THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CASE NO. 1:19-cv-01720

JUDGE ROYCE LAMBERTH

COREY LEA
WILLIE CHARLES KENNEDY

V.

THE UNITED STATES DEPARTMENT OF AGRICULTURE SECRETARY, SONNY PERDUE Et. Al.,

MOTION TO STAY CASE PENDING THE DISPOSITION OF MOTION OF DECLARATORY JUDGMENT, MOTION TO COMPEL THE SECRETARY OF AGRICULTURE-SONNY PERDUE AND THE DEPARTMENT OF AGRICULTURE TO BRING AN ADMINISTRATIVE ACTION AGAINST ITS AGENT AND CO-DEFENDANT FARMERS NATIONAL BANK AND NOW FIRST BANK WITHIN 60 DAYS OF THE FILING OF THIS MOTION ON CLAIMS LISTED IN PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT - TO INCLUDE PLAINTIFF COREY LEA AS A PARTY TO THE ADMINISTRATIVE ACTION

Comes now the plaintiffs to move this court to stay the complaint for monetary damages and to provide the relief above in the above styled caption.

JURISDICTION

The defendant concedes that this court has jurisdiction pursuant 28 U.S.C. § 1332:

a. Plaintiff Corey Lea lives in Tennessee and Plaintiff Willie Charles Kennedy lives in Louisiana.
b. Defendant Sonny Perdue and the Department of Agriculture are located in the jurisdiction of this court and serves as the nerve center for decisions that caused injuries to the plaintiff and other Black farmers.
c. Defendant Sonny Perdue resides within the jurisdiction of this court and this forum is proper pursuant 28 U.S.C. § 1391.
d. Defendant Sonny Perdue was without discretion to act to enforce a Congressional mandate of moratorium relief against foreclosure and offsets pursuant the 2008 Food Energy and Conservation Act later codified as 7 C.F.R. 766.358. In addition, this court has exclusive jurisdiction of Pigford v. Glickman Consent Decree enforcement.
e. Defendant concedes jurisdiction of Declaratory Actions presented to this court pursuant 28 U.S.C. § 2201.
f. Defendant concedes that Farmers National Bank is an agent for the Secretary of Agriculture and the United States Department of Agriculture and defendant Sonny Perdue has the authority to cure all claims against the plaintiff pursuant 42 U.S.C. § 1480. This authority delegated by Congress to the Secretary encompasses the ability to go into any court or forum within the United States that includes any state law that are part of federal actions pursuant 28 U.S.C. § 1367.

ARGUMENT

"A stay is an 'intrusion into the ordinary processes of administration and judicial review[.]'" Nken v. Holder, 556 U.S. 418, 427 (2009) (quoting Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam)). The party seeking a stay bears the "burden of showing that exercise of the court's extraordinary injunctive powers is warranted." Cuomo v. U.S. Nuclear Regulatory Comm'n, 772 F.2d 972, 974 (D.C. Cir. 1985). There are four "traditional" factors that govern a request for a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Nken, 556 U.S. at 426 (quoting Hilton v. Braunskill, 481 U.S. 770, 776 (1987)); see also Cuomo, 772 F.2d at 974. The Supreme Court has explained that the first two factors "are the most critical." Nken, 556 U.S. at 434."

"The second factor, similarly, requires more than the mere "possibility of irreparable injury[.]" Nken, 556 U.S. at 434 (internal quotation marks and citation omitted). "Irreparable harm must be 'both certain and great[,]' and 'actual and not theoretical.'" CREW, 904 F.3d at 1019 (quoting Wis. Gas Co. v. F.E.R.C., 758 F.2d 669, 674 (D.C. Cir. 1985)). It is "further require[d] that the movant substantiate the claim that irreparable injury is 'likely' to occur." Wis. Gas Co., 758 F.2d at 674 (citing Holiday Tours, Inc., 559 F.2d at 843 n.3). Where there is a low likelihood of success on merits, a movant must

show a proportionally greater irreparable injury, see Cuomo, 772 F.2d at 974, in order to warrant the "extraordinary remedy" of a stay, id. at 978."

