President Barack H. Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

December 20, 2010

Re: *Garcia v. Vilsack*, C.A. 00-2445
(D.D.C. October 13, 2000)

Dear Mr. President:

The National Hispanic Christian Leadership Conference ("NHCLC"), on behalf of its 25,434 evangelical congregations and their 16 million members, requests that you direct the Secretary of Agriculture and the Attorney General to comply promptly with Section 14011 of the Food, Conservation and Energy Act of 2008 ("2008 Farm Bill"). That section expresses "the sense of Congress that all pending claims and class actions brought against the Department of Agriculture ["USDA"] by . . . Hispanic farmers or ranchers based on racial [or] ethnic . . . discrimination in farm program participation should be resolved in an expeditious and just manner." In urging justice for Hispanic and female farmers, NHCLC is acting in conformity with one of the seven core directives of its mission statement, which is to pursue and advance justice.

Congress has created, and heavily funded with taxpayer dollars, loan programs specifically targeted to assist family farmers unable to secure needed capital elsewhere. The USDA is required to administer its farm credit and non-credit farm benefit programs in an equitable and non-discriminatory manner. The *Garcia* lawsuit arose because, unfortunately, for decades USDA has systematically discriminated against Hispanic farmers and, indeed, against non-white male farmers generally. African-American, Native American and female farmers have separately initiated litigation attacking this problem. At the core of each lawsuit is the same problem. Despite repeated warnings of the consequences of doing so, USDA has maintained, and continues to maintain, a system of administering its credit and non-credit benefit programs that gives virtually unfettered

discretion to local officials to enforce highly subjective eligibility criteria that, in turn, give vent to hostility toward minority farmers, which deprives them of an equal and fair opportunity to participate in such programs. The hostility toward Hispanic farmers and the resulting discrimination are hallmarks of the decentralized system through which USDA distributes and administers its loan and benefit programs. Indeed, the discrimination at issue is not disputed. Then Secretary Glickman, the original defendant in the *Garcia* case, testified before Congress in 1997 that USDA has a "long history of . . . discrimination" and "[g]ood people . . . [have] lost their family land not because of a bad crop, not because of a flood, but because of the color of their skin."[1] Rosalind Gray, a former Director of USDA's Office of Civil Rights, in a declaration submitted in the *Garcia* case, testified that "systemic exclusion of minority farmers remains the standard operating procedure for [USDA]."[2]

That such admitted discrimination exists at all in the twenty-first century is appalling. It is all the more appalling that such discrimination is perpetrated against hardworking American citizens by a federal agency funded by their tax dollars. An "expeditious and just" resolution of this and related litigation is long overdue. Accordingly, NHCLC urges you to direct Attorney General Holder and Secretary Vilsack to comply with Section 14011 of the 2008 Farm Bill and to resolve this matter in an "expeditious and just manner." Unfortunately, the administrative process currently being proposed by USDA and DOJ does not provide a "just" resolution to the discrimination being perpetrated against Hispanic and female farmers, and is itself discriminatory.

Secretary Vilsack has publicly stated that the Hispanic and female farmer cases are distinguishable from the African-American and Native American cases because there was no legislative action, in effect, establishing a class and no class certification, and that the *Garcia* case and the female farmer case are a series of individual cases and no set of

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[1] Statement of Hon. Dan Glickman, Secretary, U.S. Department of Agriculture, in hearings before the Subcommittee on Department Operations, Nutrition and Foreign Agriculture and the Committee on Agriculture, House of Representatives, H. Rep. 105-19, July 17, 1997, entitled "Treatment of Minority and Limited Resource Producers By The U.S. Department of Agriculture," at 94. (Exhibit 1.)

[2] Declaration of Rosalind Gray dated April 6, 2002 and submitted in *Garcia v. Vilsack*, C.A. No. 00-2445 (D.D.C. October 13, 2000), ¶ 28. (Exhibit 2.)

lawyers represents all of the plaintiffs as in the case in a class action. The argument is without merit and reflects badly upon an administration ostensibly committed to closing the book on discrimination.

The *Garcia* case is one of four cases filed on behalf of African-American (*Pigford I*), Native American (*Keepseagle*), Hispanic (*Garcia*) and female (*Love*) farmers, all alleging the same discrimination by the USDA in its farm credit and non-credit farm benefit programs. The cases were assigned to three different judges. Two judges certified as class actions the cases brought on behalf of African-American and Native American farmers. The third judge refused to certify as class actions the cases brought on behalf of Hispanic and female farmers. The claims and bases for certification were the same in all four cases.

The USDA and DOJ are hiding by this fact to deny Hispanic and female farmers the same settlement provided to African-American and Native American farmers. For example, in the recently funded African-American farmers' settlement (*Pigford II*), there were thousands of claims filed after the deadline for participating in the original *Pigford I* settlement. As a result, those farmers had no valid claims until Congress allowed them in Section 14012 of the 2008 Farm Bill. Significantly, there was no class certified by the court in any of the 17 so-called *Pigford II* cases. In the Native American farmers case (*Keepseagle*), the judge certified a class on precisely the basis that the judge in *Garcia* and the female farmers' case rejected a class. When the United States Court of Appeals for the District of Columbia Circuit affirmed the decision underlying the denial of class certification in the *Garcia* and *Love* cases and the Supreme Court refused to review that decision, the government could have moved to decertify the class in the Native American farmers case, but chose not to do so, and then entered into a class settlement with Native American farmers.

