

STATEMENT OF GUADALUPE L. GARCIA JR., Farmer
Las Cruces, NM

Subcommittee on Government Management, Organizations and Procurement of
the House Oversight & Government Reform Committee
U.S. House of Representatives

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For More Information Contact:

Guadalupe L. Garcia Jr.
9303 North Dona Ana Road
Las Cruces, NM 88007
505.644.6534

**TESTIMONY
OF
GUADALUPE L. GARCIA JR.**

Chairman Towns, Ranking Member Bilbray and members of this distinguished subcommittee, good afternoon. My name is Guadalupe L. Garcia Jr. I am from Dona Ana County, New Mexico. My family came to this area long before the United States existed. I am a third generation, life-long farmer and the lead plaintiff in a class action brought on behalf of Hispanic farmers and ranchers against the United States Department of Agriculture (“USDA”) called Garcia v. Schafer. I am also president of the Hispanic Farmers and Ranchers of America Inc. I welcome and deeply appreciate this opportunity to testify before this subcommittee. I am testifying on behalf of myself and G.A. Garcia & Sons Farm (“Garcia & Sons”).

By way of background, I am 64 years old. I hold a Bachelor of Science degree in Agronomy and a Master of Science degree in Agronomy, specializing in biochemistry and physiology of pesticide from New Mexico State University. From 1969-1973, I served as a visiting professor for Oregon State University teaching agronomy in Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Columbia and Ecuador under a contract between the University and the United States Agency for International Development. Upon returning from Central America, I resumed farming in partnership with my father and brother as Garcia & Sons. Garcia & Sons owned two farms totaling approximately 626 acres of land until they were foreclosed upon and sold in 1999. I continue to farm on rented land producing chili, onions, cotton, pecans and alfalfa.

In 1999, the appraised value of the land comprising the two farms was \$2.4 million and it was sold for \$1.075 million, less than half of its appraised value. Ultimately, Garcia & Sons was the victim of both intentional discrimination directed at us because we are Hispanic and a system

that placed largely unfettered discretion in USDA local employees whose control over credit, debt servicing and disaster relief determines whether a farming operation such as ours survives or fails.

In the early 1980s the USDA's secretly dismantled the investigative and enforcement apparatus of its Office of Civil Rights. Upon learning this nearly two decades later, Congress took the unusual step of tolling the two-year statute of limitations applicable to the Equal Credit Opportunity Act ("EOCA"), 15 U.S.C. §1691 et seq., thereby allowing farmers to seek damages for injuries arising from discrimination that occurred between January 1, 1981 and December 31, 1996. The complaint in our case was filed on October 13, 2000.

Our case seeks to remedy years of massive and admitted discrimination against Hispanic farmers who are denied equal access to USDA farm credit and non-credit farm benefit programs, and when they complain to USDA about such denials USDA refuses to process and investigate their complaints in violation of ECOA and the Administrative Procedure Act ("APA"), 5 U.S.C. §551 et seq. Our complaint covers past and present violations of ECOA and the APA dating back to January 1, 1981.

During that period we repeatedly applied for operating loans from USDA¹. After initially receiving operating loans in 1981, 1982 and 1983, we were never able to receive another loan from USDA despite the fact that the value of our farms exceeded the debt owed USDA and the local bank, and despite the fact that our farm plans setting forth our operating projections consistently reflected positive cash flows. Of the three years in which USDA provided us with

¹ Hereinafter the term "USDA office" refers specifically to either the Farm Service Agency ("FSA") or its predecessor, the Farmers Home Administration ("FmHA") of the United States Department of Agriculture. Today there are 2,346 local FSA offices in the Continental US whose purpose is to administer and manage USDA commodity, credit, conservation, disaster and loan programs on a local level.

operating loans, in at least one of these years, 1983, USDA did not fund the loan until after the planting season and we were thus unable to maximize production. In addition, in order to obtain the loans, USDA required us to secure those loans with collateral worth substantially more than the loans.

When we subsequently encountered difficulties that normally attend farming, USDA denied us further credit, denied us disaster relief and denied us debt servicing. As a result, we were slowly and systematically drained of operating capital until we lost our farms. For example, in 1984, in addition to the two farms we owned, we rented another farm where we planted approximately 60 acres of chilies. A dam broke flooding that farm and destroying that entire crop. That same year we applied for disaster relief and were advised by a Mr. Grey of the Agriculture Stabilization Committee that we were eligible for the relief. However, Mr. James Frenzy denied our application for disaster relief because allegedly “we were bad farmers.”