"The last two factors, "the harm to the opposing party and weighing the public interest[,] . . . merge when the Government is the opposing party." Nken, 556 U.S. at 435. Such is the case here; indeed because the party that opposes the stay is a committee of the body of Congress that is comprised of proportionally elected representatives of the People of the United States, it is clear that the public interest lies in avoiding any harm to the Judiciary Committee that might result from a stay of this Court's Order."

FOUR FACTORS

1. The plaintiffs meet the first factor as a prevailing Pigford Class Member, Willie Charles Kennedy and Corey Lea as a Socially Disadvantaged Farmers with an accepted discrimination complaint by the Department of Agriculture's Office for Civil Rights. Both plaintiffs are under moratorium relief afforded to them by Congress and further, Willie Charles Kennedy has additional protection against foreclosure and offsets in the Pigford Consent Decree.

It is undisputed that both plaintiffs exhausted their administrative remedies pursuant to the APA. The plaintiffs further alleged that their injuries were caused by the inactions of Secretary Sonny Perdue and is now liable for the claims against him and the Department of Agriculture pursuant 5 U.S.C. § 706(1)(2). In addition, in the case of Willie Charles Kennedy, prevailing Pigford Class Member, the DC Circuit Court of Appeals has opined- McGinnis- ""A prevailing claimant is entitled to a one-time

payment of $50,000 and 4 forgiveness of any debt he owes the USDA. J.A. 11 (Consent Decree ¶ 1(l)), 20-22 (Id. ¶ 9)."

2. If the court does not intervene, without a doubt plaintiff Willie Charles Kennedy will lose his family farm as he did the equipment that he once owned that he was forced to sell even though the equipment was part of the injunctive relief afforded to Kennedy as a prevailing Pigford class member. Plaintiff Corey Lea did lose his farm due to the violations by defendants Sonny Perdue, the Dept. of Agriculture and Farmers National Bank.

3. The defendants will not be substantially injured by granting this stay. Plaintiff Plaintiff Corey Lea has already been removed from his family farm and defendant Farmers National Bank breached the rules and regulations that governs the loan guarantee between the Department of Agriculture and Farmers National Bank. Defendant Farmers National Bank kept nearly $165,000 of taxpayer money that was due to the second lien holder, Department of Agriculture.

Defendant United States will not be injured due to the fact, they have literally made Willie Charles Kennedy pay for the family farm nearly 4 times already and will not be happy until they drive the last Black farmer in extinction. In their motion to dismiss, defendant United States and Sonny Perdue did not contest the allegations. The steered far away from the claim of the doctrine of repudiation. The fact is, the Department of Agriculture did not want to talk about the statistics and the allegations of who were the third party neutrals working for and who was actually deciding who was determining who received injunctive relief. Evidence will show that this was a scheme thought up by

several judicial officers that had a long term plan to drive affected Black farmers into a landless people.

4. The plaintiffs crosses the threshold of where public interest lies. Congress enacted the 2008 Food Energy and Conservation Act which afforded moratorium relief against offsets and foreclosures for Socially Disadvantaged Farmers with accepted discrmination complaints after May 22, 2008. These protections in the Congressional Act were later codified by the Dept. of Agriculture in 7 C.F.R. § 766.358.

The United States taxpayers paid nearly 2.5 billion dollars to right the wrongs of the Dept. of Agriculture against Black farmers. There is certainly public interest at stake. First, Black farmers are citizens of the United States too. No agency of the United States should continue to single out minorities and inflict so much emotional distress and use their position in the Courts of Law to drive the same minorities into extinction.

DECLARATORY JUDGMENT

QUESTIONS PRESENTED

1. Is it a violation of the Due Process Clause and Equal Protection Clause of the Fifth Amendment for the United States Department of Agriculture to promulgate Rules and regulations to create a separate system for Black Farmers and other Social Disadvantaged Farmers (members of a protected class as defined by Congress in the 1991 Consolidated Farm Bill) to be denied a formal hearing on the merits before the administrative law judge, that includes a mini trial, complete with running records provided to the complainant and representatives, on pending administrative discrimination complaints as afforded to similarly situated White farmers? The petitioner believes the answer in yes.

