

201 Smaw Road
Washington, NC 27889

November 18, 2009

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

Dear President Obama:

As the named plaintiff in the landmark case *Pigford v. Glickman*, I urge you to direct the Secretary of Agriculture and the Attorney General to begin immediately good faith negotiations to resolve the pending discrimination lawsuits brought on behalf of Hispanic, Native American and women farmers pursuant to Section 14011 of the Food, Conservation and Energy Act of 2008 ("2008 Farm Bill"). They have suffered the same discrimination by the United States Department of Agriculture ("USDA") as African American farmers. Just as USDA addressed the claims of African Americans on a classwide basis, it should similarly settle the discrimination claims of Hispanic and other minority farmers on a classwide basis.

As you may be aware, between 1997 and 2000, in addition to my lawsuit, three other identical lawsuits were filed in the same courthouse: my suit on behalf of African American farmers, *Keepseagle v. Glickman* on behalf of Native American farmers, *Garcia v. Glickman* on behalf of Hispanic farmers and *Love v. Glickman* on behalf of women farmers.

In my case and the *Keepseagle* case, two different judges (Friedman and Sullivan) certified the cases as class actions on the basis of USDA's admitted failure to investigate discrimination complaints filed by African American and Native American farmers at USDA's behest. USDA failed to investigate the complaints because it had secretly dismantled its civil rights investigatory apparatus in the early days of the Reagan Administration. In the *Love* and *Garcia* cases, however, a different judge, Judge Robertson, refused to certify classes on the same basis that Judges Friedman and Sullivan had applied in my case and *Keepseagle*, respectively, notwithstanding the fact that the D.C. Circuit had renewed those certifications on at least three occasions and had found no fault with the certifications. Indeed, in my case, the D.C. Circuit expressly approved a settlement that has to date resulted in nearly \$1 billion being paid to approximately 15,000 African American farmers.

While USDA and DOJ use the lack of class certification as an excuse to refuse to bring about a just and efficient resolution of these cases through negotiations of classwide settlements, such excuses ring particularly hollow. First, USDA and DOJ have steadfastly refused to settle the *Keepseagle* case despite the fact that it was certified as a class action eight years ago. Second, tens of thousands of African American farmers who missed the filing deadline to participate in the settlement in my case have filed new lawsuits pursuant to Section 14012 of the

2008 Farm Bill. While none of these cases has been certified as a class action, the government has expressed its desire to settle these on a classwide basis and you have announced your intention to appropriate an additional \$1.25 billion to cover their damage claims. Third, of the four identical cases handled by three different judges, two judges have certified classes on the basis of USDA's admitted failure to investigate discrimination claims. Fourth, class certification is a procedural matter that does not address the underlying discrimination that is in fact admitted.

Secretary Dan Glickman, the original defendant in all four cases, has 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 addition, both during his confirmation hearing and subsequently, Secretary Vilsack made strong statements expressing the administration's desire, consistent with Section 14011 of the 2008 Farm Bill, to settle all of the pending discrimination cases. Unfortunately, USDA's actions have fallen short of the promises contained in Secretary Vilsack's statements. Indeed, the refusal by USDA and DOJ to entertain settlement discussions on a classwide basis is totally at odds with the clearly expressed will of Congress as expressed in Section 14011 and irreconcilable with Secretary Vilsack's repeatedly stated desire to settle all the pending lawsuits. Furthermore, it makes no sense for four minority groups to suffer the identical discrimination from the same federal agency and yet only one of the four groups to be compensated on a classwide basis. The Clinton Administration properly saw fit to order USDA and DOJ to begin negotiations with the representatives of the African American farmers when confronted with the obvious injustice in that case. In announcing last spring an additional \$1.25 billion for African American farmers who missed the filing deadline in my case, you stated your hope that your action would "close a chapter" in the sorry history of USDA discrimination against minority farmers. Mr. President, fundamental fairness and simple practice demand that you close the entire book on all discrimination at USDA and, consistent with Section 14011, "resolve all pending claims and class actions *in an expeditious and just manner*." (Emphasis added.) The only thing standing between "an expeditious and just" resolution of these cases is the will to do it. You, sir, 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 long-overdue accountability and transparency to the USDA-administered farm credit and non-credit farm benefit programs.

Respectfully,



Timothy C. Pigford