In 1986, we worked with USDA Loan Specialist Joe Gurule to develop a farm and home plan application for guaranteed loans. During the application process, Mr. Gurule recommended to both the County Loan Officer and the Chief of Agriculture Loans for the State of New Mexico that our farm land could be divided among my father, brother and me thereby increasing the amount that we would be eligible to borrow. Not only did the USDA reject our loan application, but it never informed us of the option of dividing the farm land to increase our credit eligibility. Indeed, we did not learn of that option until eight years later when we requested a copy of our file from USDA.

In 1988, another flood destroyed the crops on our 550-acre farm. Again that same year, we applied to USDA for disaster relief. Again, our application was denied. When we appealed to the county office, USDA literally laughed in our faces and denied our appeal for relief.

In 1988, we also applied for primary loan servicing. The USDA sat on the application for two years before finally denying it. In the 1990s, our farming operation continued to be slowly starved of operating capital. By about 1990, one of our white neighbors felt sufficiently emboldened to tell us that it was only a matter of time before he would own our land.

In 1994, USDA again refused to work with us on a loan-restructuring plan. Later that year, we appealed USDA's adverse decision to the National Appeals Division ("NAD"). On appeal, the hearing officer ruled in our favor, holding that we were entitled to loan servicing and long term debt restructuring. Despite our victory, USDA refused to follow the NAD decision and we never received any loan servicing assistance.

During approximately the 1994-1995 time frame, we attended a mediation session with USDA officials, the U.S. Attorney, our lenders' attorneys and our legal counsel. At that session, Mr. Riley, the Chief of Agriculture Loans for the State of New Mexico, stated to everyone present that he "would not approve anything that involved the Garcias" and that he would not refinance our loans even if we had a million-dollar cash flow.

In 1998, we sought to sell some of our land to service delinquent debts. Our lenders informed us that the land had to be sold by February 1, to avoid foreclosure. We found a buyer whose offer would have allowed us to pay off the bank debt and, with USDA's assistance, we could have refinanced the remaining debt. We applied for the refinancing loan with USDA in early January and informed USDA that we had found a buyer and would submit a letter of intent once the parties completed negotiations. We subsequently faxed the letter of intent to USDA on January 25, for its approval. USDA denied the application two months later, well past the February 1 deadline.

In the end, we lost our farms. To add insult to injury, USDA assisted the Anglo farmers in purchasing our farms at a special master's sale. In fact, one of the purchasers was the neighbor who years earlier had stated that it would only be a matter of time before he would own our farm. And while we were forced to put up collateral far in excess of our loans we received, I am aware of instances in which Anglo farmers in my community were given loans without any collateral and given loans even though they were delinquent on their USDA loans. In at least one instance of which I am aware, a white farmer who was delinquent on a million dollars in loans was given a \$500,000 loan that saved his farm operation.

The USDA harmed my family and me, took away my livelihood and slandered my family name in the community. I personally developed health problems due to the stress from fighting with the USDA and the bank for over 13 years. My children's education was hindered, as they could not obtain student loans because of the bankruptcies we were forced to file in order to try to keep our farms. Despite the fact that our farmland was worth substantially more than our total debt, USDA's refusal to service the debt or to release a portion of the collateral to facilitate a restructuring of the debt prevented us from preserving any of our farm land. Our experience with USDA is by no means unique. Many additional declarations are available on our website www.garciaaction.org.

One might well ask how is such discrimination by a taxpayer-funded federal department possible in the twenty-first century. A substantial part of the problem, I believe, lies in the fact that (1) there remains a great deal of discretion on the part of local USDA officials in implementing both credit and non-credit programs, (2) there is little, if any, accountability on the part of such officials in particular and USDA in general, and (3) there is no transparency with respect to USDA's lending practices. In our own case, the ability of the USDA to ignore the

findings of the NAD concerning our right to debt servicing and the refusal to provide loan servicing are but two examples of the discretion that exists at the local level that can literally mean the difference between success and failure of a farming operation. Indeed as we learned in our case, once a USDA official had an unfavorable view of a distressed farmer, he could and would put that farmer out of business.

