

# DOJ and Agriculture Spar Over Hispanic Farmers Settlement

By [Tim Burger](#) | May 3, 2010 11:04 am, MAIN JUSTICE

The Justice Department and the Agriculture Department are at odds over how to handle politically sensitive claims of Hispanic farmers who have alleged discrimination against them in seeking government loans.

The case, which is being overseen by the DOJ Civil Division and its No. 3 official, Associate Attorney General **Thomas Perrelli**, will be a test of how the administration balances thorny legal and political questions.



The case is testing Associate Attorney General Tom Perrelli's ability to navigate the law and politics. (DOJ)

The White House is facing intense pressure from senior members of Congress, Agriculture Secretary **Tom Vilsack** and others who say that Hispanic farmers should be compensated in a manner similar to black farmers, who received more than \$1 billion under a 1999 [settlement](#) with the government and could get up to \$1.25 billion more under a deal announced by the administration in February.

Former FBI Director **Louis Freeh**, whose law firm joined as co-counsel for the Hispanic farmers last year, even buttonholed then-White House Counsel **Greg Craig** at an event last year about the matter.

But the two cases have a major difference. The black farmers case — known as *Pigford* after the lead plaintiff — was certified as a class action lawsuit. The Justice Department persuaded judges

to reject class action status for the Hispanic farmers case, *Guadalupe L. Garcia Jr. v. the Secretary of Agriculture*.

### ‘A different judge in the same courthouse’

In 2006, the U.S. Court of Appeals for the District of Columbia Circuit affirmed a lower court ruling rejecting class-action status for the *Garcia* case. Given that ruling, the Justice Department has balked at a global settlement for the Hispanic farmers, arguing instead that claims of discrimination in Agriculture loan programs should be handled individually. The same goes for a similar case involving female farmers, *Rosemary Love v. Thomas Vilsack*.

A senior congressional aide familiar with the matter said these cases could each command settlement pools equal to the more than \$2 billion attributed to the two stages of the Pigford case, or a total of around \$4 billion, depending on the number of plaintiffs who stepped forward in any settlement process.

Given the large federal budget deficit, there could be pressure in Congress against a settlement. A March 31 date for Congress to appropriate \$1.15 billion in funds for the supplemental black farmers settlement [passed](#) without action. (Another \$100 million for the black farmers was already set aside in a 2008 farm bill.)

And Sen. **John Barrosso** (R-Wyo.) recently [proposed](#) capping at \$50 million attorneys’ fees, expenses and costs associated with a proposed settlement with American Indians in a case known as *Cobell v. Salazar*. The \$3.4 billion Cobell [settlement](#), [announced](#) with fanfare in December, would compensate Indians for the government’s mishandling of trust funds administered by the Interior Department.



Agriculture Secretary Tom Vilsack (left) has been pushing for a global settlement for the Hispanic farmers (usda.gov)

The congressional aide and another informed person watching the *Garcia* case said the Agriculture Department's advocates for a settlement would like to see general guidelines similar to the framework of the *Pigford* settlement. This could mean an average of about \$50,000 for each plaintiff who presents a case for discrimination – without having the government question the evidence they offer. The government is likely to pay out much less overall to Hispanic farmers if they are required to litigate their cases individually.

An Obama administration official said the White House is playing a “coordinating role” in discussions with the Justice and Agriculture departments. Agriculture Secretary Vilsack has been seeking a global settlement for the Hispanic farmers.

Last June, eight U.S. senators, led by **Robert Menendez** (D-N.J.), wrote President Barack Obama to complain that while Obama last May heralded settlement of the suit brought by the African-American farmers, “thousands of Hispanic farmers and ranchers, many of whom are our constituents, continue to suffer from precisely the same discrimination and have seen no recourse thus far.”

The case features an intense clash of federal budget constraints and identity politics — as Obama and congressional Democrats head for tough re-election campaigns. Then there's the fact that the courts have arguably rejected the notion of a global settlement.

**Stephen Hill** of Howrey LLP, lead counsel in the case, said the class-action denial that separates the Hispanic farmers' case from that of the African-American farmers amounts to “a different judge in the same courthouse. It's as simple as that.” Hill said that despite such a denial, “any case can be settled on a class basis if the parties are willing to do so.... What we're trying to do is bring justice that's long overdue to these farmers.”

Hill said he's seeking to identify Hispanic farmers who could be part of a settlement. He said the 2007 agriculture census showed there are 82,000 Hispanic farmers but would not estimate how many of these might claim discrimination.

“We remain in negotiations and we'll just have to see how they unfold,” Hill said. He said there's no specific deadline for the next development and that Menendez has led talks with the White House on the matter.

The White House and Agriculture Department referred questions to the Justice Department. Justice spokeswoman **Melissa Schwartz** said court denial of class action status means “claims will be litigated on an individual basis.” She added: “Because of the court's actions, we will not be able to negotiate a class-wide settlement.”

## **Talks underway**

The Justice Department position has advocates for the farmers fuming — and talks on a deal akin to a class settlement are nonetheless underway, according to officials in Congress and the Obama administration and private attorneys familiar with the matter.

“The African Americans with the identical problems, the identical agency, they had a class certified. So why not do the Hispanic farmers? It’s always been about treating everybody equally,” said **Eugene Sullivan**, a former judge whose firm, Freeh Sporkin & Sullivan LLP, joined lead law firm Howrey last year as co-counsel.

Sullivan said class-status denial was technical and the Hispanic farmers’ case should not suffer because of “the technicality and the randomness of which judge gets it.”

Referring to the settlement with black farmers, Sullivan added: “If the United States government is settling with a particular race plaintiff they should settle with another race plaintiff who got the identical discrimination.”



Louis Freeh (FBI)

Sullivan’s partner, Freeh, brought up the case with then-White House Counsel Craig at a White House reception for Supreme Court Justice **Sonia Sotomayor** last August.

“We sat next to each other at the event,” Craig said in an interview, adding that Freeh gave him his business card and said he was working on the case. “I said this was being handled at the Justice Department.”

Craig said he took no action in the case. “This is a Justice Department case under litigation. I’m not going to get involved.” Craig added that enjoyed seeing Freeh, whom he hadn’t met before.

Vilsack has been urging a settlement similar to *Pigford’s* per-plaintiff amount. He is said to be in tune with the politics of the case. Pleasing the Latino constituency is a top priority for both parties.

Vilsack is a former governor of Iowa who briefly ran for president before withdrawing in 2007 to endorse Hillary Clinton in the Democratic primaries.

Around the time Freeh mentioned the case to Craig in the White House, U.S. District Judge **James Robertson** of the District of Columbia and a Justice Department lawyer confirmed in an exchange in the August court hearing that the case is not to be handled as a class action.

In a March 2006 ruling, the U.S. Court of Appeals for the D.C. Circuit wrote that it decided to “affirm the district court’s denial of a class certification because the appellants failed to show a common facially neutral USDA farm loan policy, resulting in the disparate effect on them and the putative class of Hispanic farmers.”

The lawyers, who have been working pro-bono, could make substantial fees if there is a global settlement.

Hill, of Howrey, said he’s concentrating on the litigation and that the “compensation will take care of itself.... I don’t have a figure off the top of my head” of expenses his firm has incurred or what it stands to make if it prevails. Expenses thus far are “substantial,” he said, with more than eight years of work poured into it.

“We will probably seek to recover our costs and investments in this case and if the court sees fit to reward our efforts additionally, it will do so,” Hill said.