There is no legal or moral basis for the government's disparate treatment of equally innocent victims of its discrimination. Indeed, it is discriminatory. The agency that admitted discrimination in its farm benefit programs is now discriminating against Hispanic and female farmers again in its attempt to resolve the programmatic

discrimination. The proposed administrative process discriminates against Hispanic and female farmers both in terms of substance and process. In terms of substance, the government has either paid or is committed to pay $2.25 billion dollars to African-American farmers in connection with the *Pigford I* and *Pigford II* settlements. By contrast, the current government proposal would have Hispanic and female farmers share $1.33 billion despite the fact that Hispanic and female farmers outnumber African-American farmers by as little as 12 to 1 and as much as 27 to 1.[3]

In addition, under the government's proposal Hispanic and female farmers would not have the benefit of a court-approved notice or any of the procedural protection of a Rule 23 settlement process that have been provided or are being provided to African-American and Native American farmers, despite the fact that Rule 23 permits the government to stipulate to a class for settlement purposes. The potential effect of that single discrepancy in treatment is graphically demonstrated by the fact that even with such court-approved notices, tens of thousands of African-Americans claimed not to have been notified of the *Pigford I* settlement.

Moreover, under the government's proposal, Hispanic and female farmers who are not currently named in the *Garcia* and *Love* complaints would have to file new lawsuits in federal district courts around the country in order to participate in the proposed settlement and each such lawsuit would require a filing fee (currently $350) rather than filling out and mailing in ($.44 for a first-class stamp) a court-approved claims form in the normal Rule 23 procedure. After filing the lawsuit, the farmer would then have to dismiss it immediately with prejudice in order to participate in the administrative process. Significantly, the government does not propose to identify the *Garcia* and *Love* cases or their counsel in its proposed notice to farmer to give them the

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[3] According to the USDA's Census of Agriculture, Hispanic farmers have substantially outnumbered black farmers since 1992. The 2007 Census of Agriculture, the most recent, indicates that there are 30,599 farms which have African-Americans as their principal operators and 34,706 farms which have Native Americans as their principal operators compared to 55,570 which have Hispanics as their principal operators and 306,209 which have females as their principal operators. The same census lists under the category of "all operators" 39,697 African-Americans, 55,889 Native Americans, 82,462 Hispanic and 985,182 females. Thus, according to the Census of Agriculture, Hispanic and female farmers outnumber African-American farmers from 12 to 1 to 27 to 1 (361,779 (55,570 + 306,209) versus 30,599 and 1,067,644 (82,462 + 985,182) versus 39,697).

option of joining the existing suits rather the more costly alternative of filing a new suit. We find it sadly ironic that this Administration would propose to impose a fee on the victims of government discrimination -- that as taxpayers they have already been forced to fund -- that eerily calls to mind the infamous pool tax of old that denied minorities the franchise. Indeed, the government would have the very agency that discriminated against Hispanic farmers for decades formulating and providing the notice to its victims and administering the settlement process. Given its oft-stated position that it wants to settle these cases and compensate the victims of its admitted discrimination, we do not see how the government can reconcile that stated goal with its refusal to employ the time-tested procedures of Rule 23 to settle these cases and to insist instead on a procedure that will be fraught with potential conflicts of interest, expensive, inefficient and pose a needless burden to courts and victims around the country.

Furthermore, the claim that the lack of class action status prevents Hispanic and female farmer cases from being treated the same way as *Pigford I* or *Keepseagle* is meritless because the manner in which the government has chosen to settle African-American and Native American cases makes class certification completely irrelevant. At the core of all of the proposed settlements is an inexpensive, court-supervised two-track claims dispute resolution process. Because no claimant, under any of the settlements, will receive a cent without individually satisfying the applicable requisite burden of proof, class certification is irrelevant to the claims resolution process. Moreover, since each minority group is an equally innocent victim of the same USDA discrimination, there is absolutely no rational basis for the government providing some victims a more favorable claims dispute resolution process than other similarly situated victims. We believe that a fair and just settlement under the circumstances must contain the following elements:

1.) A court supervised process with court-approved and court-supervised notice as provided in *Pigford I, Pigford II* and *Keepseagle*.

2.) A two-track claims dispute resolution process similar to process in *Pigford I* and *Keepseagle* with successful Track A claimants getting $50,000 tax free and debt relief

and successful Track B claimants receiving such damages as they can prove under the applicable burden of proof for such claims as was the case in *Pigford I*. In *Pigford II* and *Keepseagle*, Track B damages are limited to a maximum of $250,000 because both cases involved limited damage funds unlike the situation in *Pigford I*, the case to which the *Garcia* case is most analogous. In the instant case, there is no basis for artificially limiting the damages a claimant may prove in Track B. The limitation is appropriate in *Pigford II* because the farmers in that case missed the filing deadline to participate in the uncapped settlement process of *Pigford I* and are only able to get a second chance to recover damages as the result of legislative action that has provided a limited fund ($1.25 billion) for processing and paying their late claims. In *Keepseagle*, the overall award reflects the damages that the plaintiffs claimed in expert testimony filed in that proceeding. For the Hispanic and female farmer cases, by contrast, as was the case in *Pigford I*, there was never any discovery permitted concerning the extent of damages. Such discovery is, however, unnecessary because under this proposal Hispanic and female farmers will be able to recover only such damages as they ultimately prove subject to the applicable burden of proof.

3.) Forgiveness of all debt shown to be tainted by discrimination proven by a successful Track A or Track B claimant and tax relief from the consequences of such debt relief. In Pigford I, there was no cap on the forgiveness of debts shown to have been tainted by discrimination proven in a Track A or Track B proceeding. In *Pigford II* the total amount for all costs associated with the settlement is capped at $1.25 billion and in *Keepseagle* the total amount of debt relief is capped at $80,000,000. Consequently, in *Pigford II* and *Keepseagle*, unlike *Pigford I*, there is a cap on the amount of tainted debt that can be forgiven. We understand that the government proposes an arbitrary cap on the amount of tainted debt that can be forgiven in the *Garcia* and *Love* cases of $160,000,000. We believe, however, that there is no justification for such an arbitrary cap on debt relief in the *Garcia* and *Love* cases, just as there was no cap on such debt relief in *Pigford I*.

