

***Houston Chronicle* Editorial**

Justice delayed

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The U.S. Department of Agriculture, by its own admission, has a long and sorry history of discrimination against socially disadvantaged farmers, which unfortunately continues today in spite of recent financial compensation for black farmers.

Now, about 110 Hispanic farmers, 27 of them from Texas, are suing the USDA (Garcia v. Vilsack), seeking to remedy “years of massive and admitted discrimination” by being denied access to loan and benefit programs.

Those years — decades, in fact — included the surreptitious closing of the USDA's civil rights arm in the early 1980s, although farmers were still encouraged to file discrimination claims. Stephen Hill of Howrey LLP, lead counsel in the case, told the Chronicle that those claims “ended up gathering dust in an unlocked, unsupervised office for the next 14 years.”

The USDA, which has often been called “the last plantation,” is a giant, decentralized bureaucracy whose Farm Service Agency distributes loans, typically controlled by small local committees. Historically, claims the Garcia suit, these committees were “invariably white and male” and exercised “unfettered discretion” in loan distribution. In effect, many Hispanic and other farmers have been driven to bankruptcy, losing their livelihoods and often their land, their loans denied or delayed beyond planting season.

Unlike many lawsuits, the salient facts of the Garcia case are not disputed. In 1997, black farmers sued the USDA for discriminatory lending practices. A judge granted them class-action status, and two years later the federal government settled, rather than going to trial, and paid almost \$1 billion to 15,000 black farmers. No one in the USDA was demoted, fired or in any way held responsible for the admitted abuses leading to this enormous settlement.

In identical cases, Native American farmers sued in 1999, Hispanic and women farmers in 2000. The Native American farmers were granted class-action status, although the Department of Justice has yet to settle with them. But a judge denied class-action status to Hispanic and women farmers, insisting that their claims should be tried individually.

Without that class-action designation, needy farmers are essentially without resources: Individual litigation can be prohibitively costly and time-consuming, and beyond the reach of most farmers seeking assistance.

But in 2008, Congress enacted a Farm Bill whereby black farmers who had missed the original filing deadline could still do so, and President Barack Obama has pledged another \$1.25 billion to help them file claims.

That legislation stated that all pending claims by socially disadvantaged farmers should be “resolved expeditiously,” specifically including claims by Native American, Hispanic and female farmers. But momentum is sorely lacking, it seems.

To date, letters and petitions to the White House from legislators, the Hispanic Congressional Caucus and farmers have gone unanswered. On Sept. 15, Garcia attorneys petitioned the Supreme Court to review the judge's decision to deny class-action status to Hispanic and women

farmers. The government, due to respond in October, requested another month and is due to respond by Nov. 18.

But why wait for the Supreme Court to weigh in? What more could they possibly need to decide, as Congress already has, that Hispanic, Native American and women farmers suffered the same discrimination as black farmers?

The Justice Department and USDA need to come to the table and settle. This case has the potential to impact the lives of many more than the actual plaintiffs. Texas alone has about 29,000 Hispanic farmers, far more than any other state.

As Hill put it, "When Obama promised that additional \$1.25 billion, he said he hoped it would close a shameful chapter in the USDA's history. Now they need to close the whole book."

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