



## FAILING FARMS

### HISPANIC FARMERS ALLEGE DISCRIMINATION THROUGH GOVERNMENT LOAN PROGRAM

BY JEREMY ROEBUCK

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[JROEBUCK@THEMONITOR.COM](mailto:JROEBUCK@THEMONITOR.COM)

Albert Ortega's front porch offers a 1,500-acre view of a failed family dream.

The 50-year-old, third-generation farmer had hoped to turn this flat patch of backcountry between State Highway 107 and Expressway 83 in Mercedes into a successful, family-run farm like his father and grandfather had done before him. Instead, a series of bad years and an inability to secure government loans forced him to give up the goal in 1999 and let go of his land leases.

Ortega could have handled failing at the trade. What he cannot stand, he says, is that the very government relief program created to help small farmers like him keep their businesses afloat seemed intent on sinking him.

Now, disappointment surrounds him on all sides.

"I just wish that we could have had a level playing field," he said, gesturing to the crops — now raised by others — that encircle his house. "I couldn't make it on my own and I couldn't get any help."

For years, Hispanic farmers across the Southwest have complained of systematic discrimination within the U.S. Department of Agriculture's farm loan and disaster relief programs. Minorities have routinely been discouraged from applying for government assistance, rejected outright or experienced severe delays in receiving promised funds, Ortega and other Hispanic farmers from California to Texas allege in an ongoing lawsuit.

All the while, their Anglo peers received loan after loan without a hitch, they say.

It's a problem documented in several government reports and acknowledged by at least two secretaries of agriculture, one of whom — Secretary Dan Glickman from President Bill Clinton's era — testified before Congress in 1997 that "good people have lost their family land not because of a bad crop, not because of a flood, but because of the color of their skin."

But nearly a decade since Ortega and his cohorts filed their suit in a Washington, D.C., federal court, little has been done to address their concerns.

And like the late loan disbursements that forced many of them out of business, justice now looks as if it could be delayed indefinitely.

"I had really thought I could run this as a family operation," Ortega said. "But we never got a chance."

#### 'THE LAST PLANTATION'

The USDA loan program's acknowledged history of discrimination against minority farmers has earned it the nickname among many in the industry as "the last plantation."

And for much of its history, it operated as one.

Created in the 1930s as part of the New Deal legislation, the system was intended to help small farmers who didn't qualify for private credit obtain the financing they needed to keep their farms operating.

Its basic approach allowed farmers to borrow against their crops and pay back the debt after selling off their annual yields. If commodity prices remained low, the USDA would buy back the crops at a high enough price for the farmers to pay off their loans and remain economically viable.

But the decentralized system set up to distribute those loans and highly subjective qualifying criteria allowed the anti-minority bias that existed in many rural communities at the time to taint the application process, said Stephen Hill, the lead attorney representing the Hispanic farmers in their suit.

"The system gave full vent to regional and local prejudices," he said. "And even in largely Hispanic communities like the Rio Grande Valley, the local committees approving the loans were usually dominated by white males."

As recently as 1994, an internal USDA study found, the county-level committees charged with reviewing loan applications were overwhelmingly dominated by Anglos. Ninety-four percent had no female or minority representation.

Guadalupe Garcia Jr., the lead plaintiff in the Hispanic farmers' suit, alleges that lack of representation cost him his 630-acre farm in Doña Ana County, N.M. He applied four times for loans or emergency assistance from 1986 to 1998 only to be turned down each time after his local committee deemed him unsuitable on criteria such as whether he had the "character or industry" to operate a successful farm or the "commitment to carry out his undertakings and obligations."

A county committee in Fresno, Calif., told another of the case's plaintiffs — a single mother with a college education in agricultural economics — that farming was "not a proper business for a woman, much less a Mexican woman with two kids" — when they snubbed her attempts to secure a loan.

At least 40 farmers in the Rio Grande Valley have signed on to the lawsuit, claiming similar stories of discrimination ranging from being discouraged from even applying to being challenged when they asked for assistance in filling out complicated loan application forms.

Each was encouraged to report their complaints to the USDA's civil rights division, but for at least 14 years such an office didn't even exist.

The oversight body was quietly dismantled during President Ronald Reagan's administration, and during that time thousands of complaints were thrown into an empty government office and never looked at again.

"It's a travesty," said Hill, the lead attorney representing the Hispanic farmers. "Billions of dollars were paid out in loans over the years and there was no transparency, no accountability."

#### UNKEPT PROMISES

After a series of blistering reports in the early '90s, Congress stepped in to fundamentally reorganize the USDA's farm loan and benefit programs.

