

Congress of the United States

Washington, DC 20515

April 19, 2023

The Honorable Thomas J. Vilsack
Secretary
Department of Agriculture
140 Independence Ave SW
Washington, DC 20250

Dear Secretary Vilsack,

We write to urge you to reconsider your decision¹ not to initiate suspension and debarment proceedings against JBS USA (JBS), the U.S. subsidiary of J&F Investimentos S.A. (J&F), a Brazilian-owned investment company with a history of criminal misconduct, and each of its U.S. companies, including Pilgrim's Pride. Given this history and the recent discovery that JBS had at least 53 children illegally working dangerous cleaning jobs at three of its plants,² we urge you to reconsider your decision not to deploy the U.S. Department of Agriculture's (USDA) suspension and debarment powers against JBS. Doing so would maintain public trust in USDA's procurement channels, make good on USDA's recent commitment to curb misconduct in the industry,³ and ensure a fair and equitable food system for both producers and consumers. The farmers, ranchers, and taxpayers of this country must be certain that USDA is willing to do its part to hold corporate criminals accountable.

J&F Investimentos and JBS USA's History of Criminal Behavior

JBS is a wholly owned subsidiary of Brazilian-based JBS SA⁴, the largest meat processing company in the world.⁵ JBS SA is in turn controlled by the Brazilian agribusiness firm known as J&F Investimentos SA, a company owned and controlled by two convicted criminals, Joesley and Wesley Batista (Batista Brothers).⁶ JBS purchased a majority stake in the U.S. based company Pilgrim's Pride Corporation in 2009.⁷ The Batista Brothers pled guilty in 2017 to bribery of public officials in Brazil and received fines for criminal behavior in Brazil of

¹ Letter from USDA Secretary Thomas Vilsack to Representative Carolyn Maloney, November 2, 2022, <https://www.politico.com/f/?id=00000185-8812-de44-a7bf-e817657f0000>.

² U.S. Department of Labor, "More than 100 children employed in hazardous jobs, federal investigation finds; food sanitation contractors pays \$1.5M in penalties," February 17, 2023, press release, <https://www.dol.gov/newsroom/releases/whd/whd20230217-1>.

³ Letter from U.S. Department of Agriculture to Members of the Meat and Poultry Industry, April 12, 2023, <https://www.usda.gov/sites/default/files/documents/usda-letter-combating-illegal-child-labor.pdf>.

⁴ Securities and Exchange Commission, "Form S-1 Registration Statement: JBS USA Holdings, Inc.," July 29, 2009, <https://www.sec.gov/Archives/edgar/data/1467955/000119312509153228/ds1.htm>.

⁵ IMARC Group, "Top Players in the Meat Market," March 30, 2022, <https://www.imarcgroup.com/meat-companies>.

⁶ *In the Matter of J&F Investimentos, S.A., et al.*, Order No. 3-20124 (SEC Admin. Proc. Oct. 4, 2020), <https://www.sec.gov/litigation/admin/2020/34-90170.pdf>.

⁷ ABC News, "Brazil's JBS buys majority stake in Pilgrim's Pride for \$800M," Sept. 16, 2009, <https://abcnews.go.com/Business/brazils-jbs-buys-majority-stake-pilgrims-pride-800m/story?id=8591393>.

approximately of \$3 billion,⁸ and in 2020 pled guilty to criminal misconduct that occurred within the United States.⁹ The Department of Justice (DOJ) found that:

1. J&F executives used bank accounts based in New York to facilitate the bribery scheme and to make corrupt payments;¹⁰
2. J&F executives purchased and transferred a Manhattan apartment as a bribe;¹¹ and,
3. J&F executives met in the United States to discuss and further aspects of the illegal bribery scheme.¹²

Ultimately, the corporation pled guilty in federal court to a criminal charge of conspiring to violate the *U.S. Foreign Corrupt Practices Act* (FCPA) and agreed to pay a monetary penalty of over \$255 million.¹³ The damage caused by this illegal behavior did not end with the settlement. J&F's extensive bribery scheme helped the company consolidate the U.S. meatpacking industry by aiding its purchase of Pilgrim's Pride.¹⁴ In 2020, J&F and JBS company executives agreed to pay the Securities and Exchange Commission (SEC) over \$27 million to address charges relating to this illicit activity.¹⁵

Charles Cain, Chief of the SEC Enforcement Division's FCPA Unit, explained, "engaging in bribery to finance their expansion into the U.S. markets and then continuing to engage in bribery while occupying senior board positions at Pilgrim's reflects a profound failure to exercise good corporate governance."¹⁶