Over the years, we repeatedly complained of discrimination to USDA. Finally in 2000, an investigator from the USDA headquarters in Washington, D.C., a Mr. Antonio Califas, came to Las Cruces to investigate the complaints. As president of the Hispanic Farmers and Ranchers, I personally met with Mr. Califas and arranged meetings for him with Hispanic farmers and ranchers. Over a period of months, Mr. Califas made three trips to the Las Cruces area. During one of his visits, Mr. Califas told me that he had discovered evidence of discrimination against Hispanic farmers and ranchers that was worse than the discrimination that he had seen with respect to black farmers in local USDA offices in the deep South. During his third visit to Las Cruces, Mr. Califas told me that he had been ordered not to conduct any further interviews of Hispanic farmers and ranchers. For approximately five days, Mr. Califas sat in his room at the Las Cruces Hilton awaiting further orders, while the many Hispanic farmers I had scheduled to meet with him had to be told to go home. Ultimately, he returned to Washington without conducting any further interviews.

Since that time the USDA has refused to release Mr. Califas's report despite repeated requests by Congressman Reyes. Significantly, I have been advised by farmers who had an opportunity to witness it that since Mr. Califas's investigation, there has been substantial and ongoing destruction of documents by personnel in the Las Cruces USDA office. I am further advised that such conduct was in marked contrast to the practice which existed prior to Mr.

Califas's investigation, when stacks of records were visible cluttering the office. Such destruction of documents during the pendency of litigation is not only very disturbing, but potentially illegal and clearly a violation of USDA's own regulations. (See attached Supplemental Declaration of Guadalupe L. Garcia Jr.)

To date the USDA has not investigated any of my numerous discrimination complaints, including a complaint I filed as recently as 2006, and it continues to take adverse action and discriminate against me. For example, in 2005 the USDA falsified documents in its effort to foreclose on my home. Upon receiving a notification that USDA intended to accelerate my loan, I promptly filed a NAD appeal. In preparations for the NAD hearing, I requested copies of certain forms, which are each required by to be completed prior to notifying a producer that the loan will be accelerated to determine "if the account qualifies for acceleration," in order to ensure that USDA does not elect to accelerate loans in an arbitrary or capricious manner. The Farm Loan Manager never completed the required form.

The copy of another form FSA provide me was also purportedly signed and dated by the Farm Loan Manager on September 22, 2005. However, this document's content references both a meeting that was not held until October 20, 2005 and an appeal that was not filed until October 25, 2005. It is apparent that the form was either altered or falsified. (See attached Second Supplemental Declaration of Guadalupe L. Garcia Jr.)

The USDA has taken the position that, for purposes of establishing common issues of law or fact for class certification, our attorneys are entitled to review only USDA's centralized computerized databases. We are advised by our attorneys that such databases are absolutely useless as tools for auditing USDA's lending practices, and that the Justice Department lawyers handling the case readily concede that fact. For example, the regulations set forth a number of

eligibility criteria for participation in USDA farm credit programs, and USDA is required to advise a borrower of the reason why the borrower's loan application is denied. Yet, when USDA rejects a loan application, it does not retain in its centralized databases even the ostensible reason why the loan is denied. For a department that collects and maintains as much data as USDA does, there is simply no excuse in an age of high-powered computers and software applications for USDA not to maintain in a user-friendly, readily accessible database information sufficient to conduct meaningful and relatively inexpensive audits of its lending functions. It appears that USDA deliberately chose to maintain and expand its archaic network in the 1990s rather than secure up-to-date technology. It seems that USDA does not want to know what is happening in its local offices. Until steps are taken to insure transparency with respect to the actual operation of USDA farm credit and non-credit benefit programs, no amount of regulatory reform insure that the well-documented discrimination that has plagued USDA for decades is finally rooted out once and for all. A critically important step in rooting out that discrimination is to finally achieve the accountability which modern technology easily permits.

Finally, let me offer a few closing comments. While we seek to be compensated for past injuries inflicted upon us by USDA, a much more important purpose of our litigation is to fix once and for all the system for determining eligibility to participate in farm credit and non-credit benefit programs and process by which the administrative complaints of discrimination processed and investigated by USDA's Office of Civil Rights. I speak on behalf of many thousands of Hispanic farmers throughout the country, when I say that we love farming and want to make certain that our children and our children's children who wish to follow in our footsteps as farmers and ranchers have the opportunity to do so. In fact the number of Hispanics interested in beginning farming is growing. However, unless the system is fixed and USDA's well-

documented discrimination eradicated once and for all, that opportunity either may well not exist or else a few years from now we will be back in court once again seeking to remedy ongoing discrimination.

