eradicated Since March 2012 (Sept. 26, 2012), *available at* <http://www.dea.gov/divisions/sf/2012/sf092612a.shtml> (last visited Nov. 17, 2014).

²² See *generally id.* (explaining that marijuana farms have traps, armed guards, and guns have been seized from these farms).

²³ See Press Release, Benjamin B. Wagner, The U.S. Attorney's Office, Eastern District of California, Operation Mercury Cases (Jan. 6, 2014), *available at* http://www.justice.gov/usao/cae/news/docs/2014/2014_01/01-06-14Marijuana.html (last visited Nov. 17, 2014) (stating that Phonpaseuth Phaphilom, a Laotian man, plead guilty to conspiring to cultivate marijuana grown on an agricultural parcel in Southwest Fresno).

²⁴ Wozniacka, *supra* note 1, at 3.

Preventative measures, such as granting agricultural subsidies to Southeast Asian farmers, need to be employed as a method to halt this trend of illegal marijuana cultivation. Southeast Asian farmers are beneficial to the community and contribute to the economy by bringing a bountiful variety of plants into the Central Valley.²⁵ There are currently government programs that aid other groups of disadvantaged people.²⁶ Some of these programs, such as those which create federal farm subsidies, should be amended to include Southeast Asian farmers to deter illegal marijuana grows. The federal government has implemented farm subsidies that are geared toward helping minority farmers, but most subsidies have not reached the Southeast Asian farmers in the Central Valley.²⁷ For example, in 2012, the United States Department of Agriculture (“USDA”) census showed that the majority of farmers who received farm subsidies to buy or operate farmlands are from states in the Appalachian Mountains region.²⁸ Since the inception of these farm subsidies, Southeast Asian farmers, as well as a vast number of the general public, have been unaware of the subsidies’ existence.²⁹

This Comment will show that agricultural subsidy laws need to be revised to provide much-needed assistance to Southeast Asian farmers. Modification of these laws would support the self-sufficient farm operations of Southeast Asians, while enhancing their economic standing and reducing their dependency on welfare and marijuana cultivation. Part II of this Comment will explore the history of the Southeast Asians’ journey to the United States and the problems they faced farming on American soil. Part III will discuss the current

²⁵ Sowerwine & Getz, *supra* note 13, at 26.

²⁶ See *Benefits, Grants, and Loans for Citizens*, USA.GOV, <http://www.usa.gov/Citizen/Topics/Benefits.shtml> (last visited Nov. 14, 2014) (informing the public about different types of benefits available from the government).

²⁷ See Nat’l Sustainable Agric. Coal., *What’s at Stake: Support for Socially Disadvantaged Producers*, NSAC’S BLOG (Nov. 13, 2012), <http://sustainableagriculture.net/blog/whats-at-stake-2501/> [hereinafter Nat’l Sustainable Agric. Coal., *Socially Disadvantaged Producers*]; Nat’l Sustainable Agric. Coal., *Are USDA Microloans Reaching Farmers Across the Country?*, NSAC’S BLOG (Nov. 25, 2013), <http://sustainableagriculture.net/blog/microloan-fy13-data-analysis/> [hereinafter Nat’l Sustainable Agric. Coal., *Microloans Reaching Farmers*] (informing that minorities are still not aware of the subsidies).

²⁸ Nat’l Sustainable Agric. Coal., *Microloans Reaching Farmers*, *supra* note 27.

²⁹ See *id.* (establishing that farm program still needs improvement in informing minorities about the available assistance).

federal farm subsidy programs. Part IV will analyze the obstacles for Southeast Asians when attempting to attain the benefits of farm subsidies. Part V will advocate for changes to the Agricultural Act of 2014 in order to provide Southeast Asians an opportunity to obtain farm subsidies and ultimately deter them from resorting to marijuana cultivation and government assistance.

II. FLEEING WAR AND FACING NEW CHALLENGES

A. *Contributions Not Forgotten: the Vietnam War Created Large-Scale Immigration from Southeast Asia*

Most Southeast Asian refugees that fled to the United States are either of Cambodian, Laotian, or Vietnamese descent.³⁰ They came to the United States around 1975, fleeing from war-torn countries after the Vietnam War.³¹ The Central Intelligence Agency had requested the help of Laos and Cambodia to prevent the fall of those countries to communist rule; however, this was kept secret from the American public because the Vietnam War faced a wealth of criticism.³² The Hmong lived in Laos and were recruited as soldiers to fight alongside American forces, gather information, and assist American pilots whose

³⁰ SOUTHEAST ASIA RES. ACTION CTR, UNTOLD STORIES OF THE FORECLOSURE CRISIS: SOUTHEAST ASIAN AMERICANS IN THE CENT. VALLEY 3 (Apr. 2011), available at

http://www.searac.org/sites/default/files/SEARAC_CRISIS_REPORT_2011_Final.pdf (including Southeast Asian Americans in the Central Valley from “the following ethnic and language groups: Cambodia: Cham (a Muslim minority group), Khmer or Cambodian, Khmer Loeu or Highland Khmer[;] Laos: Hmong or Mong, Lu Mien or Mien, Khmu, Lao or Lao Loum or Lowland Lao, Taidam[;] Vietnam: Khmer. . .[.] Vietnamese.”).

³¹ KHATHARYA UM, OUR JOURNEYS, OUR COMMUNITIES: SOUTHEAST ASIANS IN AM. HISTORY 7 (2006), available at

https://www.museumca.org/wgolessons/pdf/lesson3/OMCA_WGO_Lesson3_KUessay.pdf. See Mark E. Pfeifer, *Hmong Americans*, THE NEW FACE OF ASIAN PACIFIC AM.: NUMBERS, DIVERSITY, & CHANGE IN THE 21ST CENTURY, 2003, available at <http://www.asian-nation.org/hmong.shtml> (last visited Nov. 17, 2014).

³² See UM, *supra* note 31, at 5, 6 (keeping Laos and Cambodia’s involvement in the war from American public to keep the country’s involvement neutral); William M. Leary, *CIA Air Operations in Laos, 1955-1974: Supporting the Secret War*, 1999-2000, available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/winter99-00/art7.html> (last updated Jun. 07, 2008) (establishing that Laos is an independent state and if it falls into a communist regime, then other bordering countries will follow).

planes had been shot down.³³ After the fall of Saigon in South Vietnam, the Southeast Asians who assisted the Americans in the fight against North Vietnam fled the country for fear of persecution.³⁴ The South Vietnamese citizens who remained behind soon learned that the new communist government required its citizens to provide cheap labor and spy on each other; as a result, many decided to leave their homeland.³⁵

During the mid-1970's, Southeast Asians immigrated to the United States either as refugees or children of refugees, sponsored by American families.³⁶ Those who arrived in America sought shelter and were granted asylum.³⁷ Southeast Asian refugees arrived and lived in different states throughout the country.³⁸ Many immigrated to California, Texas, and Minnesota, which are now the primary states for Southeast Asian refugee populations.³⁹ Soon, California became the state with the largest population of Southeast Asian farmers who immigrated to America with their agrarian roots and skills.⁴⁰

³³ Leary, *supra* note 32.

³⁴ UM, *supra* note 31, at 7.

³⁵ Donald Walker, *A Short History of Southeast Asian Immigration to San Joaquin Cnty.*, THE SAN JOAQUIN HISTORIAN, Summer 2003, at 4, available at <http://sanjoaquinhistory.org/documents/HistorianNS17-2.pdf>.

³⁶ Walker, *supra* note 35, at 3. See generally Pfeifer, *supra* note 31 (fleeing as refugees, Southeast Asians were placed in different states by settling agencies).