That same year Pilgrim's Pride also agreed to pay approximately \$110.5 million to settle federal price-fixing charges.¹⁷ The charges arose from a seven-year scheme to extinguish competition that affected contracts for the sale of chicken products to one customer in the United States. Pilgrim's Pride has also been embroiled in a series of labor violations, including several grave injuries to its workers at a number of different processing plants since 2015.¹⁸ Most recently, in January 2022, an ammonia leak at one of Pilgrim's Pride processing plants hospitalized two

⁸ J&F Investimentos represented in a May 29, 2019 court filing to the District of Columbia Superior Court that: "On or around June 5, 2017, J&F itself entered into a 'leniency agreement' with Brazilian authorities pursuant to which it agreed to pay a significant amount in fines, 10.3 billion reais (approximately \$3.18 billion in U.S. dollars), and to cooperate in the ongoing corruption investigation." Amended Complaint at 8, *J&F Investimentos SA v. Baker & McKenzie LLP et al.*, No. 2018 CA 002569 M (D.C. Super. Ct. filed May 29, 2019).

⁹ Department of Justice, Office of Public Affairs, "J&F Investimentos S.A. Pleads Guilty and Agrees to Pay Over \$256 Million to Resolve Criminal Foreign Bribery Case," October 14, 2020, <https://www.justice.gov/opa/pr/jf-investmentos-sa-pleads-guilty-and-agrees-pay-over-256-million-resolve-criminal-foreign>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ U.S. Securities and Exchange Commission, "SEC Charges Brazilian Meat Producers with FCPA Violations," October 14, 2020, <https://www.sec.gov/news/press-release/2020-254>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Pilgrim's Pride, "Pilgrim's Announces Agreement with DOJ Antitrust Division," October 14, 2020, <https://ir.pilgrims.com/news-releases/news-release-details/pilgrims-announces-agreement-doj-antitrust-division>.

¹⁸ United States Department of Labor, "Alabama worker's injury at a Pilgrim's Pride Corp. processing plant

workers and required the evacuation of about/around 50 others.¹⁹ The U.S. Department of Labor (DOL) cited Pilgrim's \$110,630 in penalties, noting that Pilgrim's "could have prevented the incident by ensuring required safety standards were followed."²⁰

JBS itself has been involved in labor controversies, most recently when DOL discovered that at least 53 children between the ages of 13 and 17 were illegally working in hazardous occupations "clean[ing] dangerous powered equipment during overnight shifts at JBS USA plants in Grand Island, Nebraska, and Worthington, Minnesota, and at Turkey Valley Farms in Marshall, Minnesota."²¹ In one incident, a 13-year-old working at JBS's Grand Island plant suffered severe chemical burns and had to be transported to the hospital.²² In response to this controversy, in a letter dated April 12, USDA requested that "all actors in the food supply chain take important precautionary steps" to prevent illegal child labor, promising to use its "procurement and regulatory authorities" to address the issue.²³

J&F's Federal Contracting and USDA's Failure to Use Its' Suspension and Debarment Authority

In total then, J&F and its subsidiaries have been subjected to at least \$3.4 billion in fines and penalties in both the U.S. and Brazil in the past 6 years alone. Yet despite the scale of this figure and J&F's pattern of brazen misconduct, USDA has continued awarding JBS and Pilgrim's Pride government contracts worth over \$118 million collectively since their guilty pleas.²⁴ In 2022 alone, JBS and Pilgrim's Pride contracts were worth \$60 million.²⁵ These contracts continue despite repeated calls to initiate suspension and debarment proceedings against the corporation²⁶

brings OSHA citations, penalties for the poultry producer," press release, March 10, 2016, <https://www.osha.gov/news/newsreleases/region4/03102016> (finger amputation after Pilgrim's Pride failed to develop, document, and train workers on proper procedures to conduct machine maintenance); United States Department of Labor, "Amputation, other injuries at Pilgrim's Pride chicken facilities 'preventable'," Sept. 22, 2015, press release, <https://www.osha.gov/news/newsreleases/region3/09222015> (finger amputation, arm fracture, fall on concrete floor due to preventable safety violation by Pilgrim's Pride).

¹⁹ United States Department of Labor, "US Department of Labor cites Pilgrim's Pride Corp. after ammonia leak hospitalized workers, led to evacuation of Canton poultry processing plant," August 1, 2022, press release, <https://www.osha.gov/news/newsreleases/region4/08012022>.