Final say over approving the loans was taken out of the hands of county committees and given to government-hired loan managers. Efforts were made to provide loan applications in English and Spanish and to increase the number of Spanishspeaking employees at local Farm Service Agency offices.

But problems persist.

In the mid-'90s, David Cantu's father — a corn, cotton and sorghum farmer in San Juan — found himself trapped in a catch-22 with a local loan officer. When the man visited his farm to evaluate him for a loan, he asked why the crop yield from the year before was abnormally small.

"The guy said, 'Well, you should have watered it more,'" Cantu said. "My dad just looked at him and said, 'You should have given me the money I asked for to do that.'"

"Every gentleman I know is a good farmer. But if you don't have money to irrigate, you're not going to grow crops."

Ortega, the Mercedes farmer, lost crop after crop when his loan money took much longer to process than that of his Anglo neighbor.

The continued lack of real reform prompted former U.S. Rep. Kika de la Garza, D-Mercedes — who served as chairman of the House Agriculture Committee from 1981 to 1994 — to chide President Barack Obama's administration in a letter this summer.

"Discrimination is a repulsive enough word but it gets even more so when you are paying for it with your own tax money," he wrote.

#### LEGAL MORASS

In 1999, a federal judge approved a settlement awarding nearly \$1 billion to a group of 15,000 black farmers who had alleged similar acts of discrimination, and within months Cantu, Ortega and the others had filed their own suit.

As their attorney Hill sees it, resolving the Hispanic farmers' lawsuit should be a no-brainer.

The court system has already acknowledged the discrimination alleged by black farmers. Ongoing lawsuits involving their Native American, Hispanic and female peers rely on almost identical evidence and legal arguments.

And no one within the government is disputing the facts. In April, Agriculture Secretary Tom Vilsack announced a campaign to increase diversity and combat discrimination within the department, including calling for independent analysis of USDA field offices and creating a task force to review past and pending civil rights complaints.

"I intend to lead the department in correcting its past errors, learning from its mistakes and moving forward to a new era of equitable service and access for all," he said in a memo to staff outlining the change.

But the government has fought off efforts to settle the Hispanic farmers' case at almost every step.

Unlike the black farmers, the Hispanics have thus far been denied class-action status, a designation that would allow the courts to try their suit on the merits of one case and through it resolve all the thousands of others.

That status allowed the U.S. Department of Justice to distribute the original \$1 billion settlement with the black farmers and an additional \$1.25 billion the Obama administration approved earlier this year.

But without it, the claims of the Hispanics must all be settled individually in courts across the country — a process that opens the claims up to the differing philosophies of dozens of federal judges and could result in decisions as arbitrary as those of the county committees in originally denying the farm loans, Hill said.

"Those claims — if they were forced to litigate individually — would be lost forever for those farmers," he said. "Many don't have the resources to fight this case on their own. In order to even qualify for these loans, you have to be unable to obtain credit commercially anywhere else."

He has appealed the D.C. court's class-action decision to the U.S. Supreme Court and is currently awaiting a decision.

Both the USDA and the Justice Department have said they are open to settling individual claims. But without a court order, they refuse to address them as a class.

#### 'IT'S TOO LATE NOW'

With no clear end in sight, Ortega has been forced to move on. He gave up the lease to his Mercedes farm and has taken several construction jobs in other parts of the state to make ends meet.

After three generations of family farming, now only one of his sons still actively raises crops — and only as a hobby in time off from his full-time job as a licensed vocational nurse.

Dozens of other plaintiffs have lost their farms to foreclosure or have been forced out of the business by tough economic times.

Seventeen have died waiting for their day in court.

"We could have made a good living," Ortega said, surveying what once was his on a recent afternoon. "But we never got a chance.

"It's too late now."



PHOTOS BY NATHAN LAMBRECHT | [NLAMBRECHT@THEMONITOR.COM](mailto:NLAMBRECHT@THEMONITOR.COM)

David Cantu checks his hens for fresh eggs Friday afternoon on his farm near Raymondville. Some Hispanic farmers say they have faced discrimination through the USDA loan program.



Albert Ortega sits at the kitchen table in his home north of Mercedes with his father Jose Angel Ortega as they talk Thursday about the discrimination they have experienced with the USDA loan program.



David Cantu, left, looks at equipment Friday with Erasmo Baldez near Raymondville.  
NATHAN LAMBRECHT | NLAMBRECHT @ [THEMONITOR.COM](http://THEMONITOR.COM)