4.) Forward looking injunctive relief to insure accountability and transparency in the administration of USDA's farm credit and non-credit farm benefit programs. Such

injunctive relief should include, but not be limited to all applicable injunctive relief granted in *Pigford I, Pigford II* and *Keepseagle*.

In sum, we believe that the foregoing points are essential to a truly just settlement of the claims of Hispanic and female farmers. We urge you therefore close not merely the chapter but the entire book on this sordid history of government discrimination once and for all.

Respectfully,

Samuel Rodriguez, Jr.
President

Daniel Padilla
Justice Project Coordinator

Attachments

cc w/attachments: Valerie Jarrett, Esq.
Pete Rouse
Michael Strautmanis, Esq.
Daniel Padilla

EXHIBIT 1

Civil Action No. 00-2445 (JR)

TREATMENT OF MINORITY AND LIMITED RESOURCE PRODUCERS BY THE U.S. DEPARTMENT OF AGRICULTURE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON DEPARTMENT OPERATIONS, NUTRITION, AND FOREIGN AGRICULTURE

AND THE

COMMITTEE ON AGRICULTURE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

MARCH 19, JULY 17, 1997

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The CHAIRMAN. Now, Mr. Secretary.

STATEMENT OF HON. DAN GLICKMAN, SECRETARY, U.S. DEPARTMENT OF AGRICULTURE

Secretary GLICKMAN. Thank you very much.

First of all, I want to introduce who is with me here. On my right is my partner, the Deputy Secretary, Rich Rominger. And on my left is Pearlie Reed. Pearlie is the head of our Civil Rights Action Team. Pearlie was Associate Chief of the Natural Resources Conservation Service when I asked him to take this job around the first of the year, to begin to focus our attention on civil rights.

So Pearlie is now Acting Assistant Secretary for Administration and he has been our savior coming in and doing his best to clean up a problem that has existed for a very long time. A very difficult problem. One that has caused me, in terms of my personal time as well as attention and focus, more than any other issue the Department of Agriculture, and one that frankly we have barely scratched the surface on. And so it is, this is an important topic.

I served with you for many years, 18 years, I don't think this topic was ever discussed at a formal hearing, so I commend you for having this hearing. Abraham Lincoln called USDA "the people's department," when he created this department in 1862. We are working hard to restore the full lustre of that name.

I'd like in particular to thank those on this committee and elsewhere who have shown a deep, personal commitment to and involvement in the civil rights struggle at USDA. The support of Congress, and in particular, this committee will be crucial to the progress we make. And I would tell you right now, we need your help and your support and your involvement to work through this particular issue.

It was a little over 2 years ago when I appeared before this committee to first talk about my plans for USDA. We talked about wheat and cattle, crop insurance, research, conservation. We talked about Kansas and California, just two States that Mr. Rominger and I care about. We did not focus on civil rights. Quite honestly if there was one ambush awaiting me in this job, that's it.

Today I spend as much, if not more, of my time dealing with civil rights matters as I do any specific farm program. And the reason is simple enough. We have a long history of both discrimination and perceptions of unfairness that go literally back to the middle of the 19th century. For those who look back on the progress made in the 1960s of the historic civil rights laws passed in that time and think we got the job done, I can say just from my experiences at USDA, we do not yet fully practice what we preach.

I've talked to people who have lost their farm. Good people, who lost their family land not because of a bad crop, not because of a flood, but because of the color of their skin. I've talked to employees—dedicated public servants—who have been humiliated, abused and then punished for speaking up. I want to close this chapter of USDA's history. My goal is to get USDA out from under the past and have it emerge in the 21st century as the Federal civil rights leader.

The American farmer and the American people deserve nothing else. I appear before you today proud of the progress we have made

in calling attention to the problem of starting to focus ourselves on solutions and getting key changes quickly in place. But I also appear before you today having undergone a reality check as to the massive amount of time, resources, people, power and leadership, both at USDA and in Congress, that it is going to take to get the job done right.

This is an extraordinarily complicated problem that has taken decades and decades and decades to build to this situation. So we are committed to resolving, but we do need your help as well. I also want to emphasize the overwhelming majority of our employees are committed to treating their co-workers and customers with dignity and respect. The institutional and personnel problems which continue to afflict the Department, should not demean the majority of our committed and capable staff.

By and large, USDA employees are dedicated, fair-minded, overworked and under paid.

Like discrimination in many of America's public and private institutions, civil rights problems at USDA are not going to disappear overnight. If there were easy solutions, I would assure you we would not be sitting here today. But the fact is, there is no silver bullet. We are going to have to get through this the old fashioned way, with our sleeves rolled up and a whole lot of people doing a whole lot of work.

And our efforts are already well underway. As most of you know, it's been 5 months since the release of USDA's Civil Rights Action Team Report. And by the way, that process got started around Christmas, and within a record 60-day time period, it was finished. We had 12 listening sessions around the country to hear from farmers, ranchers, employees, rural residents and community leaders.

Our report listed 92 specific recommendations to improve the civil rights climate at USDA. To carry them out, we have organized 33 implementation teams, involving approximately 300 people, currently employees at USDA. Together they have logged tens of thousands of hours of work. We have a long way to go, but we have started down the road to a solution.

