

An Open Letter to President Obama Regarding the Ongoing Discrimination Suffered by Hispanic Farmers at the Hands of the USDA

Dear President Obama:

Discrimination is a repulsive enough word but it gets even more so when you are paying for it with your own tax money. That is exactly what is happening to thousands of Hispanic farmers, who have repeatedly been denied loans from USDA loan programs in violation of the Equal Credit Opportunity Act. These are hard-working, taxpaying citizens, who are victims of well-documented and admitted discrimination at the hands of their own United States Department of Agriculture. And, however pernicious this discrimination might be, there is an even more galling aspect to it, namely that in addressing that discrimination, the government has created a hierarchy of victims in which the aggrieved farmers are not recognized and compensated equally.

A bit of history is in order. In response to this highly discriminatory administration of the USDA loan program, four identical lawsuits were filed in the same courthouse between 1997 and 2000; *Pigford v. Glickman* on behalf of black farmers, *Keepseagle v. Glickman*, on behalf of the Native American farmers, *Love v. Glickman* on behalf of women farmers and *Garcia v. Glickman* on behalf of Hispanic farmers. In the first two cases, *Pigford* and *Keepseagle*, the courts certified the cases as class actions on the basis of USDA's admitted failure to investigate discrimination complaints filed by black and Native American farmers at USDA's urging. In reality, the USDA had failed to investigate these complaints because it could not. It had secretly dismantled its civil rights investigatory capability during the early days of the Reagan Administration.

However, in the other two cases, *Love* and *Garcia*, a different judge, acting on his interpretation of the law, refused to certify classes, rejecting the basis that Judges Paul Friedman and Emmett Sullivan had applied in *Pigford* and *Keepseagle*, respectively. While the D.C. Circuit has affirmed the dismissal of the so-called "failure to investigate

claims” on which the class certifications in *Pigford* and *Keepseagle* are based, the issue remains open on appeal as the Hispanic and women farmers press their appeals to the United States Supreme Court. This delay in obtaining certification does not stop the parties from negotiating a settlement of their claims, as the parties did in the *Pigford case*, but it has once again victimized them.

The underlying discrimination that gave rise to such complaints is not disputed. Clinton Administration Agriculture Secretary, Dan Glickman, the original defendant in all four cases, testified before Congress that USDA has “a long history of . . . discrimination” and that “[g]ood people . . . lost their family land not because of a bad crop, not because of a flood, but because of the color of their skin.” Rosalind Gray, a former director of USDA’s Office of Civil Rights, has testified that “systemic exclusion of minority farmers remains the standard operating procedure for FSA [the Farm Service Agency].”

In the initial settlement of the *Pigford*, the government paid black farmers approximately \$1 billion in damages for past discrimination. On May 6, 2009, you announced an additional \$1.25 billion to be appropriated for black farmers who missed the filing deadline for participation in the *Pigford* settlement. Thus, to date, approximately \$2.25 billion have been set aside for black farmers while Hispanic and other minority farmers, who have suffered and continue to suffer exactly the same discrimination, have not received one cent to compensate them.

Congress has made crystal clear that USDA should resolve all of the pending cases described in Section 14011 of the 2008 Farm Bill. That section provides in pertinent part that “[i]t is the sense of Congress that all pending claims and class actions brought against . . . [USDA] by . . . Native American, Hispanic and female farmers or ranchers based on racial, ethnic or gender discrimination in farm program participation *should be resolved in an expeditious and just manner.*” (Emphasis added.)

Consistent with the foregoing sense of Congress, Hispanic farmers and ranchers have repeatedly sought to begin settlement discussions with USDA. The prior Administration, however, rejected all such proposals out of hand. To its credit, your Administration initially sounded a much more conciliatory tone. Indeed, both during his

confirmation hearing and subsequently, Agriculture Secretary Vilsack made strong statements expressing the administration's desire, consistent with Section 14011, to settle all of the pending discrimination cases. Encouraged by such statements, Hispanic farmers and ranchers renewed their efforts to engage in good faith settlement discussions and their counsel recently met with members of Secretary Vilsack's senior staff, along with USDA and Department of Justice (DOJ) lawyers. A draft proposal was presented with the suggestion that the parties form a working group to explore an amicable, expeditious and just resolution of the lawsuit. Surprisingly, DOJ, responding on behalf of USDA, rejected out of hand the proposal.

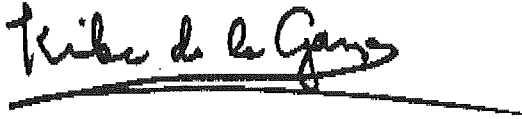
DOJ's refusal to entertain settlement discussions is totally at odds with the clearly expressed will of Congress and irreconcilable with Secretary Vilsack's repeatedly stated desire to settle all the pending lawsuits. Moreover, it is simply untenable logically, legally, morally or politically that four minority groups can suffer the identical discrimination from the same federal agency and yet only one of the four groups be compensated on a class-wide basis. The Clinton Administration had the good judgment and the will to settle the black farmers' case when confronted with the obvious injustice that that case presented. In recently appropriating an additional \$1.25 billion for black farmers who missed the filing deadline in the *Pigford* case settlement, you indicated that you hoped that this action would "close a chapter" in the sorry history of USDA discrimination against minority farmers.

A letter from the Congressional Hispanic Caucus (CHC), led by Congresswoman Nydia Velázquez (D-NY-12), and Congressman Joe Baca (D-CA-43), and a separate letter from eight United States Senators, led by Senator Robert Menendez (D-NJ), to you encouraging timely settlement of this case, have gone unanswered. Indeed, in the case of the CHC letter, nearly three and a half months have passed without so much as an acknowledgement of receipt of the letter by the White House.

The administration must realize that it cannot simply close a chapter, but that fundamental fairness and simple justice demand that it close the book on all discrimination at USDA and, consistent with Section 14011, "resolve all pending claims and class actions in an expeditious and just manner." President Obama, you are in a

unique position to end once and for all USDA's all-too-well deserved reputation as "the last plantation" and to bring overdue accountability and transparency to the USDA-administered farm credit and non-credit farm benefit programs.

Sincerely,

A handwritten signature in cursive script that reads "Kika de la Garza". The signature is written in black ink and is positioned above a solid black horizontal line that spans the width of the signature.

Kika de la Garza

Former Congressman, D-15 TX (January 3, 1965, to January 3, 1997)

Chairman, House Agriculture Committee from 1981 to 1994