2. When a private lender or bank enters into a guaranteed contract with the Dept. of Agriculture, in which the affected Socially

Disadvantaged Farmer is a third party, and the private lender or bank agrees to abide by all rules and regulations, both current and future, that may include moratorium relief by an Act of Congress or codified by the agency, is the private lender or bank subject to the Administrative Procedures Act and exhaustion requirements; if the answer is yes, if the private lender or bank forecloses on real property or calls in loans when the Secretary of Agriculture was required to act by Acts of Congress and the authority to resolve all claims pursuant to 42 USC 1480 in the 180 day period pursuant to 5 USC 706(1)(2) would the state court or district court judgment for foreclosure or any other adverse action be void?

3. When "in the nature of mandamus" for unreasonable delay under 5 U.S.C.§ 706(1)(2), the agency was required to act by Congressional Acts, Federal Law and agency rules and regulations that provided moratorium relief, should the real property or offsets of affected Socially Disadvantaged Farmers be returned until a final determination of the agency or a court of competent jurisdiction has conducted a judicial review and all appeals have been exhausted?

4. When a district court has exclusive jurisdiction over a settlement agreement, can a sister circuit provide relief to either party on injunctive relief such as foreclosure, offsets or enforcement action of the settlement agreement; should any relief provided by sister court be returned for lack of jurisdiction pursuant FRCP 60(b)? The petitioner thinks the answer concerning the exclusive jurisdiction is no and if the relief provided by the sister court is not within the jurisdiction of the sister court, the judgment should be void and the relief provided should be returned to the adverse party.

REVIEW IS WARRANTED TO CLARIFY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT WHEN THE SECRETARY WAS REQUIRED TO ACT PURSUANT TO 5 U.S.C 706(1)(2) BUT THEN DELEGATED AUTHORITY TO THE ASSISTANT SECRETARY OF CIVIL RIGHTS PURSUANT § 2.25 FURTHER FAILS TO ACT CAUSING INJURY TO SOCIALLY DISADVANTAGED FARMERS USING A DIFFERENT PROCESS TO ADJUDICATE ADMINISTRATIVE CLAIMS THAT SIMILARLY SITUATED WHITE FARMERS

COMPARATIVE ANALYSIS BETWEEN SOCIALLY DISADVANTAGED FARMERS AND SIMILARLY SITUATED WHITE FARMERS

Process For Socially Disadvantaged Farmers Through The Assistant Secretary of Civil Rights

Johnson v. USDA, No. 15-1796 (8th Cir. 2016) - "Under OSCAR's procedures, as counsel for the USDA employees explained at oral argument, an investigator is appointed to develop evidence relevant to the claim. "The investigator is a neutral party who develops the official record of the case. In the course of developing the record, the investigator is usually the person who will have direct contact with the parties, witnesses and other informants." USDA Departmental Manual 4330–1, § .II.2a ,http://www.ocio.usda.gov/sites/default/files/docs/2012/DM4330-001%5B1%5D (October 18, 2000) .pdf [https://perma.cc/EP44-8NC5]. The investigator can collect both documentary and testimonial evidence from the complainant and the USDA, see Id. § 3.III.8, but lacks subpoena powers, see id. § 3.II.2.b ("[T]he investigator acts with the same authority as [the Office of Civil Rights] and USDA to collect evidence, in whatever form, that is relevant to the case. This authority, however, stops short of subpoena power.").

"Following the investigation, the investigator creates a "record of investigation" or ROI, which is approved by the Chief of the Investigation Unit and forwarded to the Adjudication Unit. See id. § 3.III.13–14. An adjudicator then makes a determination asto whether there was discrimination based on the information in the ROI and issues a

Final Agency Decision that must be approved by the Chief ofthe Adjudication Unit. See id. §§ 3.IV.2–5."

