

# Addendum E

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, et al.,

Plaintiffs,

v.

ANN V. VENEMAN, Secretary,  
United States Department of  
Agriculture,

Defendant.

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: Civil Action No. 00-2445 (JR)  
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**FILED**

MAY 22 2002

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

MEMORANDUM ORDER

After careful consideration of the parties' briefs on the motion for class certification, I find the government's reliance upon footnote 15 of General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 159 n.15 (1982), overly literal. The Court has not categorically prohibited class actions in discrimination suits involving less than "entirely" subjective decisionmaking processes. Numerous credit and employment discrimination cases have allowed the use of disparate impact analysis to challenge subjective as well as objective criteria and practices that operate systematically to disadvantage minority groups. See, e.g., 12 C.F.R. § 202.6(a) n.2; Watson v. Ft. Worth Bank & Trust, 487 U.S. 977, 990-91 (1988); Griffin v. Carlin, 755 F.2d 1516, 1523 (11th Cir. 1985); Jones v. Ford Motor Credit Co., 2002 WL 88431 at \*3-\*4 (S.D.N.Y. Jan. 22, 2002). Commonality and typicality in such cases must be subjected to the same "rigorous analysis" used in any other Rule 23 proceeding,

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Falcon 457 U.S. at 161, but I cannot say as a matter of law that plaintiffs who challenge a set of criteria that include subjective elements can never demonstrate a sufficient "nexus" common to the whole group. Wagner v. Taylor, 836 F.2d 578, 594 (D.C. Cir. 1987) ("The existence of some common practices, such as subjective decisionmaking, can form the nexus between employees and applicants ...." (footnote omitted)).

That being said, however, the plaintiffs' 1997 statistical analysis and other evidence of record have not established a causal link between the policies that plaintiffs challenge and the asserted fact that Hispanic and Latino farmers have been less likely than white farmers to receive loans from USDA. Koger v. Reno, 98 F.3d 631, 639 (D.C. Cir. 1996). In other words, typicality and commonality cannot be determined on the limited record that has been compiled thus far.

The class certification motions in this case and Love v. Veneman, Civ. No. 00-2502, present similar if not identical legal issues, and simultaneous or joint briefing of those issues may be in the interest of justice.

It is this 22<sup>d</sup> day of May 2002,

ORDERED that the parties meet and confer on a schedule for further discovery related to the class certification issue.

It is

FURTHER ORDERED that a status conference is set for  
4:30 p.m. June 24, 2002, in Chambers.



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JAMES ROBERTSON  
United States District Judge