And I want to give you a progress report. Where progress could be made on my authority, we have moved quickly. I have made it a condition of employment, that every employee treat every coworker and customer fairly and equitably with dignity and respect. No exceptions, no excuses. We have a new foreclosure policy. Now when a written civil rights complaint is lodged, the foreclosure is frozen wherever it is in the process until an independent review occurs and a judgement is made as to whether or not discrimination occurred.

We have a zero tolerance policy for reprisals against employees who file civil rights complaints. From now on, a three person panel made up of one union or an employee representative, one manager or a personnel staff and one mediator will investigate alleged reprisals and make binding recommendations.

I've also ordered that loan processing continue on accounts where a discrimination complaint is pending. Standing up for your rights should not disqualify someone from seeking a farm loan. If it is the loan processor facing the allegations, then another FSA, Farm

Service Agency loan officer will be assigned to work with the applicant. If that loan cannot be approved, they get a meeting and a written letter of explanation. That last part helps clear up the problem and the perceptions.

Without question, part of the problem is economic. Smaller farmers of all ethnic backgrounds and all regions of the country are having an increasingly difficult time coping with the massive changes that are occurring in the structure of the Agriculture. Yesterday I announced the formation of a National Commission on Small Farms.

It will be headed by a former member of this committee, Harold Volkmer of Missouri. His commission will talk to folks around the country and pull together the thread of rural and economic conditions that affect America's small farms, and weave a national strategy to make our small farms as powerful a force in agriculture's future as they have been in the past.

I've asked their report be presented to me by September 30 and I look forward to sharing it with all of you and taking bold steps in that area as well.

Under the economic rubric, we will also propose legislation to modify certain provisions of the 1996 farm bill. We have worked very closely with Congresswoman Clayton and others to provide more flexibility in terms of assisting farmers who rely on USDA for farm operating credit. In my book, the 1996 farm bill went too far in restricting credit, particularly to those farmers who received a debt forgiveness and were denied an opportunity to work their way back to qualifying for assistance. That's even harsher than commercial credit standards and needs to be corrected.

USDA will also soon have an Office of Outreach, which may be the most visible evidence that we are serious about reaching out to customer whom we've neglected in the past. All our potential customers should get the information they need to use our programs and services. We also expect to soon fill the newly created position of Associate General Counsel for Civil Rights. This person will head a staff of attorneys who will be dedicated exclusively to the performance of civil rights functions.

These are just the highlights of what we have done to date, and they accomplish perhaps a third of the recommendations that were made in the report. You should all have a more complete accounting in the package of material that my staff has handed over to this committee. But I mentioned earlier a reality check. Nowhere has it been more abrupt than in our efforts to resolve the backlog of nearly 2,300 civil rights complaints, 1,500 from employees and nearly 800 in our farm and rural development and other programs.

Some of them go back years. This shows the rift between civil rights and civil realities. I don't have to explain to anyone on this committee what's likely to happen to a small farmer who's denied a timely loan. Or the employee who has filed a complaint against his or her boss and then has to wait year after year for closure. I am not proud of our history. I must tell you that. I am not proud of our history, our institutional dedication, or commitment or our internal operations in the past 15 years in resolving these complaints. And that even includes time that I have been in this job.

Our organizational structure and institutional commitment to resolving program and personnel complaints have left a great deal to be desired. And quite frankly, neither past administrations nor past Congresses, including when I was in this body, devoted very much time to this issue at all. I do believe this is the first time in the modern history of Congress, that this committee on either side has held a hearing on this subject. And for that, you should be commended.

Since the Civil Rights Action Team Report, we have focused huge amounts of time and resources on resolving those complaints. We have settled 215 cases of alleged discrimination against employees and closed 89 cases on the program side. Of that 89, four cases involved what I would characterize as significant settlements, adding up to a total, the four cases, of more than $2 million.

USDA stands ready to resolve quickly and fairly, legitimate civil rights complaints. And I stress the word legitimate, because we have an obligation to taxpayers to ensure the charges are warranted. We cannot simply settle for settlement's sake. We must investigate each charge. This is where we have hit the proverbial brick wall. A good part of the reason for the backlog is the fact that in 1983, USDA Civil Rights Investigation Unit was dismantled. We are just now in the process of hiring back those positions.

Currently, we are using contract investigators to help us sort through the backlog. We expect that a permanent staff will help us break up the logjam, but this will remain a lengthy, arduous process that is likely to take a year to wrap up responsibly. And I should mention, with me is Lloyd Wright who is the new head of our Office of Civil Rights.

Since Mr. Reed came on board, we have virtually an entire new team involved in the administration of these particular matters, and it's his job to break through this backlog and get it done responsibly. Once we get back to ground zero, we are working on ways to move the process along at a quick but fair clip, that allows all parties to move on with their lives.

So I would say that this leads me to perhaps my last issue, and that is the issue of building accountability. We don't just want to fix what's wrong, we want to build an institution that consistently does what's right. That requires building more accountability into the system. In this area in particular, we are going to need to work very closely with this committee. We need to send a strong signal throughout our ranks that USDA is serious about institutionalizing proper civil rights enforcement up and down our ranks.

I've given Mr. Reed the authority to rate agency heads on their civil rights performance. It will no longer be a second tier consideration. We are also working to ensure that our civil rights objectives are incorporated into our performance management system, so that managers know what's expected of them and understand that they will be rated based on how well they live up to those expectations.

Finally, there is the question of the USDA structure which serves agriculture outside of Washington, the field structure. As an 18 year member of this body, from the great agricultural State of Kansas, I am under no delusions as to the political degree of difficulty of any legislative proposal to convert county employees to Federal employees. While this change was suggested in our Civil Rights Re-

port. its origin is almost entirely based on general management concerns.