"The complainant may be represented by counsel. See id. § 3.I.6j. But as conceded by counsel for the USDA and the individual plaintiffs at oral argument, there is no procedure for questioning evidence submitted by the opposing party, much less an evidentiary hearing – a fact confirmed by the absence of provisions for such procedures in the USDA's manual specifying procedures for Part 15d investigations. See generally USDA Departmental Manual 4330–001, supra."

"In addition, there appears to be no avenue for seeking judicial review of OSCAR's final decisions. No statute provides for judicial review of decisions under 7 Part 15d, and we believe the Administrative Procedure Act does not do so either. The APA authorizes judicial review of a final agency action, Bowen v. Massachusetts, 487 U.S. 879, 891–92 (1988), but only with respect to claims "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. "[Section] 704 'does not provide additional judicial remedies in situations where the Congress has provided special and adequate review procedures." Bowen, 487 U.S. at 903 (quoting Attorney General's Manual on the Administrative Procedure Act 101 (1947))."

"Judicial review through the APA is precluded because there is an alternative adequate remedy in court in the form of an ECOA suit. See Garcia v. Vilsack, 563 F.3d 519, 524–26 (D.C. Cir. 2009). The basis for Johnson's complaint is that the USDA discriminated against him on the basis of race in administering its loan programs, which

is precisely the type of injury ECOA is meant to remedy. 15 U.S.C. § 1691(a)(1). Because Congress has provided an adequate alternative remedy under another statute, the APA does not authorize judicial review of OSCAR's final decisions. See Cent. Platte Nat. Res. Dist. v. U.S. Dep't of Agric., 623 F.3d 1142, 1148 (8th Cir. 2011); Great Rivers Habitat All. v. Fed. Emergency Mgmt. Agency, 615 F.3d 985, 989 (8th Cir. 2010); Defs. of Wildlife v. Adm'r, E.P.A., 882 F.2d 1294, 1301–03 (8th Cir. 1989)."

The difference between in the administrative process for Socially Disadvantaged Farmers and Similarly Situated White Farmers can be found in footnote 8 - "Complaints filed pursuant to Section 741 are not handled under the Part 15d procedures, but rather under a separate set of regulations codified at 7 C.F.R. Pt. 15f. The Part 15f procedures, among other things, allow the complainant to request and receive a formal hearing before an ALJ and to depose witnesses. See Administrative Civil Rights Adjudications under Section 741, 63 Fed. Reg. 67392, 67393 (Dec. 4, 1998); 7 C.F.R. §§ 15f.10, 15f.13, 15f.18."

Section 741 is similar to the right to a formal hearing on the merits before the Administrative Law Judge that all White farmers enjoy. Congress directly spoke in unambiguous terms about the right to a formal hearing on the merits. The 2008 Food Energy and Conservation Act, Section 14012, (b) DETERMINATION ON MERITS.—Any Pigford claimant who has not previously obtained a determination on the merits of a Pigford claim may, in a civil action brought in the United States and (d) INTENT OF CONGRESS AS TO REMEDIAL NATURE OF SECTION.— It is the intent of Congress

that this section be liberally construed so as to effectuate its remedial purpose of giving a full determination on the merits for each Pigford claim previously denied that determination.(e) LOAN DATA.— (1) REPORT TO PERSON SUBMITTING PETITION.— (A) IN GENERAL.—Not later than 120 days after the Secretary receives notice of a complaint filed by a claimant under subsection (b), the Secretary shall provide to the claimant a report on farm credit loans and noncredit benefits, as appropriate, made within the claimant's county (or if no documents are found, within an adjacent county as determined by the claimant), by the Department during the period beginning on January 1 of the year preceding the period covered by the complaint and ending on December 31 of the year following the period. (B) REQUIREMENTS.—A report under subparagraph (A) shall contain information on all persons whose application for a loan or benefit was accepted, including— (i) the race of the applicant; (ii) the date of application; (iii) the date of the loan or benefit decision, as appropriate; (iv) the location of the office making the loan or benefit decision, as appropriate; (v) all data relevant to the decision making process for the loan or benefit, as appropriate; and 570 O:\WEI\WEI08444.xml [file 15 of 16] S.L.C. (vi) all data relevant to the servicing of the loan or benefit, as appropriate.