²⁰ *Id.*

²¹ U.S. Department of Labor, "More than 100 children employed in hazardous jobs, federal investigation finds; food sanitation contractors pays \$1.5M in penalties," February 17, 2023, press release, <https://www.dol.gov/newsroom/releases/whd/whd20230217-1>.

²² *Walsh v. Packers Sanitation Services, Inc., Ltd.*, 22-cv-3246 (D. NE. Nov. 2022), <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2022/11/SOLWHDPSI%20FILINGS.pdf>.

²³ Letter from U.S. Department of Agriculture to Members of the Meat and Poultry Industry, April 12, 2023, <https://www.usda.gov/sites/default/files/documents/usda-letter-combating-illegal-child-labor.pdf>.

²⁴ This number was attained by adding the total value of contracts given to JBS USA and Pilgrim's Pride from October 2020, the date of Pilgrim's Pride's guilty plea, to April 2023. Relevant data can be found here: USASpending.gov Database, "JBS USA," January 23, 2023, www.usaspending.gov/recipient/688a065f-41ca-31f7-9b1e-13a5feb0d362-C/latest; USASpending.gov Database, "Pilgrim's Pride," January 23, 2023, www.usaspending.gov/recipient/0f8dc632-48a1-a14c-cf90-cdabdb22682f-C/latest.

²⁵ *Id.*

²⁶ Letter from USDA Secretary Thomas Vilsack to Representative Carolyn Maloney, November 2, 2022, <https://www.politico.com/f/?id=00000185-8812-de44-a7bf-e817657f0000>.

and we have yet to see USDA act on its commitment to utilize its procurement and regulatory authorities to curb misconduct in the industry.²⁷

We have broad concerns about the failure of DOJ, USDA, and other federal agencies to use their authority to suspend and debar individuals and entities that engage in criminal conduct or pose a risk to the public interest.²⁸ The Federal Acquisition Regulation (FAR) permits an agency to debar an entity if it is convicted of or receives a civil judgment for “any...offense indicating a lack of business integrity or business honesty.”²⁹ Additionally, the FAR includes a catchall provision permitting an agency to debar a contractor for any cause “of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.”³⁰ Agencies also have a wide latitude to link contracting companies to the misconduct of any of their employees—including top company executives—as long as the misconduct “occurred in connection with the individual’s performance of duties for or on behalf of the contractor, or with the contractor’s knowledge, approval, or acquiescence.”³¹

We understand the serious nature of debarment and suspension. Sanctions are not to be imposed as punishment, but solely to protect taxpayer dollars and the integrity of the contracting process.³² Nevertheless, it appears clear that the history of misconduct by J&F, JBS, and Pilgrim’s Pride rises to a level justifying suspension and debarment beyond punitive grounds. Your decision not to initiate suspension and debarment proceedings contravenes your responsibility to maintain trust in USDA’s procurement channels, and communicates to corporate criminals that they can engage in any kind of wrongdoing, and—after receiving an occasional fine or slap on the wrist—return to business as usual, receiving millions in taxpayer-funded government contracts without regard to the risks to taxpayers and to recipients of goods and services provided by those entities with a history of criminal misconduct.

In a November 2, 2022 letter to Representative Carolyn Maloney, you noted that “USDA considered suspension or debarment proceedings regarding [JBS],” but determined not to seek such proceedings.³³ You implied that USDA found that JBS’s performance as a government contractor did not put the taxpayers at risk, but you did not include any evidence supporting this finding.³⁴ To the contrary, it seems abundantly clear that continued contracting with J&F and its subsidiaries, with their long history of misconduct—from corrupt practices, bribery, price-fixing, and labor violations—constitutes a risk to taxpayers.

²⁷ Letter from U.S. Department of Agriculture to Members of the Meat and Poultry Industry, April 12, 2023, <https://www.usda.gov/sites/default/files/documents/usda-letter-combating-illegal-child-labor.pdf>.

²⁸ Letter from Senator Warren to Attorney General Merrick Garland and Deputy Attorney General Lisa Monaco, August 11, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.08.10%20Letter%20to%20DOJ%20on%20use%20of%20suspension%20and%20debarment%20authority.pdf>.

²⁹ 48 C.F.R. 9.406-2(a).

³⁰ 48 C.F.R. 9.406-2(c).

³¹ 48 C.F.R. 9.406-5(1).

³² 48 C.F.R. 9.402(b).