³⁷ Barbara W.K. Yee, *Health and Health Care of Southeast Asian Am. Elders: Vietnamese, Cambodian, Hmong, and Laotian Elders*, STANFORD.EDU, 1, <http://web.stanford.edu/group/ethnoger/southeastasian.html> (last visited Nov. 17, 2014). See Dwi Famia, *Southeast Asian Cmty. Report Exec. Summary*, VIRTIS.ORG, at 1 (Sept. 14, 2013), <http://virtis-ptsd.org/SOUTHEAST%20ASIAN%20COMMUNITY%20REPORT%20EXECUTIVE%20SUMMARY.pdf> (last visited Nov. 26, 2014) (coordinating refugee asylum and resettlement programs).

³⁸ See Yee, *supra* note 37.

³⁹ See generally Yee, *supra* note 37 (providing that all the different ethnic groups reside in either California, Texas, and Minnesota).

⁴⁰ See generally Nat'l Sustainable Agric. Coal., *2012 Census Drilldown: Minority & Women Farmers*, NSAC'S BLOG (Jun. 03, 2014), <http://sustainableagriculture.net/blog/census-drilldown-sda/> [hereinafter Nat'l Sustainable Agric. Coal., *Minority & Women Farmers*] (showing on the map that majority of Asian farmers are in California).

*B. Southeast Asia Farming Style: What They Have
Always Known and Done*

Before arriving in the United States, Southeast Asians farmed for survival, and on a small-scale, in Laos, Cambodia, and Vietnam.⁴¹ Farmers in Southeast Asia owned the land they farmed communally or tribally with other farmers.⁴² For example, the small Hmong villages located on the mountainsides of Laos have headmen who make decisions impacting their entire communities.⁴³ Each headman, along with one man from every family, will typically travel between fifteen and thirty miles from the village to seek out fertile hillsides to clear and farm.⁴⁴ Many of these farmers do not have to pay for the land that they farm.⁴⁵ It is only required that they pay a small tax to the government, which usually consists of payments in rice or a small amount of money.⁴⁶

The climate, periodic fall of volcanic ash, and heavy rainfall make the soil in the Southeast Asian countries moist and ideal for farming.⁴⁷ Due to the limited availability of agricultural technology for assistance, these farmers used the natural resources available to them when planning where, when, how, and what to plant.⁴⁸

In Southeast Asia, farmers utilize inter-planting, a technique which involves planting a variety of crops in the same field.⁴⁹ They also incorporate shift cultivation, a method that seasonally alternates between planting crops and leaving fields fallow.⁵⁰ Southeast Asian

⁴¹ Ana Doris Capistrano & Gerald G. Marten, *Agric. in Southeast Asia*, in TRADITIONAL AGRIC. IN SOUTHEAST ASIA: A HUMAN ECOLOGY PERSPECTIVE 6, 7, available at <http://gerrymarten.org/traditional-agriculture/pdfs/Traditional-Agriculture-chapter-01.pdf>.

⁴² *Id.* at 14. See interview with Chongyee Xiong, in Fresno, Cal. (Jul. 5, 2014).

⁴³ See interview with Xiong, *supra* note 42.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* Charles Hirschman & Sabrina Bonaparte, *Population and Soc'y in Southeast Asia: A Historical Perspective*, in DEMOGRAPHY OF SOUTHEAST ASIA 6 (Linda Williams & Phillip Guest, eds. 2012), available at <http://faculty.washington.edu/charles/new%20PUBS/A120.pdf>.

⁴⁷ Capistrano & Marten, *supra* note 41, at 6.

⁴⁸ *Id.* at 7.

⁴⁹ *Id.* at 13. See interview with Xiong, *supra* note 42.

⁵⁰ Capistrano & Marten, *supra* note 41, at 13; interview with Xiong, *supra* note 42. *Fallow*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/fallow> (last visited Oct. 25, 2014) (“usu[ally] cultivated land

countries do not have readily available agricultural chemicals so farmers there begin by cutting down and burning a section of the forest, using the ash as fertilizer for the soil.⁵¹ A field may be used for a limited number of years and abandoned when there is “excessive soil acidity, a decline in soil fertility or invasion by weeds, insects, or other pests.”⁵²

In these developing countries, farmers generally lack the modern machinery used to cut down trees or to clear the space for farming;⁵³ therefore, the tools available to clear, cut, harvest, and prepare the land are very simple.⁵⁴ Farmers use a “dibble stick to punch holes into the soil before dropping in the seeds,” and an ax, spear head, hoe, scythe, and knife to clear the area to grow Brussels sprout, bitter melon, bird pepper, cabbage, kale, bean sprouts, watercress, and eggplant.⁵⁵ This lack of technology increases the amount of manual labor required, forcing farmers to rely on a technique called labor exchange, or reciprocity, where the men and women in the village help one family clear a spot for farming and then aid the next family, or exchange a portion of their crops, for the help of others.⁵⁶ Unfortunately, the methods successfully employed by these farmers in their native lands for centuries have not translated well to farming in America.⁵⁷

C. The Challenge of Transferring Southeast Asia Farming Style to America

For most of their lives, Southeast Asian refugees have lived as farmers in rural areas.⁵⁸ For many, farming is the only skill they have that can be made useful in a “modern capitalistic society.”⁵⁹ In the

that is allowed to lie idle during the growing season . . . the tilling of land without sowing it for a season”).

⁵¹ Capistrano & Marten, *supra* note 41, at 13. See interview with Xiong, *supra* note 42.

⁵² *Id.*

⁵³ See interview with Xiong, *supra* note 42.

⁵⁴ Capistrano & Marten, *supra* note 41, at 13. See interview with Xiong, *supra* note 42.

⁵⁵ *Id.*

⁵⁶ See Sowerwine & Getz, *supra* note 13, at 27 (relying on labor reciprocity to farm). See generally interview with Xiong, *supra* note 42 (relying on scythe and other simple tools to clear land for farming and requiring teamwork to plant and harvest).

⁵⁷ See *infra* Part II.C.

⁵⁸ Pfeifer, *supra* note 31.

⁵⁹ *Id.*

early 1980's, an influx of Southeast Asian refugees came to the Central Valley.⁶⁰ Some settled on small parcels of land and attempted farming in the Central Valley clay soil.⁶¹

Southeast Asian farmers had never farmed in this type of soil and encountered great difficulties growing fruits and vegetables here.⁶² Their home country was lush, the soil was rich, and planting was done very differently.⁶³ In America, Southeast Asian farmers did not have access to the quality of land they were accustomed to working in Southeast Asia.⁶⁴ Upon arriving, they discovered the need to implement irrigation drip systems, use plastic row covers, or practice fumigation.⁶⁵ Additionally, the land and government in America brought a complexity of marketing systems and regulatory restrictions that had to be strictly adhered to, such as safety and sanitary protocols, mandatory training, and the procurement of farm insurance.⁶⁶ Now operating under the jurisdiction of the Food and Drug Administration, Southeast Asian farmers had to expand their close-knit community-based farming operations to include collaboration with farm advisors that could help ensure that their produce complied with federal standards.⁶⁷ Meeting such standards involved mastering pest control

⁶⁰ J. Stumbos, *Southeast Asian Refugees Learn Modern Farming Methods*, CALIFORNIA AGRICULTURE (Mar. – Apr. 1993),

<http://californiaagriculture.ucanr.org/landingpage.cfm?i=i&article=ca.v047n02p9>.

⁶¹ *Id.*; Heidi Tarver, *Clay Soil: The Good, the Bad, and the Just Plain Annoying*, BERKELEYGARDENCOACH.COM, <http://berkeleygardencoach.com/2011/04/04/clay-soil-the-good-the-bad-and-the-just-plain-annoying/> (last visited Nov. 11, 2014, 4:23 PM) (noting clay soil is composed of clay, sand and silt particles. Soil that contains about 40% of clay particles is considered clay soil. This type of soil becomes dense and sticky when wet and does not drain well. However, when it dries it forms a hard crust which is difficult to penetrate).

⁶² Stumbos, *supra* note 60.

⁶³ *Id.*; *see generally* interview with Xiong, *supra* note 42 (stating that soil is dough-like, not sand-like and all that the farmer needs is rain to make plants grow; no fertilizer is needed). *See supra* Part II.A.