The Congressional mandate of the AlJ hearing the claims first, before the judicial review, by the DC District Court, can be found in Benoit v. The USDA, 08-5434, DC Circuit Court of Appeals. That Court held "In 1998 the Congress passed legislation reviving ECOA claims of discrimination that had been filed with the USDA from 1981 to 1996 but were barred by the statute of limitations. Section 741 of the Department's 1999

Supplemental Appropriations Act* created a two-year window within which farmers who had filed such complaints could pursue their claims in court notwithstanding the statute of limitations. Sections 741(a) and (b) each gave affected farmers a distinct option: Either file the claim (a) directly in federal district court or (b) with the USDA and, if the USDA denies the claim, then seek review of the agency decision in district court, as provided in § 741(c). Of course, a farmer who chooses option (a) "forego[es]" option (b), Garcia v. Vilsack, 563 F.3d 519, 523 (D.C.Cir.2009), and vice versa, see § 714(b) ("The complainant may, in lieu of filing a civil action, seek a determination on the merits [by the USDA]")."

"The plaintiffs in this case chose option (b) and duly filed their claims, styled "Section 741 Complaint Requests" by the USDA, which considers such matters in two stages. The first is an informal settlement process overseen by the Director of the Office of Civil Rights (OCR). 7 C.F.R. § 15f.9. The Director may consider documents submitted by the complainant, review documents in the Department's files, and refer the case for investigation. Id. Ultimately the Director either negotiates a settlement with the complainant or sends him a letter stating that the OCR will not settle the complaint and informing him of his "options, including [the] right to request formal proceedings before an ALJ." Id.

The Commonality of Pigford Claimants and Socially Disadvantaged Farmers v. Similarly Situated White Farmers Right To A Formal Hearing On The Merits Before The Administrative Law Judge

1. The Pigford Claimant is afforded the right by section 741 of Ecoa. In particular, the Consent Decree deals with injunctive relief on farm ownership loans and farm operating loans. In any capacity, both loans are contracts with the USDA. By the

terms of the settlement agreement, the Department of Agriculture agreed to two things:

A. That The DC District Court has exclusive jurisdiction of all enforcement actions, to include all adverse action, by either party. As aforementioned, the DC Circuit Court of Appeals, in Benoit held that the ALJ must hear the claims before the judicial review or mandamus action must be heard by the ALJ first.

B. The agency agreed to moratorium relief on all farm ownership loans and offsets of claimants that had business interactions with the Department of Agriculture between 1981 and 1997.

C. Congress re enforces the moratorium relief in the 2008 Food Energy and Conservation Act, Section 14012, (h) LIMITATION ON FORECLOSURES.—Notwithstanding any other provision of law, during the pendency of a Pigford claim, the Secretary may not begin acceleration on or foreclosure of a loan if— 571 O:\WEI\WEI08444.xml [file 15 of 16] S.L.C. (1) the borrower is a Pigford claimant; and (2) makes a prima facie case in an appropriate administrative proceeding that the acceleration or foreclosure is related to a Pigford claim.

D. Notwithstanding any rule or regulation adopted by the agency, the Department of Agriculture was required to act and provide the moratorium relief albeit by settlement agreement or an unambiguous

mandate to clarify congressional intent in the 2008 Food Energy and Conservation Act that gives rise to a judicial review under 5 USC 706(1)(2).

2. A Socially Disadvantaged Farmer also is afforded moratorium relief provisions on Farm Ownership Loans and against Administrative Offsets pursuant the 2008 Food Energy and Conservation Act and later codified by the Agency as 7 C.F.R. 766.358.

E. A Socially Disadvantaged is afforded moratorium relief against foreclosure and administrative offsets if he or she has an accepted discrimination complaint lodged with the office of civil rights after May 22, 2008.

