

United States Senate

WASHINGTON, DC 20510

November 16, 2010

The Honorable Eric H. Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Holder:

We are writing to once again express our concern that Hispanic and female farmers who suffered discrimination at the hands of the U.S. Department of Agriculture (USDA), are not receiving the same level of justice as African-Americans and Native Americans who suffered virtually identical discrimination. The recent settlement of the Keepseagle case further illustrates this point, as Native American victims will stand to have significantly more opportunities to redress the wrongs perpetrated against them than their fellow Hispanic and female victims. In expressing these concerns, we do not intend to address matters involved in any ongoing litigation.

As you know, the underlying facts of the claims made by African-Americans, Hispanics, females, and Native Americans, some of whom may have lost millions as a result of discrimination, are nearly identical. In the words of Timothy Pigford, the lead plaintiff in the Pigford case, Hispanics and females “suffered the same discrimination by the USDA as African American farmers.” The indisputable fact remains that farmers and ranchers were denied access to USDA loans, farm benefits, and credit services due to their race, ethnicity, and gender, and were not given proper opportunity for recourse. We must not remedy the underlying discrimination in a way that compounds that discrimination by treating victims differently based on their race, ethnicity, or gender.

We are concerned that the program that you have announced regarding Hispanic and female farmers will not meet your stated objectives of parity and adequate redress, in large part because the Department of Justice (DOJ) is imposing a cap based on a number of claimants that may be drastically underestimated. The Congressional Research Service recently noted, “[T]here seems to be a consensus that many of the issues surrounding the implementation of Pigford can be attributed to the gross underestimation of the number of claims that would actually be filed.” We fear DOJ is about to repeat this same mistake. Under your program, Hispanic and female farmers who were denied a loan and as a result, in the words of then-Secretary Glickman, “lost their family land, not because of a bad crop, not because of a flood, but because of the color of their skin” are likely to be eligible for a mere fraction of the \$50,000 individual cap and therefore may never be able to rebuild their lives and recover their land.

Under the proposed program, the amount each victim will receive will depend on how many other victims there were, not the merits of each individual case. In a perverse way each victim will actually be punished the more the USDA discriminated, as the more valid claims there are,

the less each victim will receive. In order to be eligible for relief under this program, victims would have to waive all future rights to have their day in court, without having any idea of their level of compensation. Without providing some certainty to these victims who have already been betrayed by their own government, very few victims will place any trust in this program.

In order to instill some certainty and confidence into the process, we would like you to identify what steps you plan to take if the number of valid claims exceeds your expectations. We know that the ceiling for each individual claim is \$50,000, but there is no indication what the floor would be. Providing details on these policy questions would at least begin to address some of the concerns expressed by the communities affected.

It would seem that the most complete and effective way to lift this cloud of uncertainty would be to lift the cap altogether. Since resources are being provided by the judgment fund, any funds not expended would be returned to the government, thus requiring it to pay only what it owes the victims. If DOJ and USDA are correct about their assumptions regarding the number of potential claimants, then it will not be liable for anything over \$1.33 billion; in fact, the amount might even be less. However, if the government is wrong and the number of claimants far exceeds its estimates, removing the cap would save claimants from falling victim to errors committed by the government yet again.

We want to once again applaud you for taking a big step toward your stated goal of universal justice. We understand the Administration inherited this problem. We also are very encouraged by your assurances that you seek to implement a fair and equal process for all victims so we can finally close the entire book on this sad part of our history. We look forward to hearing from you as you work toward this shared goal.

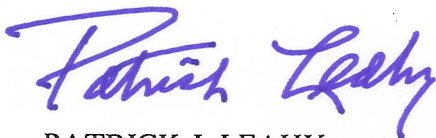
Sincerely,



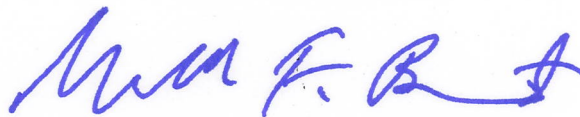
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