

**IN THE
UNITED STATES COURT OF APPEALS
FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

04-5448

**GUADALUPE L. GARCIA, for himself and
On behalf of G.A. GARCIA and SONS FARM, *et al.*,**

Appellants

v.

**MICHAEL JOHANNNS, Secretary,
United States Department of Agriculture,**

Appellee.

Consolidated with 05-5002

**Appeal from the United States District Court
For the District of Columbia
(Civ. No. 00-2445)**

APPELLANTS' MOTION TO EXTEND WORD LIMIT

Pursuant to Circuit Rule 28(f), appellants respectfully request the Court to enter an order allowing the parties to file principal briefs of not more than 21,000

words and appellants to file a reply brief of not more than 10,500 words.¹

Appellants have conferred with counsel for appellee, who does not consent to the motion. The reasons for the motion are as follows:

1. This case involves decades of admitted and documented discrimination by the United States Department of Agriculture (“USDA”) against Hispanic farmers and ranchers and the very survival of thousands of such farmers and ranchers who have been victimized by that discrimination. The appeals are before the Court on separate petitions filed pursuant to Fed. R. Civ. P. 23(f) and 28 U.S.C. § 1292(b) that this Court granted on December 16, 2004. Fed. R. App. P. 32(a)(7) would have afforded appellants 14,000 and 7,000 words respectively for their principal and reply briefs for each appeal for a total of 28,000 and 14,000 words respectively. However, on April 12, 2005, this Court, on its own motion, consolidated appellants’ appeals and consequently limited appellants to 14,000 and 7,000 words respectively for their principal and reply briefs.

2. The current word limit is insufficient to address adequately the multiple issues and errors raised by the separate appeals. Appellants believe that the requested word extension will give the parties a fair opportunity to present their arguments on the numerous factual and legal issues presented by these

¹ Appellants do not believe it necessary to extend the word limit applicable to briefs of *amici curiae*. See Fed. R. App. P. 29(d).

appeals and will better enable the Court to consider these issues fully and expeditiously.

3. With respect to appellants' 1292(b) appeal, the district court has committed numerous errors in its March 20, 2002 memorandum order ("3/20/02 Order") granting partial summary judgment and holding that USDA's failure to investigate discrimination complaints by Hispanic farmers and ranchers against USDA officials in connection with USDA's farm loan programs do not form the basis for a finding of commonality pursuant to Fed. R. Civ. P. 23(a)(2) despite contrary findings by the district court and this Court with respect to the identical discrimination complaints of African American and Native American farmers. *See Pigford v. Glickman*, 182 F.R.D. 349, 351 (D.D.C. 1998) (Friedman, J.); *Keepseagle v. Veneman*, No. 99-03119, 2001 U.S. Dist. LEXIS 25220 (D.D.C. Dec. 11, 2001) (Sullivan, J.); *Pigford v. Glickman*, 206 F.3d 1212 (D.C. Cir. 2000); *In re Veneman*, 309 F.3d 789 (D.C. Cir. 2002). The district court's 3/20/02 Order, in turn, relies upon and implicates its earlier order granting partial summary judgment in *Love v. Veneman*, No. 00-2502, 2001 U.S. Dist. LEXIS 25201 (D.D.C. Dec. 13, 2001), which is also before this Court on appeal. *See* Nos. 04-5449 and 05-5084.

4. With respect to appellants' Fed. R. Civ. P. 23(f) appeal, the district court has committed numerous additional errors in (1) its decision in *Garcia v.*

Veneman, 211 F.R.D. 15 (D.D.C. 2002) (“*Garcia I*”) in which the district court, after directing the parties to submit affidavits in connection with a then pending dispute concerning the scope of class discovery, abruptly denied appellants’ class certification motion without ever addressing the discovery dispute, and (2) its decision in *Garcia v. Veneman*, 224 F.R.D. 8 (D.D.C. 2004) (“*Garcia II*”) in which the district again denied appellants’ class certification motion and incorporated its decision in *Garcia I*. *Garcia II*, 224 F.R.D. at 9 (“[t]his Memorandum Order is intended to pick up where *Garcia I* left off, and it should be read in conjunction with that ruling”).

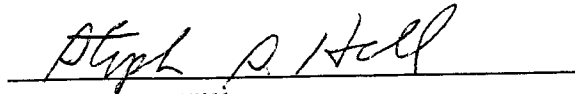
5. The district court’s many errors compel appellant to address numerous legal and factual issues on appeal. *See* Petition of Plaintiffs Guadalupe L. Garcia, *Et Al.* For Permission To Take An Interlocutory Appeal Under Fed. R. Civ. P. 23(f), No. 04-8008, dated Sept. 22, 2004, at 11-20; Petition of Plaintiffs Guadalupe L. Garcia, *Et Al.* For Permission To Take An Interlocutory Appeal Pursuant To 28 U.S.C. § 1292(b), No. 04-8009, dated Oct. 12, 2004, at 14-18. Indeed, given the nature of the district court’s errors and the contrary holdings with respect to virtually identical cases brought on behalf of African American and Native American farmers, merely placing these appeals in the proper procedural and factual context requires a more extensive discussion of the procedural and factual background than would ordinarily be necessary. And appellants believe

that the Court will be better served if that discussion is cogently set forth in their principal brief rather than requiring the Court to refer extensively and repeatedly to four separate memorandum orders for such procedural and factual discussions.

6. In other complex cases, appellate courts, including this Court, have permitted parties to file briefs that exceed the current word limits. *See, e.g., Michigan v. EPA*, No. 98-1497 *et al.*, 1999 WL 229221, at * 3 (D.C. Cir. Mar. 19, 1999) (permitting EPA to file principal brief not to exceed 38,500 words); *Transmission Access Policy Study Group v. FERC*, No. 97-1715 *et al.*, 1998 WL 633827, at * 1 (D.C. Cir. Aug. 13, 1998) (permitting FERC to file principal brief not to exceed 62,500 words); *Am. Trucking Ass 'ns v. EPA*, No. 97-1440 *et al.*, 1998 WL 65651, at * 1 (D.C. Cir. Jan. 21, 1998) (permitting EPA to file principal brief not to exceed 41,250 words); *Oxy USA v. FERC*, 64 F.3d 679 (D.C. Cir. 1995); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979) (permitting 150 page printed brief, a figure three times the then existing 50 page limit).

For the foregoing reasons, appellants respectfully request that the Court enter an order allowing each side to file principal briefs of not more than 21,000 words and appellants to file a reply brief of not more than 10,500 words.

Respectfully submitted,



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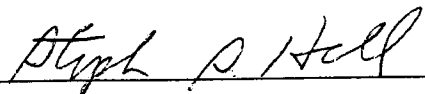
Dated : July 20, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July 2005, I have caused the Appellants' Motion To Extend Word Limit be served by hand delivery upon the following :

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