Our county field structure is far from resembling a Fortune 500 corporation. But as we downsize and streamline and all the rest that we have to do, I think a brief comparison is worthwhile. Right now we operate under two personnel systems in our counties. A system of county-based employees and Federal employees, often in the same offices, all whose salaries are paid for by the Federal Government, Uncle Sam.

It wasn't even until about 10 years ago that I realized that county employees were paid by the taxpayers of the America just as Federal employees were paid by the taxpayers of America. They are all paid by the same people. In the same county office, we find both Federal and non-Federal employees all doing USDA work, side by side, but they do not technically have the same boss.

This is something that you would be hard pressed to find in the private sector, because it is that dreaded management consulting word, inefficient. Now what does that mean? We had a county committee, they are a grass roots connection and bring to the table hands-on farmers' knowledge of how Federal policies actually work. These men and women are like the Board of Directors. They care about the big picture, getting their rural communities and farmers the Federal resources they need. Seeing Federal conservation policies, rural development efforts and farm programs work in their county.

Their role in substantive policy and program matters would not be affected by this shift at all. This proposal will simply take the next logical step. It will recognize all the changes that are occurring. It will close the accountability gap on civil rights and it will create a more efficient and much less costly field structure where everyone does what they do best.

County committees will be free to focus on the big picture, the program picture. And nuts and bolts personnel management will be carried out according to one national standard. Again, all these people are paid by the same people. They are all nationally taxpayer paid people. This will help create a more positive, consistent work environment for our field staff and a higher standard of service for all our customers.

Done right, it will also eventually save us the thousands of hours and millions of dollars we are putting out right now on the damages side of civil rights enforcement. I understand that the nature of a bureaucracy is to resist change. I understand too, that for decades this has been an untouchable issue and probably rightly so for the times. But today I am utterly convinced that we can do this the right way, and I am equally convinced that this is simply the right thing to do.

Our employees out on the front lines of this whole civil rights effort liken their work to trying to turn an elephant around using a pin. We are dealing with a large Federal bureaucracy. One that is scattered across almost every county in this country. We were the first decentralized government in this country. The Agriculture Department was set up and it was—the programs in the thirties were set up basically to run in a decentralized way, with a national set of policies. So we are located everywhere.

We are also dealing with civil rights, which involves laws and policies, but also people's hearts and minds. Some things change faster than others. It is not hard to draw the comparison to the President's "One American Initiative." On the one hand, racially healing is such a vast and squishy issue that few people have any real concrete ideas on where to begin. On the other hand, discrimination runs so completely counter to everything we stand for as a Nation, that the alternative, which is to do nothing, would be unthinkable.

Today President Clinton is talking to the NAACP and the National Association of Black Journalists about our options as a Nation. I am here talking to all of you. I have every confidence that these actions, if embraced by this Congress, will be extraordinarily positive for the Department of Agriculture. We, at USDA, are special in our advocacy for America's farmers and ranchers. These changes will make us even more effective.

We cannot change how every person treats every other person, but we can demand a basic respect for the human rights and dignity of our customers and employees. If we do, we will strengthen the people's Department and dramatically improve our ability to serve agriculture and the Nation.

Thank you, Mr. Chairman.

[The prepared statement of Secretary Glickman appears at the conclusion of the hearing.]

The CHAIRMAN. I thank you, Mr. Secretary, for an excellent statement. Does the Deputy Secretary or Mr. Reed have comments?

[No response.]

The CHAIRMAN. Not at this time. And they are available for questions. Thank you. I have several questions, but I would like to send them down to the Department. That will save some time for the rest of the committee members who have been patient to answer some of their questions.

At this point, I recognize Mr. Stenholm of Texas.

Mr. STENHOLM. Mr. Secretary, I know that Mrs. Clayton has developed a bill with a number of provisions stemming from the Civil Rights Action Team Report and I look forward to working with her on that package. But I was wondering when we might be expecting a formal, legislative package with the eight or nine recommendations that now appear to need Congressional action?

Secretary GLICKMAN. Well, we have been working with Congresswoman Clayton, and based upon the early drafts, we support most of the provisions in the bill that we have seen. So it is my expectation that you will probably be hearing our position, as it relates to Congresswoman Clayton's bill.

Let me tell you a little bit. We're going through close-out sessions of the Civil Rights Action Team Report. There were 92 recommendations, many of them involve legislative recommendations. So we have the implementation teams that I have been working with, since this is a grass roots effort and I need to complete that process before I finish a final decision on everyone of the legislative packages.

But working with her, I think that we have reached agreement on most of what she has prepared to date.

EXHIBIT 2

DECLARATION OF

ROSALIND GRAY

1. I am over 18 years of age and a United States citizen.

2. My business address is 607 Oneida Place, N.W., Washington, D.C.

3. I am a 1973 graduate of Howard University School of Law, a member of the Mississippi Bar and have practiced in many federal district courts. I am also a member of the Bar of the United States Supreme Court. From 1976 to 1986, as trial counsel and director for the Lawyers' Committee Municipal Services Equalization Project, I represented minorities in small, rural communities seeking to equalize municipal services. I have served as a consultant to the Legal Services Corporation, the Office of Revenue Sharing and the Departments of Justice and Housing and Urban Development. I have also served as Acting General Counsel to the U.S. Commission on Civil Rights and as Deputy General Counsel at the Equal Employment Opportunity Commission ("EEOC"). As Deputy General Counsel at EEOC, I managed the national litigation program and participated in the settlement of a number of major class actions. In addition, I have served as Associate General Counsel for the University of the District of Columbia where I represented the University in federal litigation and administrative proceedings on employment discrimination and other labor claims. On July13, 1998, the Secretary for the Department of Agriculture announced my appointment to serve as Director of Civil Rights.

