

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| GUADALUPE L. GARCIA, JR., et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. 1:00CV02445 |
| |) | Judge James Robertson |
| ANN VENEMAN, Secretary of the UNITED |) | |
| STATES DEPARTMENT OF AGRICULTURE, |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFFS' REPLY TO DEFENDANT'S
OPPOSITION TO PLAINTIFFS' EMERGENCY
MOTION FOR PRELIMINARY INJUNCTION**

While cavalierly dismissing plaintiffs' motion as not a serious matter, the government ignores some key facts. Defendant's Opposition at 1. First, plaintiffs filed their motion to require the United States Department of Agriculture ("USDA") to adhere to its well-settled policy of not taking adverse action against farmers who have pending civil rights complaints filed with the USDA's Office of Civil Rights ("OCR"). Moreover, to suggest, as the government does, that plaintiffs have failed to demonstrate that they are facing irreparable injury is simply disingenuous given the fact that USDA has already violated the very policy which plaintiffs seek to enforce. Thus, the injury is not merely imminent, it has occurred and there is the very real possibility that it will be repeated.

Indeed, it is significant that the government has not denied the existence of the well-established and well-documented policy. Nor has the government denied that it foreclosed upon the Garzas in direct violation of that policy. Similarly, the government has not denied any of plaintiffs' assertions with respect to (1) the policy, (2) USDA's shoddy recordkeeping, (3) the

obligation of USDA personnel to record and forward oral complaints, (4) the facts relating to the Garzas' multiple complaints, (5) the circumstances giving rise to the emergency telephone hearing on September 7, 2004 and (6) the implications of those assertions for the government's policy and this motion.

The USDA's well-settled policy of not taking any adverse action against farmers with discrimination complaints pending with USDA does not depend upon whether the farmers are ultimately successful in proving discrimination. To the contrary, the policy is designed to maintain the status quo pending the completion of USDA's investigation and review of the farmer's discrimination complaint. The ultimate merit of the farmer's discrimination complaint is completely irrelevant to the policy and USDA's obligation to adhere to it. Thus, to require that a farmer who files a civil rights complaint must demonstrate that he would prevail on the merits of his complaint before the USDA will follow its policy, places a requirement upon the farmer that is neither expressly nor implicitly required by the well-settled, straight-forward policy.

The government's assertion that plaintiffs "'equity' consists of claims of injury and discrimination that are simply . . . bare allegations devoid of any factual support whatsoever" is also disingenuous. Defendant's Opposition at 4. Plaintiffs Vicky and Ray Garza along with Stella and Adam Garza Jr. have all supplied declarations documenting how USDA discriminated against them. The defendant has not supplied any evidence to dispute their claims.

In the case of Vicky and Ray Garza, the couple applied for several operating loans from 1990-1998. See Declaration of Vicky Garza, April 1, 2002, ¶ 7.¹ Each year that Vicky and Ray Garza applied for the operating loan, the USDA never accepted their original application. The Garzas hired Mr. Bill Arens, an experienced farmers' advocate with a vast knowledge of the CFR, to assist them in completing their loan application. See id. ¶ 5. Despite receiving professional assistance, USDA repeatedly asked the Garzas to correct alleged mistakes on their application. Thus delaying the loan application process. See id. ¶ 7.

¹ See Exhibit 1.

Once the loan applications were deemed complete and finally approved, the loan amount was often less than what the Garzas originally requested. See id. ¶ 5. In addition, the USDA took several months to disburse the funds. Oftentimes the Garzas did not receive their loan proceeds until late July/early August several months after the cotton-planting season. See id. ¶ 6. Due to USDA's excessive processing time, the Garzas were forced to farm on limited credit from their suppliers based on the expected USDA loan. Moreover, the Garzas had to forego certain necessary supplies as a result of not receiving the loan funds on time. Without the necessary funding, the end result was that the Garzas could not successfully produce healthy crops to make enough money to repay their debt. The significant delays by the USDA forced the family deeper and deeper into debt. See id. ¶ 7.

Similarly, Stella and Adam Garza, Jr. experienced the same treatment and fate with the USDA. See Declaration of Stella Garza, March 26, 2002;² Declaration of Adam P. Garza, Jr., April 1, 2002.³ From 1990 to 1997, Stella and Adam Garza applied for operating loans, were rejected and had to appeal the decision or if they were approved, the Garzas did not receive their funding until late in the planting season. See Declaration of Adam P. Garza, Jr. ¶ 8. In addition, on several occasions when the USDA rejected Stella and Adam Garza's loan applications, the Garzas, with the assistance of Mr. Arens, successfully had the USDA's denial overturned at the appeals level. Nevertheless, the funding of these loans also came late. Ultimately, Stella and Adam Garza were unable to produce healthy crops. USDA's delays and denials prevented the Garzas from optimizing their production and hence reducing their revenue while simultaneously forcing them deeper into debt, which ultimately caused them to default on their loan obligations.

