

IN THE UNITED STATES COURT OF APPEAL
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GUADALUPE L. GARCIA, et al.,

Plaintiffs-Appellants,

v.

MICHAEL JOHANNNS, SECRETARY,

Defendant-Appellee.

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) Nos. 04-5448, 05-5002
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REPLY OF PLAINTIFFS-APPELLANTS TO THE OPPOSITION
TO APPELLANTS' MOTION TO EXTEND WORD LIMIT

Defendant-Appellee's opposition to plaintiffs-appellants' motion to extend the word limit is without merit and, if anything, supports the motion.

1. While mentioning in passing that this Court has consolidated plaintiffs-appellants' Fed. R. Civ. P. 23(f) and 28 U.S.C. § 1292(b) appeals, the government asserts, contrary to fact, that the instant appeals are identical in every respect to the appeal in *Keepseagle*. See, e.g., Opposition at 3 ("plaintiffs now seek to litigate the exact same legal issues on appeal that the government attempted to litigate in *Keepseagle*") and 5. The government's *Keepseagle* appeal, however, was much more narrow in scope than the instant appeal. As this Court noted with respect to *Keepseagle*,

The Department now mounts two challenges to the district court's class certification decision. First, the Department claims that farmers' complaint processing allegations fail Rule 23(a)'s commonality and typicality

requirements. Second, the Department argues that the district court lacked authority to certify a (b)(2) class without first determining whether the “appropriate final relief relates exclusively or predominately to money damages.”

In re Veneman, 309 F.3d 789, 793 (D.C. Cir. 2002). The *Keepseagle* appeal was essentially limited to (1) the issues raised by plaintiffs-appellants’ Section 1292(b) petition,¹ *i.e.* whether allegations that USDA systematically failed to investigate discrimination complaints of Hispanic farmers arising out of their attempts to participate in USDA-administered non-credit farm benefit and farm credit programs state a cause of action under either the Administrative Procedure Act or ECOA and can such allegations support a finding of commonality and typicality and (2) whether final relief relates exclusively or predominately to money damages?

2. In opposing the motion, the government completely ignores the fact that plaintiffs-appellants’ Fed. R. Civ. P. 23(f) appeal addresses numerous errors committed by the district court in *Garcia v. Veneman*, 211 F.R.D. 15 (D.D.C. 2002) (“*Garcia I*”) and *Garcia v. Veneman*, 224 F.R.D. 8 (D.D.C. 2004) (“*Garcia II*”) that are unrelated and in addition to the issues raised in the *Keepseagle* appeal. For example, *Garcia I* and *Garcia II* raise, among others, the following issues: Did the district court err by denying Hispanic farmers the discovery needed to satisfy its mandated burden of proof with respect to their disparate impact claims and by refusing to follow legislation specifically enacted to modify that burden of

¹ Indeed, in response to plaintiffs-appellants’ petition for review, the government unsuccessfully argued that “this Court first . . . review th[e] legal question pursuant to Section 1292(b) while denying (or holding in abeyance) plaintiffs’ Rule 23(f) petitions.” Defendant’s Response To Plaintiffs’ Petition For Permission To Take An Interlocutory Appeal Pursuant To 28 U.S.C. 1292(b) at 3 (attached hereto as Exhibit 1).

proof in circumstances identical to those present in the case? Did the district court err in ignoring a significant showing of a pattern and practice of discrimination by multiple government decisionmakers applying uniform, highly subjective national eligibility criteria? Did the district court err in applying *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147 (1985)?

3. Unwittingly, the government actually supports the motion to extend the word limit, conceding that it required a 13,632-word opening brief and a 6,996-word reply brief just to address the limited issues presented in *Keepseagle*.² Opposition at 2-3. In the instant motion, the Hispanic farmers merely seek an additional 7,000 words and 3,500 words respectively to address issues similar to those raised in *Keepseagle* and the additional unrelated Fed. R. Civ. P. 23(f) issues raised by *Garcia I* and *Garcia II*.

4. The government's suggestion of "the possibility of coordination among the two sets of plaintiffs in this case (and their amici)" ignores key facts. Opposition at 5. First, the Court rejected the government's motion to consolidate these cases and there are distinct differences between them in terms of the issues presented on appeal. *Compare* 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) at 11-19 and Plaintiffs' Petition for Permission To Take An Interlocutory Appeal Pursuant To Fed. R. Civ. P. 23(f) (No. 04-8010) at 11-19. Second, owing to the errors committed by the district court in *Garcia I* and *Garcia II*, the Hispanic farmers, unlike the plaintiffs-appellants in *Love*, have to address more issues in their Fed. R. Civ. P. 23(f) appeal, wholly apart from the issues presented

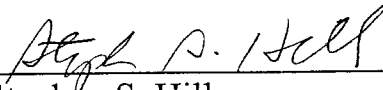
² Indeed, with respect to the issue of whether the appropriate final relief relates exclusively or predominately to money damages, the Court concluded that key aspects of that issue were "entirely unbriefed. . . ." 309 F.3d at 796.

by the Section 1292(b) appeal. Third, unlike the plaintiffs-appellants in *Love*, the Hispanic farmers have no amici with which to coordinate and the deadline for seeking permission to file an amicus brief in this case has long since passed. Indeed, the only amicus in this case, the United State Chamber of Commerce, supports defendant-appellee.

5. Finally, far from burdening the Court, the very modest extension of the word limits requested by plaintiffs-appellants will actually benefit the Court by allowing plaintiffs-appellants to state cogently the procedural and factual background as well as the numerous legal issues raised by the multiple decisions in a single brief rather than repeatedly and extensively referring the Court to four separate memorandum orders. Indeed, plaintiffs-appellants are far along in the briefing process and represent that the issues raised by the instant Fed. R. Civ. P. 23(f) and Section 1292(b) appeals simply cannot be fairly addressed within the current word limits – a fact made clear by the government’s own experience in the much more narrowly focused *Keepseagle* appeal. Moreover, inasmuch as the livelihoods of thousands of Hispanic farmers who are the victims of well-documented and indeed admitted discrimination by USDA are at stake in these appeals, fundamental fairness dictates that the modest request to extend the word limits for the principal and reply briefs be granted.

Accordingly, for the foregoing reasons and for the reasons set forth in the motion, plaintiffs-appellants respectfully request that the word limit for the principal briefs be extended to no more than 21,000 words and that plaintiffs-appellants be permitted to file a reply brief not to exceed 10,500 words.

Respectfully submitted,



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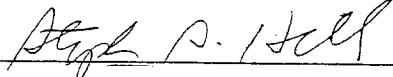
Dated : July 27, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July 2005, I have caused the Reply Of Plaintiffs-Appellants To The Opposition To Appellants' Motion To Extend Word Limit served by hand delivery upon the following :

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