4. The Office of Civil Rights ("OCR") has broad responsibility for implementing and coordinating all Department of Agriculture ("USDA") nondiscrimination, civil rights, and equal opportunity efforts in connection with all USDA programs and activities, including programs and activities which are operated or sponsored by USDA and carried out by non-federal organizations. The OCR Director serves as the principal advisor to the Secretary and the Assistant Secretary for Administration on all matters related to equal opportunity and civil rights. The position description for the OCR Director is included as Exhibit 1.

OVERVIEW: USDA and Civil Rights

5. When I assumed my duties as OCR Director, the OCR could perhaps best be described as being in a state of confusion and disorder. The office had a history of failing to handle properly program and employee complaints. My task as a manager was further complicated by the fact that the OCR was newly organized and poorly staffed. Most of its employees had been reassigned from non-civil rights jobs or were new hires, and poorly prepared to undertake the responsibilities of the office. I soon realized that the goals established by the administration to organize the office, to reduce complaints and to develop procedures for complaint processing while executing the other duties and responsibilities of the Director's Office would be one of the greatest challenges of my life. Despite these obvious problems that I discovered upon my arrival at OCR, I

nevertheless welcomed the challenge and saw it as an opportunity to assist in addressing issues of USDA's long history of discrimination against minority farmers and the well-documented decline of minority farmers.

6. When I arrived at the Jamie Whiten Building, USDA's headquarters in Washington, D.C., the atmosphere resembled that of a recently desegregated institution. Minority men, whether farmers or employees, were greeted with suspicion. Minority females were largely hired in support or administrative positions. While the Clinton Administration sought to change some of this by appointing a number of minority employees to high-level positions at USDA, African American men who were appointed often saw the authority of their positions curtailed. Management involvement in the allegations against and removal of the former Secretary of Agriculture Mike Espy is but one example.

7. Almost forty years after the civil rights acts, black employees were still reluctant to frequent the cafeteria in the Whiten Building. Long-term black employees remembered when it had been segregated and still did not feel welcome. In fact, they did not feel comfortable in the building at all and came to the building as little as possible. Black senior executives told me that white females whom they saw daily were reluctant or declined to enter an elevator when they were on it. Most minority employees in the main administration building were in low-grade positions and worked in the mailroom or technical support. White females reported they were afraid to walk corridors along the basement where a number of minority employees worked. I am not aware of any reported incidence of harassment.

8. Minority employees complained frequently of promotion denials. Senior minority employees struggled to maintain authority in their areas of management. White career employees used different standards of evaluation for minority managers and attempted to rate them unsatisfactorily for performances that earned their white counterparts outstanding ratings. Senior white career managers resisted integration of employment at higher grades.

9. In direct conflict with the EEOC, FSA personnel procedures provided for priority in hiring to be given to internal candidates and these procedures were still followed in many agencies. When white internal candidates were not selected, they invariably filed discrimination complaints. In one agency, when a minority female manager sought to diversify the senior executive staff, career managers met to complain and to prevent the Asian selectee from receiving the appointment. This was the USDA headquarters. Employees in the field reported that few, if any, of the civil rights or diversity changes initiated by the administration had been implemented in the field offices.

MANAGEMENT AND PERSONNEL ISSUES IN CIVIL RIGHTS

10. OCR employees resented my appointment and focus on program

complaints. They believed that I had replaced a career employee and that my primary focus was not employee complaints. It is well to note that USDA's employment-complaint processing, though inefficient and ineffective, had never been eliminated as had program-complaint processing. Upon my arrival at OCR, I became aware that reducing the number of program complaints and establishing processing procedures for farm program complaints simply were not matters of concern to OCR staffers. Many of these employees were responsible for the poor service provided farm customers. Many of them were, at best, indifferent to the exclusion of minority farmers from USDA programs.

11. Indifference and incompetence produced poor records and ineffective case processing. While uncertainty about the number of cases and their status was clearly a controllable management issue, files were and remained in disarray. Few CR staffers understood complaint processing or even the rudiments of civil rights procedures. They seemed to care little about the consequences to farmers of their denial of services. To build a structure for complaint processing, I worked diligently with the technical staff to provide resources to complete the complaint tracking system. When employees' lack of understanding of complaint processing threatened to derail completion of the tracking system, I contracted to draft processing procedures to be incorporated in the tracking system. When the system was deployed OCR employees complained that data entry for the tracking system was too time consuming and burdensome. Without my approval, employees eventually maintained two systems: 1) new cases were entered in the computerized tracking systems; and 2) existing cases were maintained in the old system. This dual tracking system eliminated their need to organize the old files. It also created the opportunity to maintain various and confusing categories of pending cases. The result was that the number of pending cases continued to be erroneously reported. In fact, if one did not know the category of case numbers to request, one could not obtain a clear picture of OCR's caseload. This basic failure had serious repercussions beyond the immediate office. Not only were there not accurate numbers for work and planning, but time and again, the OCR reported differing case numbers to the Secretary and Congress, resulting in embarrassment for the administration and for me.

12. It was obvious that personnel changes were needed. The Secretary had approved the return of many of the OCR employees to their former agencies and was committed to hiring experienced civil rights personnel. The Department's Office of Personnel identified forty-five people who had been assigned to OCR who did not meet the qualifications for any position at the office. However, before the reassignments could be completed, they were aborted. The proffered reason was that the reassignments violated the settlement agreements that had brought the employees to OCR initially; the real reason was that the agencies did not want these employees returned. Thus, although Congress had allocated additional funds for hiring new competent OCR employees, much of the additional funding was redirected to other divisions within the USDA. Many times, the department simply froze hiring for OCR and used the funds earmarked for OCR for other purposes. With the high rate of turnover and frequent freezes on hiring, civil rights had no appreciable staff increases. It was not difficult to glean that civil rights

enforcement simply was not a USDA priority.