³³ Letter from USDA Secretary Thomas Vilsack to Representative Carolyn Maloney, November 2, 2022, <https://www.politico.com/f/?id=00000185-8812-de44-a7bf-e817657f0000>.

³⁴ *Id.*

You also implied that because FAR debarment “requires the contractor to be debarred across all government agencies,” such an action might “impair competitive choice for the taxpayer in securing affordable food.”³⁵ However, this is not accurate: other agencies can avoid suspension and debarment if they state “compelling reasons” which justify continued business dealings.³⁶ Additionally, implying that suspension or debarment of the largest meat processor in the world cannot occur because it would threaten competitive choice is another way of saying that JBS is simply too big to fail. This is not an acceptable justification. While we appreciate your concern for competitive markets, USDA needs to address market competitiveness by working with the Department of Justice to enforce the *Packers and Stockyards Act*, not by conceding it as an immutable fact.³⁷

In addition, your letter to Chair Maloney also left out important information regarding the flexibility of suspension and debarment decisions.³⁸ For example, you did not mention that decisions can be limited to “specific divisions, organizational elements, or commodities,” of the suspended or debarred entity.³⁹ Furthermore, agencies can continue contracts already in existence at the time the contractor is debarred or suspended.⁴⁰ Indeed, the FAR includes a menu of options that could allow USDA to temper any potential negative impacts on taxpayers from suspension or debarment of JBS, while simultaneously upholding its duty to maintain public trust in government procurement channels.

Despite your decision to the contrary, JBS’s extensive history of misconduct, detailed by the DOJ and the SEC, warrants the initiation of suspension and debarment proceedings. Imposing these sanctions would serve the public interest and signal to American farmers that the integrity of procurement channels is of the utmost importance to USDA. And it would make good on USDA’s commitment to use its procurement and regulatory authorities to curb labor violations in the industry.⁴¹ As Secretary, you cannot allow corporate criminals and their top executives to rest easy knowing that no matter how egregious, how extensive, or how long-lasting their misconduct, the government will welcome them back to the contracting table with open arms. We urge you to use all the tools at your disposal and take all necessary steps to ensure that such action is sustained.

Your decision to not act in the face of JBS’s record of criminal behavior has become unsustainable. We therefore ask that you reverse your decision not to begin suspension and debarment proceedings for JBS and its subsidiaries. And, we ask that you respond to the questions below by May 16, 2023:

³⁵ *Id.*

³⁶ 48 C.F.R. 9.407-1(d); 48 C.F.R. 9.406-1(c).

³⁷ USDA, “Packers and Stockyards Act,” <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act#:~:text=As%20stated%20by%20Congress%2C%20the,unfair%2C%20deceptive%2C%20unjustly%20discriminatory%20and>.

³⁸ Letter from USDA Secretary Thomas Vilsack to Representative Carolyn Maloney, November 2, 2022, <https://www.politico.com/f/?id=00000185-8812-de44-a7bf-e817657f0000>.

³⁹ 48 C.F.R. 9.406-1(b).

⁴⁰ 48 C.F.R. 9.405-1(a).

⁴¹ Letter from U.S. Department of Agriculture to Members of the Meat and Poultry Industry, April 12, 2023, <https://www.usda.gov/sites/default/files/documents/usda-letter-combating-illegal-child-labor.pdf>.

1. Suspension allows current contracts to be maintained while disallowing the procurement of future contracts. Could this tool be used to give USDA more time to find alternatives to JBS? Why or why not?
 - a. Could USDA procure other food items of similar nutritional value and support growing industries and small businesses?
2. What steps is USDA taking to ensure that lucrative government contracts are not being awarded to multinational corporations that exploit children, ignore labor laws, and violate other federal laws?
 - a. Does the USDA plan to increase the number of contracts with small businesses and independent farmers and ranchers to eliminate its reliance on large corporations that violate federal laws?
 - b. Does the USDA need additional resources or authority to ensure that procurement contracts are not awarded to these bad actors but instead go to small businesses and independent farmers and ranchers, thereby supporting local and regional food systems and rewarding those that treat their workers, animals, and communities with respect?
3. What steps is USDA taking to increase competition and reduce the market dominance of firms like JBS?
4. What steps is USDA taking to ensure that large meatpackers refrain from employing illegal child labor through third-party contractors?
5. Thank you for your attention to this matter.

Sincerely,


Elizabeth Warren
United States Senator


Jamie Raskin
Ranking Member
Committee on Oversight and
Accountability