F. A continuing tort of discrimination if the Agency has not resolved the Claims from Pigford, Garcia, Love and Keepseagle class members in which the Secretary and the Agency was required to act in case of foreclosure by a third party or the agency itself without providing a determination of discrimination or a formal hearing on the merits by the ALJ pursuant to the Pigford Settlement Agreement or any other class action settlement agreement. The threshold is met when the class request for a formal hearing on the merits and is denied the hearing by agency.

<u>Similarly Situated White Farmer</u>

G. Has more than 52 grievances that can be heard by 3 levels of appeals within 180 days pursuant the Administrative Procedures Act. First, the

similarly situated White farmer, can file a grievance with the National Appeals Division (NAD), A Director's Review and The Office of the Administrative Law Judge (ALJ). Emphasis on cost and length of time.

H. If there is a contract dispute, the similarly situated White Farmer can go to the Claims Court and have the claims court to conduct a review pursuant RCFC 52.1 and 52.2.

The Fifth Amendment has an explicit requirement that the federal government not deprive individuals of "life, liberty, or property" without due process of the law. It also contains an implicit guarantee that each person receive equal protection of the laws. The Secretary has the authority to enforce all contract with government interest of all affected Socially Disadvantaged Farmers pursuant 7 USC 1981(4) and 42 USC 1480. However, the Secretary has chosen to run a dual administrative justice system that allows Similarly Situated White Farmers to have an expeditious hearing and making Socially Disadvantaged Farmers wait as long as 35 years, then the agency goes in and takes the land from the family upon death and while the affected farmer is still living. These inactions and blatant disregard from due process is a violation of the Fifth Amendment.

42 USC 1981: Equal rights under the law (a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like

punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

The petitioners assert the right or of opportunity to be heard in the same fashion as Similarly Situated White Farmers are rights conferred unto the farm ownership loans and farm operating loans when subjected to adverse actions, in the form of moratorium relief provided by aforementioned Congressional Acts, Settlement Agreement and Agency Rules and Regulations, taken against the Socially Disadvantaged Farmers. The Secretary is without discretion to act pursuant 5 USC 706(1)(2) with the authority to cure any claim in any court pursuant 42 USC 1480. Moreover, 42 USC 2000d subjects private bank and lenders to the provisions of the APA, in which the Socially Disadvantaged Farmer is a third party beneficiary with the right to attend and participate into any hearing or decision for any adverse action taken against the Socially Disadvantaged Farmer. If the third party did not exhaust the administrative remedy the District Court or State Court in which judgment was entered against the Socially Disadvantaged Farmer should be void pursuant FRCP 60b or its State Counterpart for lack of subject matter jurisdiction. The petitioner believes it is unconstitutional to have two separate processes of administrative laws for Socially Disadvantaged Farmers and

Similarly Situated White Farmers under the Equal Protection Clause and the Due Process Clause of the Fifth Amendment.

The Tenth Circuit is currently facing this question in J and L v. Bradshaw, 18-3176 in regards to administrative offsets being taken from a Socially Disadvantaged Farmer that is facing a foreclosure action. The USDA owes the Pigford Claimant and Socially Disadvantaged Farmer nearly $186,000 since the year of 1999. Through research, we have found that the USDA purposely denied injunctive relief to Black Farmers with substantial acreage. Bradshaw and his father were farming nearly 4,000 acres and had won 2 NAD ruling in which the Agency did not follow through during the 1981-1997 time frame. If the agency would have followed through, Rodney Bradshaw would not be in the position he is in now and about to lose his farm to foreclosure.

Agency Rules and Regulations] … a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt… Also, non-centralized administrative offsets include USDA internal administrative offsets, for example, of CCC payments to pay Farm Service Agency (FSA) delinquent debts. [7 CFR 3.43(d)] Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

[7 CFR 3.43 (b)] A non-centralized administrative offset may be effected 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under §3.42(c) (subparagraph 63 E) is not acceptable if the 30-day period for the debtor to seek review of the Notice has expired, unless the creditor agency makes a determination under §3.41(b)(3) (subparagraph 62 C) that immediate action to effectuate the offset is necessary.