⁶⁴ Stumbos, *supra* note 60.

⁶⁵ *Id.*

⁶⁶ *Id.*; Jeannett E. Warnert, *A Lifeline to Fresno's Southeast Asian Farmers, Richard Molinar Retires in June*, SMALL FARM NEWS (Jun. 07, 2013), <http://ucanr.edu/blogs/blogcore/postdetail.cfm?postnum=10582> (last visited Nov. 17, 2014). *See* interview with Xiong, *supra* note 42.

⁶⁷ *See generally* Warnert, *supra* note 66 (requiring that farmers comply with OSHA regulations); Brenda Dawson, *Post Tagged: Richard Molinar*, SMALL FARM NEWS (Apr. 06, 2012), <http://sfp.ucdavis.edu/?blogtag=Richard%20Molinar&blogasset=51570> (last visited

techniques and fertilizer applications, which were previously foreign to them in their native countries.⁶⁸ Farm advisors implemented programs, like the “‘Master Farmer’ program, that consisted of workshops, tours of successful farms, and lectures from university experts.”⁶⁹ The trainings involved educating Southeast Asian farmers about food contamination, pest management, personal hygiene, farming techniques, and marketing strategies, in an effort to encourage farms to thrive.⁷⁰

In addition to learning these foreign farming techniques, there were language and cultural barriers.⁷¹ Many of these small-scale farmers required the assistance of translators to understand rules and regulations.⁷² Patti Hang, manager of Vang C. Thao Farms, a Hmong family-run farming operation, stated that the company’s founder depended on his children when he first started farming because, as a first generation immigrant lacking the benefit of a formal education, he did not understand the legal intricacies of farming in the United States.⁷³ The challenges of farm management caused him to delegate to his children the duties of farm management and marketing while he focused on farm labor.⁷⁴ Additionally, they encountered the struggle of having to pass English tests in order to obtain the licenses necessary to purchase and use many pesticides essential to successful farming.⁷⁵

Most Southeast Asian farmers have to work a second job during the day and farm at night in order to pay for their leases, farm machine rentals, seeds, fertilizers, pesticides, utility bills, insurance, and other farm supplies.⁷⁶ Many cannot afford to hire farm hands; instead, farming is a multi-generational effort involving grandparents, parents,

Nov. 26, 2014) (setting up food safety workshops to teach farmers about compliance with Food and Drug Administration regulations).

⁶⁸ Warnert, *supra* note 66.

⁶⁹ Stumbos, *supra* note 60.

⁷⁰ *Id.*; Jeannette E. Warnert, *Delicious, Healthful Strawberries Will be Available Soon at Valley Roadside*, FOOD BLOG (Apr. 12, 2011), <http://ucanr.edu/blogs/blogcore/postdetail.cfm?postnum=4588> [hereinafter Warnert, *Healthful Strawberries*].

⁷¹ Stumbos, *supra* note 60.

⁷² *Id.*

⁷³ See e-mail from Patti Hang, Manager of Vang C. Thao Farms to Mao Lee, San Joaquin Agricultural Law Review (Aug. 22, 2014, 8:54 AM) (on file with author).

⁷⁴ *Id.*

⁷⁵ Interview with Xiong, *supra* note 42.

⁷⁶ See Arax, *Illegal Cash Crops*, *supra* note 3, at 4. See generally Stumbos, *supra* note 60 (farming supplies list).

children, grandchildren, and other relatives.⁷⁷ Moreover, they do not own sophisticated farming equipment, nor do they have the financial capability to employ farm laborers; therefore, it is paramount that the farm operation involve the entire family.⁷⁸ In the United States, the customary farming techniques of Southeast Asians, such as labor exchange or reciprocity without pay, cannot be utilized, as they are illegal.⁷⁹ Without them, the Southeast Asian farmer is placed at an even greater disadvantage.⁸⁰

D. Southeast Asian Farmers' Contributions to American Economy

Despite the inability to obtain funds for farm equipment, land, and farm laborers, Southeast Asian farmers utilized available help and education to adapt to the clay soil and integrate the use of some agricultural chemicals.⁸¹ In turn, they produced an abundant variety of vegetables from their homeland and introduced them to farmers' markets across California.⁸² They harvested eggplants, oriental herbs, lemon grass, mokua, opo, bitter lemon, bok choy, and many other types of herbs and vegetables.⁸³ In addition to oriental vegetables and herbs, Southeast Asian farmers recognized that there was a high demand for strawberries.⁸⁴ As a result, numerous Southeast Asian farmers have successful strawberry farms, despite the fact that strawberry is not a fruit that is farmed in Southeast Asian countries.⁸⁵

⁷⁷ See Arax, *Illegal Cash Crops*, *supra* note 3, at 3 (farming is family operation).

⁷⁸ See generally Capistrano & Marten, *supra* note 48, at 13 (utilizing simple tools).

⁷⁹ Sowerwine & Getz, *supra* note 13, at 27; According to Fair Labor Standards Act, it is a violation of the Act if agricultural workers do not receive minimum wage with the exception that they are immediate family members. See U.S. Dep't of Labor, Fact Sheet #12: Agric. Employers Under the Fair Labor Standards Act (FLSA) (July 2008), available at <http://www.dol.gov/whd/regs/compliance/whdfs12.pdf> (establishing that all agricultural employees are governed by federal law regarding wages and work hours).

⁸⁰ See *supra* notes 76-78.

⁸¹ See *supra* Part II.C.

⁸² Stumbos, *supra* note 60, at 47.

⁸³ *Id.*

⁸⁴ See generally Warnert, *Healthful Strawberries*, *supra* note 70, at 1 (providing an overview of strawberries stands).

⁸⁵ See Arax, *Illegal Cash Crops*, *supra* note 3, at 1 (stating that best strawberries are grown by Southeast Asians). See generally GEORGE M. DARROW, *THE STRAWBERRY: HISTORY, BREEDING, AND PHYSIOLOGY* 113 (1st ed. 1966), available at

http://specialcollections.nal.usda.gov/speccoll/collectionsguide/darrow/Darrow_The

These farmers contributed to the diversity of California's crops by creating a variety of food for California's multi-cultural population and ensuring food security for economically disadvantaged communities.⁸⁶ The total acreage of oriental vegetables doubled over a ten-year period with production of more than 12,600 tons of crops harvested at a value of \$9,600,000.⁸⁷ Southeast Asian farmers have also "improve[d] the local economy by purchasing fertilizers, seeds, plastic, pesticides, backpack sprayers, tractors, rototillers, drip irrigation lines, shovels, hoes, fittings, and other farm equipment."⁸⁸ If Southeast Asian farmers were provided with agricultural government aid and guidance, similar to the education that farm advisors provided regarding the challenges of planting in clay soil, they would continue to prosper and benefit the economy.⁸⁹

III. THE FARM BILLS

A. *History of the Farm Bills*

The farm bill is a massive piece of legislation pertaining to a variety of topics, with titles dating back to the Great Depression and ranging from food to research-based conservation.⁹⁰ This piece of legislation allocates for subsidies in the form of "payments made and other support extended by the United States federal government to certain

Strawberry.pdf (indicating that *fragaria nilgerrensis* is the only berry resembling a strawberry that is grown in Southeast Asia and have poor flavor).

⁸⁶ Sowerwine & Getz, *supra* note 13, at 26.

⁸⁷ *See id.* (dating from 1994-2004 and by 2012 for ten-year period).

⁸⁸ Stumbos, *supra* note 60, at 47.

⁸⁹ *See supra* notes 67-70 and Part II.D.

⁹⁰ Laura Collins, Am. Action Forum, *The 2014 Farm Bill Subsidy Reforms Don't Go Far Enough*, AMERICANACTIONFORUM.ORG (Feb. 07, 2014),

<http://americanactionforum.org/research/the-2014-farm-bill-subsidy-reforms-dont-go-far-enough> (last visited Nov. 2014); Deborah White, *What are U.S. Farm Subsidies?*, ABOUTNEWS.COM,

<http://usliberals.about.com/od/FoodFarmingIssues/a/What-Are-Farm-Subsidies.htm>.