13. Employees were antagonistic and not very helpful. Agency chiefs and supervisors generally resented the existence of the OCR and considered most efforts to enhance civil rights enforcement as infringements upon their authority, because previously, agency chiefs had been responsible for their own civil rights enforcement. Agency chiefs and supervisors complained that OCR interfered with their civil rights enforcement authority, threatened to expose their past efforts or lack thereof in the area of civil rights enforcement. Consequently, throughout my tenure, I was constantly confronted with agency heads and their deputies who resisted directly, or through the agency civil rights director, many of the changes I sought to implement.

14. While complaints continued to be filed in record numbers and the Secretary's office retrenched on commitments it had made to customers and employees regarding civil rights enforcement, I struggled to reform the system of complaint processing.

15. The Office of General Counsel ("OGC") oversaw the civil rights process at USDA. When the OCR was created. OGC insisted that all attorneys hired for civil rights review and enforcement be housed with OGC. The resulting effect was that OCR still did not have independence in case processing. OGC's authority for a legal sufficiency review extended to every element of case processing and OGC's delays magnified the problems of civil rights enforcement. However, OGC was never held responsible for the problems created. Moreover, OGC civil rights attorneys were often as lacking in the knowledge of civil rights law as the OCR staff. There was constant conflict between the two offices.

16. Although OCR had responsibility for many activities, the remainder of this declaration will be limited to my observations of complaint processing for programs managed by the Farm Services Agency ("FSA") and the continuing need for reform.

PROGRAM DISCRIMINATION COMPLAINTS IN THE FARM SERVICES AGENCIES

17. The February 1997 Civil Rights Action Team ("CRAT") Report summarized charges by minority farmers that USDA had long tolerated discrimination in the distribution of program benefits and the misuse of power to influence land ownership and farm profits. Minority farmers blamed the FSA for depriving them of the benefits of farm programs that have helped major producers survive the changes in agriculture. Based on thousands of complaints that were filed and the supporting documentation that I personally reviewed. I can confirm that the accusations contained in the CRAT Report are generally true. Despite ample warnings that minority farmers were being subjected to systematic discrimination at the local level in the delivery of credit and debt servicing. USDA has failed to exercise sufficient control over its field operations to address these lingering problems. I submit that there have been few effective steps taken to insure an equitable distribution of federal dollars to USDA customers. This is in large part due to

the fact that there are constituents, more numerous than minority farmers, who oppose change. In addition, there has been less than a total commitment from the Department to correct the recognized inequities and almost none from the FSA. A leading feminist once said that discrimination will end when it is more profitable for corporations and institutions to treat their customers equitably than it is for them to discriminate. The same can be said for USDA.

18. Notwithstanding its protestations to the contrary, the USDA is not interested in an equitable distribution of funds from its farm programs to minority farmers. Indeed, there have been many opportunities for the FSA to change if that agency really desired equity for its farm customers.

19. When I arrived at USDA there were 1,088 cases identified as being backlogged or filed before 1997. In addition to the " backlogged" cases, there were approximately three hundred complaints that had been accepted and several hundred or so filings that awaited determinations. While not all filings would be accepted as complaints and not all complaints would yield findings of discrimination, the backlogged cases had been forwarded to OCR in a state of disarray.

20. Until 1997, the FSA had processed its own civil rights complaints. Based upon my first-hand knowledge, I can attest that many complaints were destroyed or not accepted at all. After FSA complaint processing was transferred to the OCR, the FSA was initially responsible for preparing a preliminary investigatory report. Even though the FSA had presumably forwarded complainant files to OCR, the files were often incomplete and OCR had to rely on FSA to provide documents and a response to each allegation. Within the USDA, the preliminary investigatory report prepared by FSA was considered more persuasive than the complainant's allegations even when the accused FSA official had a well-documented history of discriminating against minority farmers. In preparing the preliminary report, FSA would send its non-civil rights investigators to interview and often intimidate the complainant. When investigations were transferred to the OCR, reports of investigations were frequently deficient due to a lack of understanding of the farm programs, and the OGC's policy that no matter how blatant the discriminatory conduct might be, there can be no discrimination unless the applicant is "eligible." To avoid finding a would-be applicant "eligible," county officials often simply refused to give minority farmers a loan application thereby making it impossible for the minority farmer to establish "eligibility" under the OGC's policy.

21. When I arrived and regrettably when I left, the OCR did not have, despite my best efforts, an effective civil rights enforcement program. In 1993, there were twenty employees responsible for civil rights compliance in the Department. In 1998, there were more than one hundred twenty employees. However, roughly half of that number was responsible for employment complaints. Of the fifty or sixty employees responsible for program complaints, about twenty three were temporary employees with no prior civil rights complaint experience. The administrative and support staff were comprised of temporary employees or detailees from other agencies.

22. To bring any case to conclusion, I personally had to become much more involved than I wanted to be. I reviewed investigatory reports looking for information that the farmers swore should have been included in their files. A familiar scenario soon emerged: The farmer charged discrimination; FSA replied that it had done everything "by the books."

23. Over time, I began to see geographical patterns emerge in the complaints. Black farmers in the "southern" states had already lost most of their farm acreage. They complained of FSA's refusal to finance them after successful farming years. They complained of conspiracies between USDA and local white corporate farmers and developers to acquire their farms. Often the land had been auctioned and lost before their complaints were processed. It appeared that FSA bid at auctions infrequently. Consequently, the lost land was not available for repurchase by the farmer from FSA inventory.