102 Discrimination Complaints and TOP - (A) Accepted Complaints Delinquent accounts involved in an accepted discrimination complaint will be serviced according to 1-FLP, subparagraph 41 I. Accounts that have no security remaining, which have been accelerated or where all loans are mature, such as those classified CNC, will continue to accrue interest and be subject to administrative offset. In cases where loans are not eligible for TOP, according to 1-FLP, subparagraph 41 I, use delete code "11" to remove them from the TOP Offset Screens.

As evidenced in 7 CFR 3.43(a)(b), the Similarly Situated White Farmers are entitled to an administrative review, complete with a formal hearing on the merits before the Administrative Law Judge. The Office of Civil Rights acts as a "catchall" and immediately triggers retaliation from the agency. Congress mandated to the Secretary of Agriculture the moratorium relief on offsets on all Pigford Class member and Socially Disadvantaged Farmers with accepted discrimination complaints after May 22, 2008. The agency automatically sends all adverse claims from Socially Disadvantaged Farmers

to the Office of Civil Rights, which currently has been without an Assistant Secretary for Civil Rights Since 2016, in which the authority has been delegated to resolve the pending claims. Once the claim is accepted by the agency, the procedural protections of equal protection have dire consequences against Socially Disadvantaged Farmers, that impair the ability to defend against adverse actions taken against them, unlike Similarly Situated White Farmers who have an opportunity to have 3 different types of appeals in 180 pursuant to the "APA," the Socially Disadvantaged Farmers cannot dispute evidence submitted against or depose witnesses, much less see what has been entered on the record against them.

Review Is Warranted For Failure To Resolve Cases in an Expeditious Manner Pursuant To Section 14002 Of The 2008 Food Energy And Conservation Act

When the Secretary is without discretion to act on an adverse claim against real property in which the USDA has interest and such interest is affected by moratorium relief provided by Congressional Acts should such claims be resolved in the 180 days allotted for the Administrative Procedures Act? The petitioner thinks the answer is yes. The Secretary has broad authority under 7 U.S.C. § 1981(4) and 42 U.S.C. § 1480 to resolve all such claims and for third parties to exhaust administrative remedies before going to court.

[1]In addition, the district court's decision in In re 2000 Sugar Beet Crop Insurance Litigation illustrates the consequences of not heeding the command of § 6912(e) in an unusual context. There, unlike in the typical judicial review case where the only parties before the court are the plaintiff and the government, § 6912(e) was applied to a third party action against USDA agencies brought by private insurance companies who had been sued by some of their policyholders for failing to pay indemnities under crop insurance policies subsidized by the Federal Crop Insurance Corporation (FCIC).

The 180 days would not cause undue burden on the third party and would also require the Secretary to act if discretion was removed by Congressional Acts that imposed moratorium relief. Moreover, some third parties are controlled by guaranteed loans and the terms of agency rules and regulations or Congressional Acts that have been legislated into the guaranteed loans are required to exhaust. If the third party did not exhaust the administrative remedies the court of competent jurisdiction was without jurisdiction. In addition, the 180 day should be the threshold was violated when the Secretary was required to act, the farmer would be prejudiced if a favorable decision

[1] The National Agricultural Research Center- Christopher Kelley, In many of these —typical" cases, the plaintiff had not bypassed the administrative appeal process altogether but had failed to raise a claim before the agency that it then sought to raise on judicial review. Section 6912(e) has been a bar to judicial review of such claims. See, e.g., Gilmer-Glenville Ltd. Partnership v. Farmers Home Admin., 102 F. Supp. 2d 791, 795 (N.D. Ohio 2000); Bentley v. Glickman, 234 B.R. 12, 17-18 (N.D.N.Y. 1999); Tucson Rod and Gun Club v. McGee, 25 F. Supp. 2d 1025, 1029 (D. Ariz. 1998); Gregson v. United States Forestry Serv., 19 F. Supp. 2d 925, 929-30 (E.D. Ark. 1998). When presented with the question of whether the written comments of an interested third party can fulfill a plaintiff's duty under § 6912(e) when the applicable appeal regulations require the appellant to file a written appeal and permit interested parties to submit written comments, the only court to address the issue has answered —no." See Chattooga River Watershed Coalition v. United States Forest Service, 93 F. Supp. 2d 1246, 1250-51 (N.D. Ga. 2000).

would cure the adverse action from a third party and the stake of the adverse action that belong to the government and ultimately the American taxpayer.