See generally RALPH M. CHITE, CONG. RESEARCH SERV., R43076, THE 2014 FARM BILL (P.L.113-79): SUMMARY AND SIDE-BY-SIDE, at Summary, CONTENTS, 6-19 (2014) (indicating that farm bill contain a variety of topics and the headings for each sections describe each title). The Agricultural Act of 2014 contains twelve titles: Title I-Commodities; Title II-Conservation; Title III-Trade; Title IV-Nutrition; Title V- Credit; Title VI-Rural Development; Title VII-Research, Extension, and Related Matters; Title VIII-Forestry; Title IX-Energy; Title X- Horticulture; Title XI-Crop Insurance; and Title XII-Miscellaneous. CHITE, *supra* note 90, at Contents.

farmers and agribusiness.”⁹¹ With the onset of the Great Depression in the 1930’s, President Herbert Hoover supported taxing the public, with the benefit of that tax aimed toward farm subsidies.⁹² Thus began the first government subsidy known as the Farm Board Act.⁹³ This was groundbreaking, as the government was now heavily involving itself in agricultural matters for the benefit of the public.⁹⁴

The purpose of the Farm Board Act was to allow the government to intervene by purchasing over-produced wheat and cotton, and paying for the storage of those two crops with the intent to sell them later.⁹⁵ One unintended, yet significant, consequence of this legislation was a dramatic decrease in specialty crop production in favor of the over-production of wheat and cotton, which many farmers felt would qualify them for the new government subsidies.⁹⁶ After President Herbert Hoover’s presidential term expired, President Franklin Roosevelt created the Agricultural Adjustment Act to resolve the problem of wheat and cotton over-production, by paying farmers to cease production of those crops.⁹⁷ In addition, he created the “idea of parity” where the prices are fixed at a rate equivalent to rates during excellent years, so that regardless of whether there is an issue of supply or demand, there will be no side effect to the profit farmers receive in return for their produce.⁹⁸ When the Great Depression ended, the agricultural world was still governed by the “ideas of payments to reduce crops and fixing prices at higher-than-market levels.”⁹⁹

Since the 1930’s the U.S. government has enacted variations of the farm bill¹⁰⁰ and additional historical pieces of farm legislation.¹⁰¹ The

⁹¹ White, *supra* note 90.

⁹² Burton Folsom, Jr., *The Origin of American Farm Subsidies*, THE FREEMAN: IDEAS ON LIBERTY, Apr. 2006, at 34, available at <http://fee.org/files/doclib/0604Folsom.pdf>.

⁹³ *Id.* at 35.

⁹⁴ *See generally id.* (breaking precedents of presidents not taxing for the public).

⁹⁵ *See id.* at 35.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *See, e.g.*, Nat’l Agric. Law Ctr., *U.S. Farm Bills*, NATIONALAGLAWCENTER.ORG, <http://nationalaglawcenter.org/farmbills> (last visited Nov. 2014) (displaying a variation of the farm bill: Agricultural Adjustment Act of 1933, Agricultural Adjustment Act of 1938, Agricultural Act of 1948, Agricultural Act of 1949, Agricultural Act of 1954, Agricultural Act of 1956, Food and Agricultural Act 1965,

farm bill is revised, amended, evaluated, or repealed about every five years.¹⁰² During a congressional hearing to make changes and affirm previous programs within the farm bill, if Congress cannot come to an agreement as to amendments, the measures revert back to permanent laws depending on the title under which they fall.¹⁰³ These permanent laws are “non-expiring agriculture policies that were established by 1938 and 1949-era farm program laws” that are temporarily suspended when new farm bills are implemented.¹⁰⁴ Congress’s purpose for holding onto the permanent laws, although they are archaic and often detrimental to the economy if allowed to control, is to utilize them as an instrument to induce future Congresses to continue evaluating farm programs.¹⁰⁵ Such an evaluation is certainly overdue where it concerns current loan availability for disadvantaged Southeast Asian farmers.

Agricultural Act of 1970, Agricultural and Consumer Protection Act 1973, Food and Agriculture Act 1977, Agriculture and Food Act 1981, Food Security Act 1985, Food, Agriculture, Conservation, and Trade Act 1990, Federal Agriculture Improvement and Reform Act 1996, Farm and Security and Rural Investment Act 2002, Food, Conservation, and Energy Act 2008, and Agricultural Act of 2014).

¹⁰¹ See, e.g., *id.* (displaying additional historical farm legislation: Soil Conservation and Domestic Allotment Act of 1935 (Soil Erosion Act), Soil Conservation and Domestic Allotment Act of 1936, Steagall Amendment of 1941 (Steagall Commodity Credit Act), Commodity Credit Corporation Charter Act of 1948, Food and Agricultural Act of 1962, Agricultural Act of 1964, Omnibus Budget Reconciliation Act of 1982, Extra-Long Staple Cotton Act of 1983, Dairy and Tobacco Adjustment Act of 1983, Agricultural Programs Adjustment Act of 1984, Technical Corrections to Food Security Act of 1985 Amendments, Food Security Improvements Act of 1986, Omnibus Budget Reconciliation Act of 1987, Omnibus Budget Reconciliation Act of 1989, Omnibus Budget Reconciliation Act of 1990, Omnibus Budget Reconciliation Act of 1993, and Amendments to the National Wool Act).

¹⁰² RENEE JOHNSON & JIM MONKE, CONG. RESEARCH SERV., RS22131, WHAT IS THE FARM BILL? at Summary (2014); Fact Sheet, Farm Serv. Agency, 2014 Farm Bill 1 (Mar. 2014) (on file with author), *available at* http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140311_insup_en_fbil.html [hereinafter Farm Serv. Agency, 2014 Farm Bill].

¹⁰³ JIM MONKE, CONG. RESEARCH SERV., RL34594, FARM COMMODITY PROGRAMS IN THE 2008 FARM BILL 3 (2008).

¹⁰⁴ Nat’l Ass’n of State Departments of Agric., *Potential Implications of Repealing Permanent Farm Law*, NASDA.ORG (Aug. 12, 2013), <http://www.nasda.org/File.aspx?id=21527>.

¹⁰⁵ *Id.*

B. Credit Title: Loans for Beginning Farmers and Ranchers

The most recent farm bill is called the Agricultural Act of 2014 (“the Act”) and will remain in effect until 2018.¹⁰⁶ The USDA has authorized the Farm Service Agency (“FSA”) to administer the Act.¹⁰⁷ The Credit Title of the Act came about with the inception of the Consolidated Farmers Home Administration Act of 1961.¹⁰⁸ The Consolidated Farmers Home Administration Act of 1961 first came into fruition fifteen years after the Farmers Administration Act of 1946, in response to the evolving agricultural world.¹⁰⁹ Congress was forced to expand the agriculture credit programs to consider modern farming technologies and resources and to concurrently amend prior loans that no longer fulfilled their purpose.¹¹⁰ The Consolidated Farm and Rural Development Act of 1961, originally called the Farmers Home Administration Act of 1961, became the permanent law that authorized the USDA agricultural credit and rural development programs.¹¹¹

The purpose of the Credit Title is to allow the USDA to provide “direct and guaranteed loans to farmers and ranchers who have been denied direct credit by commercial lenders but have the wherewithal to repay the loan.”¹¹² The Credit Title consists of subsections for each of the following: farm ownership loans, farm operation loans, emergency loans, administrative provisions, and miscellaneous.¹¹³ Within these subsections, there are segments designated for farm ownership loans and operating loans, as well as authorized programs that are geared

¹⁰⁶ See Farm Serv. Agency, 2014 Farm Bill, *supra* note 102, at 1.

