

Hispanic Farmers Bemoan Protracted Litigation Against USDA

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BERINO -- A lawsuit alleging the U.S. Department of Agriculture harmed Hispanic farmers through discriminatory lending practices turns 10 next year, and some of its plaintiffs say the protracted litigation has left them feeling twice stung.

First, many Hispanics lost their farms or financial opportunities because, they claim, the USDA discriminated against them and then failed to investigate complaints.

Then, though the Justice Department settled with black farmers in a nearly identical case, a federal judge has refused to grant the Hispanic farmers class-action status in their lawsuit, leaving the case to inch along as some plaintiffs die off.

"They are just dragging it out," said Doña Ana County farmer Guadalupe Garcia Jr., the lead plaintiff in the case and president of the Hispanic Farmers and Ranchers Association Inc. "That's just dirty."

Garcia, his father and brother lost two farms totaling 626 acres, which sold in a 1999 foreclosure for less than half of their \$2.4 million value.

The lawsuit, filed in 2000 in U.S. District Court in Washington, D.C., alleges USDA lending arms, the Farm Service Agency and its predecessor the Farmers Home Administration, discriminated against Garcia and numerous other Hispanic farmers in denying them credit, disaster relief and debt servicing in violation of the Equal Credit Opportunity Act.

"That's what I'm waiting for -- equal rights for all of us," said the 65-year-old Garcia, whose father died six years ago with the lawsuit still pending. The farmers' attorney said at least 17 farmers have died waiting for the case to be litigated. The lawsuit's 81 named plaintiffs hail from Washington to Texas and California to Colorado.

As he watched over the recent harvest of red chile peppers at a 40-acre farm he leases in Berino, Garcia added, "If they had helped us, we would still have our farm."

What particularly rankles the Hispanic plaintiffs, about 20 of whom live in New Mexico, is that black farmers, who filed a similar lawsuit in 1997, were granted class-action certification, and the government then moved to settle the case.

Federal Judge James Robertson of the District of Columbia twice denied the Hispanic farmers class certification, the last time in 2004, and that decision has been upheld. The plaintiffs, Robertson concluded, claimed they had been denied USDA credit benefits "in

various ways" but had not sufficiently established "a common question of law or fact" warranting class certification.

In the black farmers' lawsuit, known as *Pigford v. Glickman*, the settlement has so far resulted in payments of nearly \$1 billion to about 15,000 farmers.

After the initial filing of the *Pigford* case, three other lawsuits alleging USDA discrimination were filed by Hispanic, Native American and female farmers. As with the *Pigford* case, Native American farmers were granted class-action certification by a different federal judge in 2001. No settlement has yet resulted. But so far, the Hispanic and female farmers are still trying to get certified as a class.

On Sept. 15, those farmers jointly filed a petition asking the Supreme Court to review the lower court's denial of class-action certification.

"No matter what the Supreme Court does, the parties could always settle the case if they are of a mind to," said Washington attorney Stephen Hill, who represents the Hispanic farmers. "There's no dispute about the discrimination."

Past bias

As far back as 1997, then-Agriculture Secretary Dan Glickman acknowledged in testimony before Congress that there had been discrimination in the farm loan program. A 2008 Government Accountability Office report noted how, for decades, complaints about alleged USDA discrimination against minorities and women had been raised and studied. The report said officials of the U.S. Commission on Civil Rights, the GAO, the USDA's Inspector General, and Congress had "described extensive concerns about discriminatory behavior in USDA's delivery of services to program customers -- in particular minority farmers."

Current Agriculture Secretary Thomas Vilsack, announced "A New Civil Rights Era for USDA" in a department memo earlier this year, and in September he announced the hiring of a private contractor to conduct an independent analysis of the quality of the Farm Service Agency's programming and to identify problem areas.

"Under Secretary Vilsack's leadership, USDA is committed to ending all forms of discrimination and addressing past allegations in a timely and fair manner," USDA spokesman Caleb Weaver said.

As to whether the Department of Justice, which represents the USDA, concedes that Hispanic farmers suffered past discrimination in the farm loan program, spokesman Charles Miller said, "It may be possible that individual cases of discrimination may have occurred, but since the individual cases have not been litigated, we really don't know for sure." Miller noted that it was a federal judge, not the Justice Department, who denied class-action status.

"The government to date has used the fact that our judge refused to certify class as a reason not to settle," Hill said. "We continue to believe that the government is acting in a cynical and opportunistic way."

Problems with loans

Along with Garcia, other New Mexicans involved in the case come from Las Vegas, Chimayó and Questa in the north, and small rural communities in the south like Hatch, Chamberino and Hagerman.

Hatch farmer Norma Flores said that for 16 years until 1988, she and her husband, Edward, owned nearly 100 acres of land and leased about 200 more. Their operation began to run into problems after they applied for an operating loan with the FSA's predecessor, the Farmers Home Administration. The couple applied for one loan in October, and, while approved, they did not receive the proceeds until March, delaying preparation of the land and undercutting crop production. Other delays, usually due to repeated requests by agency officials for more documentation, caused a chain reaction, Flores said, and the couple became delinquent on bills.

"That really was setting people up for failure," Flores said. "Our Anglo counterparts never skipped a beat, I can guarantee you that."

They eventually lost eight leased farms, and other land they owned was foreclosed on.

Anthony resident George Provencio, 62, said he ran into similar problems with the FSA: repeated delays in processing loan applications; lost paperwork; a requirement that he use a private "loan packager" who charged him a fee of \$9,000.

At one point, Provencio said, he farmed cotton, corn and chile on 1,500 acres, but he ended up losing equipment and land. "We could have kept going. They (FSA) wouldn't work with us. They just cut us off at the knees," Provencio said while surveying land he once farmed in Berino.

He and other plaintiffs claim that Anglo farmers, often with less collateral and experience, would be granted loans and better service. A county committee that made credit eligibility decisions on behalf of the USDA -- and was usually made up of Anglo farmers -- often worked against Hispanic farmers, several plaintiffs said.

"We didn't lose this land because we were bad farmers," Provencio said. "It was FSA working against us."

The Department of Justice has already asked Judge Robertson to transfer individual claims in the Hispanic farmers case for trial in courts in six states.

If the Supreme Court denies the Hispanic farmers class certification, and each case must be litigated individually, Hill said, "Substantial numbers of farmers will lose the right to pursue perfectly legitimate claims" because it would be "cost-prohibitive and time-prohibitive."

Flores said she plans to continue fighting.

"I'm determined to see this lawsuit through so that other minority generations and farmers never suffer the humiliation and degradation we had to endure," Flores said. "We just

want fairness across the board. I don't think that's asking too much."

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