I sincerely believe the eradication of discrimination within the USDA is possible and that Congress has a definite role to play in doing so. For example, Congress can be instrumental in (1) mandating greater accountability with respect to the operation of USDA credit and non-credit benefit programs, (2) developing objective scoring criteria for credit and benefit eligibility, (3) reducing discretion and the potential for conflicts of interest on this part of local officials, (4) mandating greater accountability and transparency in connection with the recordkeeping associated with farm credit and non-credit benefit programs, and (5) insuring that USDA's Office of Civil Rights process and investigate the discrimination complaints of all producers in a thorough and timely fashion. At the core of this effort must be a commitment revamping data collection and processing within USDA to permit efficient and cost effective auditing of the administration of its farm credit and non-credit farm benefit programs. Nearly 18 years ago in 1990 this committee complained that USDA's record keeping prevented it from properly exercising its oversight function. Unless Congress mandates that changes be made in this process, I am afraid that more years will pass and Congress will still not be able to exercise properly its lawful oversight function and USDA discrimination will continue unabated. In sum, insuring accountability and transparency in the administration of USDA's farm credit and non-credit farm benefit programs and a properly function Office of Civil Rights will benefit all farmers who seek fair and equal access to farm credit and non-credit benefit programs.

Chairman Towns and Ranking Member Bilbray, this concludes my prepared testimony. Thank you very much for the opportunity to testify before this subcommittee.

Supplemental Declaration of Guadalupe L. Garcia Jr.

I, Guadalupe L. Garcia Jr., hereby state and declare the following:

1. My date of birth is October 23, 1943, and I am over the age of 18, Hispanic, and a United States citizen. My mailing address is 9303 N. Dona Ana Rd., Las Cruces, N.M. 88007.
2. I am a third generation lifetime farmer and have been farming since I was eight years old. I also have a Bachelors of Science Degree in Agronomy and a Masters of Science Degrees in Agronomy and Plant Physiology from New Mexico State University.
3. My father, brother, and I farmed together as G.A. Garcia and Sons Farm. We produced chili, onions, lettuce, cotton, pecans, alfalfa, and hay. We owned two farms in Dona Ana County, NM, one with 550 acres and the other with 78 acres of land. We also leased land occasionally for our farm operation.
4. Throughout the 1980s and 1990s, we applied repeatedly for various types of programs with the Dona Ana County Farmers Home Administration ("FmHA") and its successor Farm Service Agency ("FSA"). In response to the blatant discrimination that we experienced each time we applied for a loan, I filed discrimination complaints with the Office of Civil Rights ("OCR") on several different occasions. The OCR never investigated or even responded to any of these complaints.
5. During this same time period many other local Hispanic farmers and ranchers experienced similar blatant discrimination perpetrated by FmHA the FSA and also filed separate discrimination complaints. To my knowledge, the OCR failed to respond to any of these complaints.
6. In approximately August of 2000 the USDA headquarters in Washington, D.C., sent Mr. Antonio Califas along with a five-person team to Las Cruces ostensibly to perform a civil rights investigation. Mr. Califas and his team spent a week reviewing loan files in the Dona Ana County FSA office.
7. Over the following several months, Mr. Califas made three trips to the Las Cruces area to continue his investigation. As president of the Hispanic Farmers and Ranchers Association, Inc., I personally met with Mr. Califas and at his request I arranged meetings for him to interview local Hispanic farmers and ranchers.
8. During one of his visits, Mr. Califas told me that he had discovered evidence of discrimination against Hispanic farmers and ranchers that was worse than the discrimination that he had seen with respect to black farmers in local county offices in the deep South.
9. During his last visit to Las Cruces, Mr. Califas told me that he had been ordered not to conduct any further interviews of Hispanic farmers and ranchers. For approximately five

days, Mr. Califas sat in his room at the Las Cruces Hilton awaiting further orders, while the many Hispanic farmers I had scheduled to meet with him had to be told to go home. Ultimately, he returned to Washington without conducting any further interviews.