¹⁰⁷ *Id.* (showing that the Agricultural Act of 2014 contains twelve titles: Title I-Commodities; Title II-Conservation; Title III-Trade; Title IV-Nutrition; Title V-Credit; Title VI-Rural Development; Title VII-Research, Extension, and Related Matters; Title VIII-Forestry; Title IX-Energy; Title X- Horticulture; Title XI-Crop Insurance; and Title XII-Miscellaneous).

¹⁰⁸ See *Curry v. Block*, 541 F.Supp. 506, 510-511 (S.D. Ga. 1982), *aff'd*, 738 F.2d 1556 (11th Cir. 1984) (establishing that the legislation’s name changed to Consolidated Farm and Rural Development Act).

¹⁰⁹ *Id.* at 510.

¹¹⁰ *Id.*

¹¹¹ See *Curry*, 541 F.Supp. at 510-511 (establishing that the Consolidated Farm and Rural Development Act of 1961 is the parent statute whose nature of providing farm loans remain unchanged). CHITE, *supra* note 90, at 12.

¹¹² CHITE, *supra* note 90, at 12.

¹¹³ See Agricultural Act of 2014, Pub. L. No. 113-79, (codified as amended in scattered sections of 7 U.S.C.) (sectioning Credit Title into different sections).

toward helping beginning farmers and ranchers, as well as socially disadvantaged applicants.¹¹⁴

The federal government understands that new farmers and ranchers struggle to find and purchase land, so the USDA created programs with the intent of assisting farmers to buy and operate land, procure farm equipment, and establish credit.¹¹⁵ The FSA, also considered the Lender of First Opportunity, gives farmers who were unable to obtain commercial loans an opportunity to get subsidized farm loans through the federal government.¹¹⁶ The agricultural loans are designed to assist new farmers, or an individual in a protected class that has been discriminated against, regardless of the applicant's identity or individual qualities.¹¹⁷

The FSA offers loans for farm ownership, farm operation, conservation, or emergency.¹¹⁸ There are five different types of loan programs: Direct Farm Ownership, Direct Down Payment, Direct Operation, Direct Guaranteed Farm Ownership, and Microloans.¹¹⁹ Each type of program has its own use.¹²⁰ For example, if a farmer needs help with expanding his or her farm, paying for closing costs, water conservation, or protection, then the farmer should apply for Direct Farm Ownership Loans.¹²¹ If the farmer is interested in purchasing livestock, farm equipment, minor home repairs or farm operating expenses, then the farmer should apply for Direct Operation Loans.¹²² Each of these loans has its maximum loan amount, rates, and

¹¹⁴ U.S. Dep't of Agric., *Farm Loan Programs*, FARM BILL FORUM COMMENT SUMMARY & BACKGROUND, 1-2, http://www.usda.gov/documents/FARM_LOAN_PROGRAMS.pdf (last visited Aug. 19, 2014) [hereinafter U.S. Dep't of Agric., *Farm Loan Programs*]. See FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., YOUR GUIDE TO FSA FARM LOANS 16 (2014), available at http://www.fsa.usda.gov/Internet/FSA_File/fsa_br_01_web_booklet.pdf (last visited Aug. 19, 2014) (assisting farmers who are beginning farmers or socially disadvantaged in borrowing farm loans to own, expand, or start a farm).

¹¹⁵ FARM SERV. AGENCY, *supra* note 114, at 7.

¹¹⁶ *Id.* at 7, 16.

¹¹⁷ *Id.* at 16.

¹¹⁸ *Id.* at 9.

¹¹⁹ Fact Sheet, Farm Serv. Agency, Loans for Beginning Farmers & Ranchers, at 1 (Mar. 2014) (on file with author), available at https://www.fsa.usda.gov/Internet/FSA_File/beginningloansoct14.pdf.

¹²⁰ FARM SERV. AGENCY, *supra* note 114, at 9.

¹²¹ *Id.* at 10.

¹²² *Id.*

terms.¹²³ The applicant may concurrently apply for more than one type of loan, depending on the applicant's need.¹²⁴ Despite the existence of these various loan opportunities, Southeast Asian farmers face significant, and often insurmountable challenges when seeking to secure financial aid for their agricultural endeavors.¹²⁵

IV. OBSTACLES SOUTHEAST ASIAN FARMERS ENCOUNTER IN SECURING LOANS

A. Intent of Credit Title as Social Welfare Legislation

The Credit Title originated from the Bankhead-Jones Tenant Act of 1937, which was additional legislation to the farm bills.¹²⁶ The Bankhead-Jones Tenant Act of 1937 transformed into the Consolidated Farm and Rural Development Act, and is now part of the Credit Title in the Act.¹²⁷ In *Curry v. Block* 541 F.Supp. 506 (1982), a persuasive case out of the Southern District of Georgia, the court held that the Consolidated Farm and Rural Development Act was social welfare legislation to aid farmers who are “underprivileged.”¹²⁸ Social welfare legislation was described as legislation that: 1) imposes “a minimum standard of living”; 2) applies to “a group that falls below the minimum” standard; and 3) establishes programs to assist “that group to reach or approach the minimum standard.”¹²⁹ In *Califano v. Aznavorian* 439 U.S. 170 (1978), it was stated that “social welfare legislation . . . involves drawing lines among categories of people”¹³⁰ Social welfare legislation helps members of the public who are in need, ranging from persons who are unemployed to those who are physically or mentally handicapped.¹³¹

¹²³ *Id.* at 12.

¹²⁴ *Id.* at 10.

¹²⁵ *See infra* Part IV.A.2.

¹²⁶ *See generally* *Curry*, 541 F.Supp. at 510 (establishing that Congress passed the Bankhead-Jones Tenant Act of 1937 which provided for concept of farm loan programs that still remains today).

¹²⁷ *See id.* at 510 (showing statute name changed); Agric. Act of 2014, *supra* note 113.

¹²⁸ *Curry*, 541 F.Supp. at 511.

¹²⁹ Lawrence M. Friedman, *Soc. Welfare Legislation: An Introduction*, 21 STAN. L. REV. 217, 220 (1969), available at 21 STNLR 217.

¹³⁰ *Califano v. Aznavorian*, 439 U.S. 170, 174 (1978).

¹³¹ Friedman, *supra* note 129, at 217.

In *Curry*, the plaintiffs were a class of farmers who had acquired agricultural credit pursuant to the Consolidated Farm and Rural Development Act.¹³² Hostile weather and a depressed economy caused undue financial hardship upon the farmers.¹³³ They turned to the loan programs for help and, when they were denied their rights provided by the Consolidated Farm and Rural Development Act, sought intervention from the court.¹³⁴ The court focused on the history of the government's issuance of farm loans and the legislative objective of helping farmers who had been unsuccessful in obtaining loans from other lenders.¹³⁵ The court cited congressional record regarding the farm loans¹³⁶ which stated that Congress had given the Secretary of Agriculture the power to "the postpone payment of principal and interest on [] loans for farmers hard pressed due to natural disasters."¹³⁷ The court determined that the agricultural credit program served two legislative functions, acting as both social welfare legislation and legislation for high risk farm loan applicants.¹³⁸ The *Curry* court found that the legislature's goal was to keep farms in business because "Congress is demanding that the [FSA] strike a balance between the business nature of the loans and the predominant social welfare nature of the legislation by buying those farmers crippled by circumstances beyond their control a little time to get back on their feet."¹³⁹

The Credit Title came about because the Consolidated Farm and Rural Development Act is the permanent law for this title.¹⁴⁰ The Credit Title is social welfare legislation.¹⁴¹ This title was purposefully created with the intent to alleviate the financial burdens facing new farmers and ranchers and the socially disadvantaged, so they may be

¹³² *Curry*, 541 F.Supp. 506.

¹³³ *Id.* at 509.

¹³⁴ *Id.* at 508-509.

¹³⁵ *Id.* at 509-510.

¹³⁶ *Id.* at 516, 518.

¹³⁷ *Id.* at 519.

¹³⁸ *Id.* at 513.