The Garzas' experiences coincide with the Civil Rights Action Team's ("CRAT") findings. The CRAT report acknowledged that the USDA had a pattern of delaying and denying

² See Exhibit 2.

³ See Exhibit 3.

loan applications of minority farmers which ultimately caused them to lose their farms.

According to the CRAT report:

The minority or limited-resource farmer tries to apply for a farm operating loan through the FSA county office well in advance of planting season [T]he farmer might receive an application without any assistance in completing it, then be asked repeatedly to correct mistakes or complete oversights in the loan application. Often those requests for correcting the application could be stretched for months, since they would come only if the minority farmer contacted the office to check on the loan processing. By the time processing is completed, even when the loan is approved, planting season has already passed and the farmer either has not been able to plant at all, or has obtained limited credit on the strength of an expected FSA loan to plant a small crop, usually without the fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced.

If the farmer's promised FSA loan finally does arrive, it may have been arbitrarily reduced, leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts. . . . The land is lost finally and sold at auction, where it is bought by someone else at half the price being asked of the minority farmer.

A Report by the Civil Rights Action Team, Civil Rights at the United States Department of Agriculture, at 15-16 (Feb. 1997). The CRAT report clearly supports the factual allegations detailed in the Garzas' declarations. As with the Garzas' declarations, the government has failed to provide any evidence disputing the facts documented in the CRAT report.

Furthermore, the government has not and cannot dispute that the Garzas have pending civil rights complaints. The government has not and cannot deny that USDA foreclosed upon the Garzas in violation of its policy of not taking adverse action against farmers with pending civil rights complaints. Instead, the government asserts that "[d]efendant . . . has significant responsibilities to ensure that public funds are protected and that productive land is farmed by persons who have not already failed at that enterprise." Defendant's Opposition at 4. However, assuming arguendo that USDA, in fact, has such responsibilities, it presumably had them when it promulgated the policy against taking adverse action against any farmer who had a pending civil right complaint filed with the USDA OCR. Far from "interfere[ing] with defendant's

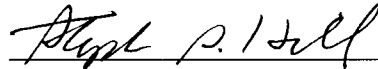
ability to discharge those responsibilities” or “significantly undermin[ing] her ability to discharge her obligations under the farm credit program,” the injunction relief sought by the instant motion would vindicate a fundamental rule of law that an agency is required to follow its own rules and policies. See Michigan Consolidated Gas Co. v. Federal Energy Regulatory Comm’n, 883 F.2d 117, 122 (D.C. Cir. 1989).

Finally, the suggestion that because the Court has denied plaintiffs’ motion for class certification, “the only plaintiffs in this case are those persons identified as such in the caption of the complaint and as to whom the complaint alleges facts sufficient to establish this Court’s subject matter jurisdiction” also misses the point. Defendant’s Opposition at 2. First, plaintiffs’ counsel continue to represent the interest of the putative class and have sought interlocutory review of the Court’s order denying class certification. Moreover, both the Court and the government concede that interlocutory review is appropriate, although the government and plaintiffs disagree concerning the scope of such review. Second, the government’s conduct with respect to the foreclosure of the Garzas’ farms demonstrates USDA’s willingness to ignore and violate its own well-documented policy against taking adverse action against farmers with pending civil rights complaints. It is well-settled that an agency cannot depart from prior policy without providing a reasoned explanation for such a departure. See, e.g., Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984). The Garzas have already been injured by USDA’s refusal to adhere to its own policy. Unless the Court requires USDA to adhere to its own established policy, there is no telling how many additional farmers will be injured. In that connection, it should be noted that the Court made clear in the emergency telephone hearing of September 7, 2004 that it would not look favorably upon other such emergency oral motions and that the issue should be addressed in a written motion. The instant motion is a direct response to the concerns raised by the Court. Third, if this case is not resolved on a class-wide basis and plaintiffs are required to bring hundreds, if not thousands, of individual complaints, the need for

the government to follow its established policy becomes all the more critical as the time required to resolve these issues will be extended substantially.⁴

Accordingly, for the foregoing reasons and for the reasons set forth in plaintiffs' emergency motion for preliminary injunction, the Court should enter an order requiring the USDA to comply with its well-settled policy of not taking adverse action against farmers with pending civil rights complaints and granting the other relief sought by plaintiffs.

Respectfully submitted,



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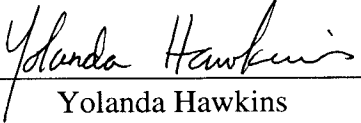
Date: November 9, 2004

⁴ Currently, on information and belief, OCR is suspending its investigation of discrimination complaints by Hispanic farmers pending the outcome of the Garcia case.

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Plaintiffs' Reply To Defendant's Opposition To Plaintiffs' Emergency Motion For Preliminary Injunction to be served by means of the Clerk's electronic notification system, this 9th day of November, 2004 upon the following:

Lisa Olson, Esquire
UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
Federal Programs Branch
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Yolanda Hawkins