24. In the midsouth, complaints alleged brazen conduct. In Arkansas and Alabama, for example, there were proven claims documented by OCR that FSA employees actually participated in schemes to deprive minority farmers of land ownership by refusing loans and refinancing or simply failing to inform them of the availability of funding. A favorite scheme was to extend loans that FSA officers knew the farmer could not repay. In some cases, farmers complained that they were required to pay a portion of their operating loans to the lending officers. In the southwest, where corporate farms dominate, and the largest concentrations of Hispanic farmers and ranchers live, the tactic was more direct - no loans. Many FSA employees are themselves farmers and have a personal interest in depriving loans to minority farmers. Finally, in 2000, the USDA's Office of Ethics was able to implement a provision that made it a conflict of interest for a FSA official to benefit personally from a loan in which he was involved.

25. For years, FSA has known that its system of county committees excluded minority farmers. Many minority farmers complained that they never knew about FSA elections or when funds were available even after they inquired. This system of control by a few white farmers over federal farm dollars moving into the counties has been used to perpetuate and expand the farms of many county committee members and their families, at the expense of disfavored minority farmers. In some Alabama and Arkansas counties where minority farmers were a majority, they were nevertheless totally excluded from participation in the county committee system.

26. When farmers complained that civil rights investigations had been inadequate or that FSA had misrepresented the truth during investigations, OCR sent investigators to review field offices for compliance. Discriminatory practices and treatment were uncovered in compliance reviews that investigations often did not identify. Through compliance reviews, it was uncovered that in certain offices in Oklahoma, FSA employees refused to register tribal land in their databases. This insured that the Native American farmers would not receive notice of elections to the county committee and would not be eligible to participate in FSA programs - simple and

effective discrimination. That practice was discovered in August.1998, and I was still trying to insure that the all Native American farm land was registered in the database when I left office in 2001.

27. Results from many compliance reviews were shared with FSA administrator, the Deputy Secretary and the Assistant Secretary for Administration. FSA's civil rights director, who now serves as the USDA's OCR Director of Civil Rights, would respond that training was provided to the FSA office in response to findings of non-compliance. When complaints continued, I met with the FSA administrator who referred me to the agency civil rights director. FSA was reluctant and sometimes field offices refused to implement settlement or compliance agreements. Progress was so slow that the FSA administrator was made personally responsible for implementing compliance and settlement agreements. Complaints reached such a level that the USDA Secretary had to become personally involved. One of the more infamous cases involved an employee in rural Virginia who had brandished a gun in the office at an African American farmer inquiring about a loan. The federal employee admitted having the weapon in the office. FSA concluded that it was an antique weapon that the employee had in the office for cleaning and gave the employee only a three day suspension.

28. After all the investigations and findings of discrimination, after all the findings that FSA was not in compliance with civil rights regulations, after the millions paid by FSA in settlement of administrative complaints and after the many more millions in debt that FSA has forgiven, there still has not been any change in the way programs are administered. There were many recommendations for change. Yet systemic exclusion of minority farmers remains the standard operating procedure for FSA.

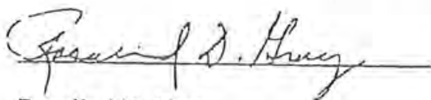
29. If not every, many efforts were made to correct the situation. Congress allocated resources. The Clinton Administration made improving civil rights enforcement at the USDA a priority. Training was provided. Yet these and many other efforts did not provide lasting improvements. The 1,088 "backlogged" cases were reduced to seven. All of the resources within the program office and assistance from other agencies helped reduce the backlogged cases. In 1999 another 1,261 cases were filed. In FY2000, filings were down to 671. Most of the complaints continued to be filed against the FSA. Many of the new filings were more than a year old before the initial processing began. OCR staff was simply not prepared to do the work of the office.

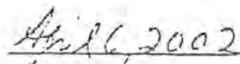
30. The lack of quality in the processing of cases over this period of time produced many erroneous decisions, especially dismissals based on an alleged lack of jurisdiction. Hundreds of complaints were dismissed on the basis of "lack of jurisdiction" by people who did not know the basis of a jurisdictional claim under Title VI of the Civil Rights Act. Private contractors, as well as the Justice Department, provided training. Employees attended Civil Rights training outside the Department. Yet the training did not improve production or the quality of work.

31. As I reflect upon my tenure as OCR Director, I ask: What was accomplished? Thousands of cases were resolved through extraordinary methods. Many backlogged cases, with the exclusion of the complaints filed by African American farmers, were resolved through an early resolution task force. Civil rights procedures were developed and published, but were not and are not followed. OCR dismissed hundreds of cases because they were not filed within 180 days of the "occurrence of the alleged discrimination." Yet many complainants did not receive a letter of acknowledgment after filing their complaint for more than a year and it frequently required another year for the complaint to be investigated and still another year before a proposed finding in the case was rendered. Consequently, there have been countless farmers who have lost their land or died waiting for USDA to process their complaints. Minority farmers continue to allege that FSA discriminate against them. The root of this problem lies in the unfettered discretion FSA employees have to control farmers' access to needed credit.

32. With few exceptions, minority participation in FSA programs is remarkably low. A comparative analysis of the distribution of the federal dollars would show this. I had suggested that a simple tracking of dollars would establish claims of exclusion by minority applicants. Small, minority farmers cannot compete with corporate farmers for loan eligibility, anymore than small business can compete with major corporations. USDA must propose, and Congress must approve, regulations with realistic eligibility standards for small farmers and set aside appropriate funding for this purpose. Exclusion of minority farmers from equitable participation in FSA program benefits must end before there are no minority farmers left to complain.

I have reviewed the foregoing Declaration and declare under penalty of perjury that it is true and correct to the best of my personal knowledge.





Rosalind D. Gray

Date