¹³⁹ *Id.* at 518. The Farmers Home Administration (FmHA) is currently known as Farm Service Agency (FSA). Farm Serv. Agency, U.S. Dep't of Agric., *Agency History*, FARM SERVICE AGENCY, UNITED STATES DEPARTMENT OF AGRICULTURE (Jan. 9, 2008),

<http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=ham-ah>.

¹⁴⁰ CHITE, *supra* note 90, at 12.

¹⁴¹ See *Curry*, 541 F.Supp. at 510, 514 (establishing that farm legislation name changed and farm loans are social welfare legislation); see *supra* note 134.

able to start a farming business and build their credit.¹⁴² The FSA's goal is to ensure that farmers or ranchers build enough credit to attain a commercial loan without the government's assistance.¹⁴³ To achieve that goal, the FSA has implemented different agricultural loan programs with strict eligibility requirements.¹⁴⁴ However, in their current form, such requirements thwart attempts by disadvantaged groups, such as Southeast Asians, to attain farm loans intended for applicants in similar circumstances and undermine the very purpose of the FSA.¹⁴⁵

1. Relevant Eligibility Criteria for Obtaining Farm Loans

There are many factors that the FSA considers when making a determination as to whether an applicant may receive a government loan, but the factors relevant to Southeast Asian farmers require that an applicant be a disadvantaged beginning farmer, a legal resident, have no government debt, submit a business plan, have a credit history, prove an attempt at obtaining a loan, and secure the loan with a lien.¹⁴⁶

The first eligibility factor demands that the applicant be a socially disadvantaged beginning farmer or rancher who began farming less than ten years prior to seeking the loan.¹⁴⁷ A socially disadvantaged farmer or rancher includes an individual that is Asian, Hispanic, a woman, African American, Native American, Alaskan Native, Native Hawaiian, or Pacific Islander.¹⁴⁸ Southeast Asians commonly qualify as both socially disadvantaged farmers and beginning farmers.¹⁴⁹ The term Asian is incredibly broad.¹⁵⁰ There are an estimated 17.3 million residents of Asian descent in America.¹⁵¹ In this context, an individual

¹⁴² FARM SERV. AGENCY, *supra* note 114, at 16.

¹⁴³ *Id.* at 7.

¹⁴⁴ *Id.* at 18-21.

¹⁴⁵ *See generally* Curry, 541 F.Supp. at 511 (establishing that agricultural credit designed to aid farmers who need help).

¹⁴⁶ FARM SERV. AGENCY, *supra* note 114, at 18-21. *See* U.S. Dep't of Agric., *supra* note 114, at 1-2 (establishing eligibility factors to qualify for farm loans).

¹⁴⁷ FARM SERV. AGENCY, *supra* note 114, at 17.

¹⁴⁸ *Id.*

¹⁴⁹ *See id.*

¹⁵⁰ *See generally* KAREN R. HUMES, NICHOLAS A. JONES & ROBERTO R. RAMIREZ, OVERVIEW OF RACE & HISPANIC ORIGIN: 2010, at 3 (Mar. 2011), *available at* <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf> (showing a list of ethnicities as Asian).

¹⁵¹ *See id.* at 6.

of Asian descent originates from Southeast Asian countries, such as India, China, Korea, Philippine Islands, or Pakistan.¹⁵² By 2010, there were 1,174,651 Southeast Asian refugees who immigrated to the U.S.;¹⁵³ however, by 2012, there were only 13,669 Asian farmers.¹⁵⁴ These types of loans would apply to Southeast Asians regardless of how long they have been farming.¹⁵⁵

Another requirement mandates that the applicant must be either a U.S. citizen, national, or resident alien.¹⁵⁶ The Immigration Act of 1965 permitted an influx of immigrants from Southeast Asia after the Vietnam War.¹⁵⁷ The Refugee Act of 1980, with the goal of reuniting families, has allowed more Southeast Asian immigrants into America.¹⁵⁸ By 2010, there were a total of 989,871 Southeast Asian refugees who naturalized as U.S. citizens.¹⁵⁹ Also by 2010, there were 422,063 Southeast Asian refugees recorded as permanent resident aliens.¹⁶⁰ Of that total, 30,632 came from Vietnam, 12,925 from Burma, and the rest were other Asian ethnicities.¹⁶¹ As a result, a large number of Southeast Asian applicants are either U.S. citizens or resident aliens and will satisfy this second requirement.¹⁶²

¹⁵² *Id.* at 3.

¹⁵³ SOUTHEAST ASIA RES. ACTION CTR., SOUTHEAST ASIAN AMERICANS AT A GLANCE: STATISTICS ON SOUTHEAST ASIANS ADAPTED FROM THE AM. CMTY. SURVEY 7 (last updated Oct. 06, 2011), *available at* <http://www.searac.org/sites/default/files/STATISTICAL%20PROFILE%202010.pdf> [hereinafter SOUTHEAST ASIA RES. ACTION CTR., STATISTICS ON SOUTHEAST ASIANS].

¹⁵⁴ See Nat'l Sustainable Agric. Coal., *Minority & Women Farmers*, *supra* note 40, at 5.

¹⁵⁵ See FARM SERVICE AGENCY, *supra* note 114, at 16, 17.

¹⁵⁶ *Id.* at 20.

¹⁵⁷ See Int'l World History Project, *Asian Americans*, in INT'L WORLD HISTORY PROJECT, 2, http://history-world.org/asian_americans.htm (last updated Jan. 2007) (accepting immigrants from Asia by enacting Immigration Act of 1965).

¹⁵⁸ See *id.* (indicating that the Refugee Act of 1980 aided reunification of families and brought order to admission of immigrants coming from Southeast Asian war zones).

¹⁵⁹ SOUTHEAST ASIA RES. ACTION CTR., STATISTICS ON SOUTHEAST ASIANS, *supra* note 153, at 8.

¹⁶⁰ RANDALL MONGER & JAMES YANKAY, U.S. LEGAL PERMANENT RESIDENTS: 2012, 4 (Mar. 2013), *available at* https://www.dhs.gov/sites/default/files/publications/ois_1pr_fr_2012_2.pdf.

¹⁶¹ *Id.*

¹⁶² See *supra* notes 157-161.

The “no debt forgiveness” criterion necessitates that the applicant has not received debt relief and have not defaulted on any existing debt to the government.¹⁶³ Prior to having outstanding debts from the government, the Southeast Asian farmer would need to have knowledge that there are government loans available.¹⁶⁴ A study on whether the general public is aware of the government’s farm loan subsidy demonstrated that minorities still have not heard about such government subsidies and more effort is needed to reach out to these communities.¹⁶⁵

These criteria fulfill the legislative intent described in *Curry* of assisting a minority group because the eligibility requirements are set at standards that are easily attainable for a disadvantaged group.¹⁶⁶ Southeast Asian farmers should reap the benefits of these farm loans, as it would further the stated purpose of aiding a disadvantaged group.¹⁶⁷

2. Elements that Impede Southeast Asian Farmers in Qualifying for Farm Loans

As found in *Curry*, the legislative history showed that the Secretary of Agriculture has the authority to make changes to arduous eligibility factors that fail to assist farmers who need financial support.¹⁶⁸ However, the lines drawn¹⁶⁹ from this point forward are complex webs of minimal standards unnavigable for the underprivileged.¹⁷⁰ The following eligibility requirements of the FSA hinder the Southeast Asian applicants’ access to government subsidies that would help elevate their financial standing.¹⁷¹

¹⁶³ FARM SERV. AGENCY, *supra* note 114, at 20.

¹⁶⁴ *See generally* Nat’l Sustainable Agric. Coal., *Microloans Reaching Farmers*, *supra* note 27, at 1, 3 (showing through research that only a small number of loans have been granted throughout the nation).

¹⁶⁵ *Id.*

¹⁶⁶ *See supra* Part IV.A.1.