10. Since this abrupt termination of Mr. Califas' investigation, we have not received any further information regarding the status of our discrimination complaints, or whether the investigation will ever be continued. These discrimination complaints remain outstanding to this day. I understand that since that time the USDA has refused to release Mr. Califas's aborted investigation despite repeated requests by Congressman Reyes.
11. After ignoring the discrimination complaints I filed over a span of twenty years, I remain sorely disappointed that the first time the OCR decided to commence any type of civil rights inquiry in Dona Ana County USDA ordered the investigators not to complete the investigation.
12. On February 1, 2006, I filed a discrimination complaint after the FSA intentionally falsified documents to accelerate my loan. Approximately six months later, after counsel had made over a dozen phone calls to the OCR inquiring of the status of my complaint, OCR finally sent a letter stating that my complaint was "being reviewed to determine whether it should be accepted in [OCR's] administrative complaint process."
13. USDA continues to invite Hispanic farmers and ranchers who feel they have been discriminated against to file complaints with the OCR. While I personally know of many farmers who have filed and who continue to file timely discrimination complaints with meritorious claims, I am not aware of a single case where the OCR has fully investigated the complaint and offered the farmer any remedial relief.
14. While the OCR no longer remains literally dismantled as it was in the early 1980s and 1990s, it continues to ignore its regulations that require it to investigate discrimination complaints.
15. Thus far the OCR has both failed to show any signs of successfully terminating discriminatory practices within FSA or of investigating discrimination complaints.

I declare under penalty of perjury that the above fifteen paragraphs are true and accurate to the best of my personal knowledge.

8-22-06
Date

Guadalupe L. Garcia
Guadalupe L. Garcia Jr.

Second Supplemental Declaration of Guadalupe L. Garcia Jr.

I, Guadalupe L. Garcia Jr., hereby state and declare the following:

1. My date of birth is October 23, 1943, and I am over the age of 18, Hispanic, and a United States citizen. My mailing address is 9303 N. Dona Ana Road, Las Cruces, New Mexico 88007.
2. I am a third generation lifetime farmer and have been farming since I was eight years old. I have a Bachelors of Science Degree in Agronomy and a Masters of Science Degrees in Agronomy and Plant Physiology from New Mexico State University.
3. I continue to farm fulltime today. I grow chili, onions, lettuce, broccoli, cabbage, sweet corn, cantaloupe, watermelon, pima cotton, pecans, alfalfa, and Sudan grass. While I currently lease 60 acres, I am in the process of making the necessary arrangements to lease 20 more acres.
4. While the United States Department of Agriculture ("USDA") has not investigated any of my numerous discrimination complaints, including the complaint filed this year, it continues to take adverse action and to discriminate against me. Most recently, the USDA has falsified documents in its efforts to foreclose on my home.
5. On September 22, 2005 Mr. Gary L. Miller, a Roswell, New Mexico, Farm Service Agency ("FSA") Farm Loan Manager, sent me a "Notification of Intent to Accelerate or Continue Acceleration of Loans and Notice of Your Rights" letter. On October 25, 2005 I filed a request for a National Appeals Division ("NAD") appeal. In preparation for the NAD hearing, on November 2, 2005 I requested a copy of Form FSA-580, "Primary and Preservation Loan Servicing Checklist" and FSA-581.
6. Mr. Miller's November 3, 2005 reply included a copy of FSA-580 but no copy of FSA-581, because apparently FSA-581 had not yet been completed. Notice FLP-372 clearly requires that both FSA-580 and FSA-581 be completed prior to notifying the producer that the loan will be accelerated to determine "if the account qualifies for acceleration". The primary purpose of FLP-372 is to ensure that FSA does not elect to accelerate loans in an arbitrary or capricious manner. Mr. Miller began the acceleration process without completing the requisite form FSA-581.
7. The copy of form FSA-580 that FSA provided me was also purportedly signed and dated by Mr. Miller on September 22, 2005. However, this document's content references both a meeting that was not held until October 20, 2005 and an appeal that was not filed until October 25, 2005. It is apparent that these forms were either altered or falsified.

I declare under penalty of perjury that the above seven (7) paragraphs are true and accurate to the best of my personal knowledge.

Guadalupe L. Garcia Jr.
Guadalupe L. Garcia Jr.

Oct 14, 2006
Date