Review Is Warranted For Lack Of Jurisdiction Of Sister Courts That Entered Foreclosure Judgements Against Pigford Class Members When The DC District Court Has Exclusive Jurisdiction And Repudiation Of The Settlement Agreement or Breach of Contract For Actual Damages For Every Month That The Affected Farmer Loss Wages And Expenses Incurred From Adverse Action Against.

APPEALS

"It is well settled that limitations on subject-matter jurisdiction are not waivable; the court must address jurisdictional issues, even sua sponte, whenever those issues come to the court's attention, whether raised by a party or not, and even if the parties affirmatively urge the court to exercise jurisdiction over the case. See Foster v. Chatman, 136 S. Ct. 1737, 1745 (2016) ("Neither party contests our jurisdiction to review [the plaintiff's] claims, but we 'have an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party.'" (quoting Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006))); Sebelius v. Auburn Regional Med. Ctr., 568 U.S. 145, 153 (2013) ("Objections to a tribunal's jurisdiction can be raised at any time, even by a party that once conceded the tribunal's subject-matter jurisdiction over the controversy."); Ashcroft v. Iqbal, 556 U.S. 662, 671 (2009) ("Subject-matter jurisdiction cannot be forfeited or waived and should be considered when fairly in doubt."); Rick's Mushroom Serv., Inc. v. United States, 521 F.3d 1338, 1346 (Fed. Cir.

2008); Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004); Booth v. United States, 990 F.2d 617, 620 (Fed. Cir. 1993)."

The Pigford Settlement Agreement unambiguously states that the DC District Court retains exclusive jurisdiction for enforcement actions, which include foreclosure and offsets, see Parker *v.* United States, 16-264 (Fed. Cl. 2017). Moreover, the DC Circuit Court of Appeals in Benoit v. The USDA, 08-5434 expressly stated that the hearing must first be heard by the Administrative Law Judge. However, the agency is refusing to hear these adverse actions administratively first.

The Agency, on the other hand, is sending the Department of Justice to the states where the farms are located and foreclosing on the land belonging to Black Farmers. Upon the filing, the Black Farmers have shown that they are Pigford Class members and filing counterclaims and the lower courts of the sister circuits are dismissing the counterclaims and allowing the USDA to foreclose on the land belonging to Black Farmers, when the agency and the Pigford Class Members agreed to have all adverse claims be litigated in the DC District Court. Foreclosure of the farms is an adverse action that is in exclusive jurisdiction of the DC District Court and those farms that have been foreclosed on belonging to Pigford Class Members should be immediately returned.

The Fourth Circuit has affirmed a foreclosure in United States *v.* Eddie Wise, 15-2477 (4th Cir. 2016). The United States admitted in the District Court that Dorothy Monroe-Wise was the owner of the property and was a Pigford Class Member who had not received a formal hearing on the merits as a Pigford Class Track B Claimant. The

Settlement Agreement unambiguously states that the USDA shall not foreclose until a final determination has been reached.

The Fifth Circuit lower courts have taken property from Pigford Class Members that prevailed see Douglas v. O'Neal, 1:17-cv-00808,WDLA and USA v. Kennedy, 3:17-cv-00396.

The Sixth Circuit Court lower courts Young v. The USDA 4:10-cv-00074, WDKY.

The Tenth Circuit Court of Appeals, pending J and L v. Rodney Bradshaw, 18-3176

The Eleventh Circuit Court of Appeals in Abrams v. The USDA-cv-191, SDGA. This Court found that the foreclosure proceedings for a Pigford Class Member belong in the District Court.