¹⁶⁷ *See generally Curry*, 541 F.Supp. at 511 (permitting the underprivileged to obtain loans).

¹⁶⁸ *See id.* at 510.

¹⁶⁹ *See Califano*, 439 U.S. at 174 (drawing lines as standards); Friedman, *supra* note 129, at 220 (setting minimum standards as guidelines for status).

¹⁷⁰ *See infra* Part IV.A.2.

¹⁷¹ *See generally* Nat’l Sustainable Agric. Coal., *Microloans Reaching Farmers*, *supra* note 27, at 3 (getting loans were unsuccessful). *See infra* Part IV.B.

The demanding standard requiring submission of a business plan requires that an individual applicant farmer first write a business plan.¹⁷² The purpose is to show that the farmer has a projected future plan and that he or she understands all parts of the farm operation.¹⁷³ A business plan assists lenders in determining whether a farmer has the financial ability to repay a loan.¹⁷⁴ The business plan must describe the following in detail: the vision, goal, and mission for the farm; current assets (property or investments owned) and liabilities (payments, debts, or loans owed); what the operation will produce and how is it going to be marketed; and whether the income will generate enough to pay for the business and family living expenses.¹⁷⁵

In *Curry*, the court emphasized that social welfare legislation is written to support the underprivileged in meeting a proposed guideline.¹⁷⁶ Requiring Southeast Asian applicants to formulate a detailed business plan frustrates the purpose of the Credit Title.¹⁷⁷ Southeast Asian farmers face both cultural and language barriers.¹⁷⁸ Making a business plan is a difficult task for them, as many do not have access to a computer and are not formally educated.¹⁷⁹ A reason for their lack of education is that “they are more likely to come from rural backgrounds in their native countries,” and have less command of the English language.¹⁸⁰ A 2012 study by the Southeast Asia Resource Action Center revealed that Southeast Asians “continue to face issues of limited English proficiency.”¹⁸¹ Furthermore, many are

¹⁷² FARM SERV. AGENCY, *supra* note 114, at 23. *See generally* Nat’l Inst. of Food and Agric., *Hmong Am. P’ship*, *supra* note 7, at 2 (showing that only eleven percent have business plan).

¹⁷³ FARM SERV. AGENCY, *supra* note 114, at 22.

¹⁷⁴ *Id.* at 24.

¹⁷⁵ *Id.* at 23.

¹⁷⁶ *See Curry*, 541 F.Supp. at 511 (establishing that the social welfare legislation helps farmers who are in need of aid because they are underprivileged).

¹⁷⁷ *See infra* notes 178-184.

¹⁷⁸ *See* RIAMSALIO PHETCHAREUN, SOUTHEAST ASIA RES. ACTION CTR., ENCOURAGING ECON. EMPOWERMENT: A REPORT ON THE FIN. AND BANKING CAPABILITIES OF SOUTHEAST ASIAN AM. COMMUNITIES IN CALIFORNIA 7, 12, 14 (May 2012), *available at* http://www.searac.org/sites/default/files/SEARAC_2012_MAY_FINAL.pdf; *see infra* notes 184-7.

¹⁷⁹ PHETCHAREUN, *supra* note 178, at 14.

¹⁸⁰ *Id.* at 11.

¹⁸¹ *Id.* at 12.

unable to read or write in their native language.¹⁸² Research found that out of fifty-six farmers surveyed, only eleven percent of the responders had a business plan.¹⁸³ “Southeast Asian farmers need access to culturally appropriate education and support to help make the shift from income-generating farming activities to wealth-generating farming businesses.”¹⁸⁴ Without this education and support, the requirement of submitting a business plan merely serves to block the path to self-sufficiency for this disadvantaged group.¹⁸⁵

The FSA imposes the challenging eligibility requirement that the applicant have a good credit history.¹⁸⁶ Many Southeast Asian farmers have very little knowledge or experience involving credit; therefore, this criterion will adversely affect their opportunity to apply for loans.¹⁸⁷ In a survey done by the Southeast Asia Resource Action Center in May of 2012, all of the 174 Southeast Asian participants had “little to no formal training in financial management.”¹⁸⁸ Those born outside of the United States did not receive any training at all.¹⁸⁹ “The majority of those who came to the group discussion were aware that they needed to learn more about credit building and credit scores, as this would affect their ability to borrow for large purchases”¹⁹⁰ The participants would only seek to use a credit card or ask their family and friends for help if they needed to make a large purchase or if there was an emergency.¹⁹¹ The study found that because of their social ties to the community, Southeast Asians favor asking friends and families for help when they suffer any hardship over seeking loans from the bank.¹⁹² Additionally, there is a fear of making an appearance at the bank because the bank industry lacks a diverse staff pool.¹⁹³ All participants questioned agreed that there should be more education on use of credit, savings, banking, and other important financial tools.¹⁹⁴

¹⁸² See Nat’l Inst. of Food and Agric., *Hmong Am. P’ship*, *supra* note 7, at 2.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 1.

¹⁸⁵ See *supra* notes 176-184.

¹⁸⁶ FARM SERV. AGENCY, *supra* note 114, at 19.

¹⁸⁷ See PHETCHAREUN, *supra* note 178, at 20.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 23.

¹⁹² *Id.* at 23.

¹⁹³ See *id.* at 21.

¹⁹⁴ *Id.* at 20.

As it stands, the good credit history requirement undermines the purpose behind the Credit Title.¹⁹⁵

Additional eligibility standards require individual applicants to demonstrate that they have previously attempted to apply for a reasonable loan which resulted in denial and to show that they can come up with a cash down payment of at least five percent.¹⁹⁶ These requirements contradict the aforementioned good credit history standard because one of the reasons for rejection of a reasonable loan is a denial for poor or no credit history.¹⁹⁷ Southeast Asian applicants who have a very limited knowledge about credit would lack credit history and be refused a reasonable loan.¹⁹⁸ The cash down payment standard necessitates that the applicant have a cash down payment of at least five percent of the loan amount.¹⁹⁹ The majority of Southeast Asians are utilizing some type of government assistance because their living standard does not meet the general public minimum standard; therefore, it is unlikely that they will have a large savings account or that they will be able to otherwise afford a down payment of this size.²⁰⁰ A provision to toll the payment for a certain number of years would allow the Southeast Asian farmer applicant to begin generating a source of income from the farm business, in order to pay the government back. The government has already provided concessions for other groups of interest, as it did in implementing the Veteran's Home Loan program and first time homebuyer program.²⁰¹ In the Veteran's Home Loan program, military members with Veteran's status are afforded an opportunity to obtain a home loan with a zero

¹⁹⁵ See *supra* note 175 and notes 185-192.

¹⁹⁶ FARM SERV. AGENCY, *supra* note 114, at 19.

¹⁹⁷ See *generally id.* (requiring that applicants have good credit).

¹⁹⁸ See *supra* notes 186-191.

¹⁹⁹ FARM SERV. AGENCY, *supra* note 114, at 18.

²⁰⁰ See *generally* Mark Arax, *Many Refugees Work While Getting Welfare*, LA TIMES, Feb. 9, 1987, at 1, available at 1987 WLNR 1515267 (relying on public assistance).

²⁰¹ See U.S. Dep't of Hous. and Urban Dev., *Let FHA Loans Help You*, HUD.GOV, <http://portal.hud.gov/hudportal/HUD?src=/buying/loans> (last visited Nov. 2014). See *generally* Mortg. Bankers Ass'n, *Special Programs for Homebuyers*, HOMELOANLEARNINGCENTER.COM, <http://www.homeloanlearningcenter.com/consumerhelpdesk/specialprogramsforhomebuyers.htm> (last visited Nov. 2014) (listing different types of government assistance available to certain groups).

down payment.²⁰² The first time homebuyer program includes a requirement for a down payment of 3.5 percent of the total loan.²⁰³ What these programs share in common is that they cater to specific groups of people and provide those groups with an opportunity to buy a home.²⁰⁴ There is no requirement that the applicants be underprivileged or in a position that necessitates government assistance before they can receive assistance without strenuous burden of proof that prevents them from obtaining such prospect.²⁰⁵ Similarly, the farm loan program sought to provide a specific group of people, beginning or disadvantaged farmers, a chance to start a successful business.²⁰⁶ The government should apply the same principle to farm loans and toll repayment periods.

Congress also created the Microloans program as an additional means of aiding applicants who have no farming experience.²⁰⁷ This loan requires less paperwork and has a maximum loan amount of \$35,000.²⁰⁸ The Microloans must be secured by either a first lien on a farm property or an agricultural product with a value of at least one hundred percent of the Microloan amount.²⁰⁹ For this type of loan, the applicant farmer has seven years to pay it back.²¹⁰ The only requirement for a Microloan is that the applicant must have the ability to secure the loan with a lien that has comparable value; however, the loan can only be used for furniture, fixtures, working capital, equipment, or inventories.²¹¹ Because the maximum amount allowed is so minute, it cannot be used to purchase an adequate plot of land that

²⁰² U.S. Dep't of Veterans Affairs, *Purchase & Cash-Out Refinance Home Loans*, U.S. DEPARTMENT OF VETERANS AFFAIRS (last update Oct. 22, 2013), <http://www.benefits.va.gov/HOMELOANS/purchasecashout.asp>.

²⁰³ U.S. Dep't of Hous. and Urban Dev., *supra* note 201.

²⁰⁴ See Mortg. Bankers Ass'n, *supra* note 201 (catering to particular groups with incentives that help them obtain loans).

²⁰⁵ See *generally id.* (requiring only the minimum requirements as described by each category to obtain the loans).

²⁰⁶ FARM SERV. AGENCY, *supra* note 114, at 16.

²⁰⁷ See Fact Sheet, Farm Serv. Agency, Microloans (Aug. 2013) (on file with author), *available at*

http://www.fsa.usada.gov/Internet/FSA_File/microloans_eng_jan2013.pdf.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ See U.S. Small Bus. Admin., *Microloan Program*, SBA.GOV, <http://www.sba.gov/content/microloan-program> (last visited Nov. 2014).

would generate an income-producing farm.²¹² This is especially true since, on average, an acre of land is approximately more than two thousand dollars.²¹³

The eligibility requirements that demand a business plan, good credit history, prior loan application attempt, and lien requirement have contradicted Congress' intent by preventing the Southeast Asian applicants - a disadvantaged group - the opportunity to benefit from the government's offerings.²¹⁴ These criteria frustrate the purpose of social welfare legislation, as established by the court in *Curry*, and prevent Southeast Farmers from realizing an opportunity to sustain a successful farming business.²¹⁵

V. RECOMMENDATIONS

When the Agricultural Act of 2014 is up for review by Congress in 2018, to make amendments as it deems necessary and repeal any provisions that adversely affect the community, Congress should remove the eligibility requirements of good credit history and a prior attempt at securing a loan that resulted in denial. The good credit history requirement should be removed because it defeats Congress' intent of aiding the "underprivileged."²¹⁶ It is highly unlikely that an individual who is "underprivileged" will have the necessary credit history to obtain a loan.²¹⁷ In addition, compelling good credit history contradicts the requirement that before the individual can obtain a farm loan they have to satisfy the requirement of applying for a reasonable loan and have been denied.²¹⁸ If an individual has been denied a loan from a commercial lender, due to unsatisfactory credit, then they will have already failed to meet the good credit history requirement of the

²¹² See generally Cynthia Nickerson et al., U.S. Dep't of Agric., *Trends in U.S. Farmland Values and Ownership*, in ECONOMIC INFORMATION BULLETIN 92 (Feb. 2012), available at http://www.ers.usda.gov/media/377487/eib92_2_.pdf (calculating maximum loan amount and cost per acre to obtain an average acreage of land to farm).

²¹³ See generally *id.* (using the map, look for the amount of money per acreage in regional areas).

²¹⁴ See *supra* Part II.A.2. See also *Curry*, 541 F.Supp. at 511 (establishing that social welfare legislation helps the underprivileged).

²¹⁵ See *supra* Part IV.A.2.

²¹⁶ See *Curry*, 541 F.Supp. at 511.

²¹⁷ See *supra* note 215.

²¹⁸ See *supra* note 194.

FSA.²¹⁹ The bank industries need safeguards in place to assure that they will make some profit from helping the disadvantaged, but this should not be a reason to make it impossible for minority applicants to secure aid from the government.²²⁰ As deduced in *Curry*, less deference should be given to the banks because this legislation is social welfare legislation.²²¹

In terms of the business plan, the FSA should maintain multi-cultural staff members who can assist Southeast Asian farmers, and other minorities who are interested in applying for a farm loan, but do not know how to read or write in English. If the applicants have satisfied all the preliminary eligibility criteria and the business plan remains, the FSA agents assigned to the different applicants should be available to assist applicants in getting their ideas transcribed onto paper. The purpose of assisting this category of people is to help guide them toward the minimum standard because they have fallen below the proposed standard.²²² The complex task of writing a detailed business plan will hinder, not guide, this group from attaining a FSA loan.²²³

In addition, Congress should remove the down payment criteria and add a provision to toll payment for three years in order for the Southeast Asian farmers to realize some profits that will permit them to make payments on their farm loans. This would be similar to the Veteran's Home Loan program that allows Veterans to apply for loans without any down payment.²²⁴ An incentive should be granted to Southeast Asian applicants who have fought alongside the United States during the Vietnam War. Because they were recruited as soldiers fighting for America, they should be afforded an incentive to both become more self-sufficient in starting their own business and stop relying on the federal government indefinitely for an income. Southeast Asian farmers should be afforded similar treatment as Veterans.

By affording the Southeast Asian farmers such an incentive, it will enable the poor to learn how to manage their own business and reduce reliance on the government for assistance. The legislature's clear

²¹⁹ See *supra* note 212.

²²⁰ See *Curry*, 541 F.Supp. at 513-514 (establishing that legislation in favor of helping underprivileged, not businesses).

²²¹ See *id.* at 514.

²²² See *supra* notes 130-131.

²²³ See *supra* notes 172-185.

²²⁴ See *supra* note 202.

intent of drafting social welfare legislation to aid a socially disadvantaged group will have been a wasted effort if the funds and regulations that have been preserved for them were not utilized because the eligibility criteria were set at a standard that is unreachable by the underprivileged.²²⁵

VI. CONCLUSION

Southeast Asians sought refuge in America, fleeing war and persecution in their native countries.²²⁶ Although skilled at working their native soil and resourceful in applying traditional farming methods, these immigrants' techniques did not translate well to American geography.²²⁷ Cultural and socio-economic barriers have made it difficult for them to adapt and learn the new trades.²²⁸ Although some managed to work small plots for a minimal income and have managed to contribute greatly to the diversity of food available in the United States, others have resorted to illicit activities, such as marijuana cultivation, to make a living or have resigned themselves to public assistance.²²⁹ If Congress is interested in curbing such illegal activity and helping Southeast Asians pull themselves above the poverty line, changes will have to be made to the farm bill. The subsidies offered to other farmers and the loans offered to similarly disadvantaged citizens should be made equally available to this vulnerable population. By amending the farm bill in a way that relaxes the criteria under which an applicant may receive funds and guidance, Southeast Asian farmers will find themselves qualified for much-needed assistance—assistance that can ultimately be repaid to society through the efforts of its recipients. However, if Congress allows unreasonable qualifications to continue creating barriers to assistance for those like Southeast Asian farmers, it will ultimately undermine the very purpose for which the farm bills were created and cause the good intentions guiding the creation of this revolutionary body of law to fall short.

²²⁵ See *supra* Part IV.A.2.

²²⁶ See *supra* Part II.A.

²²⁷ See *supra* Part II.C.

²²⁸ See *supra* Part II.C.

²²⁹ See *supra* Part I.

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