

Re: Response to Questions

Thomas Vilsack [REDACTED]

Fri 5/10/2019 4:38 PM

To: Nathan Rosenberg [REDACTED]

Nathan - will try to respond to your additional questions. I am now and was as Secretary unaware of any effort by the OGC office to undermine the review process of Civil Rights complaints. I find it impossible to believe that either Ramona Romero or Jeff Prieto in their capacity as Général Counsel would have tolerated such conduct. I am wondering if you have interviewed either of these folks? If you have I find it hard to believe that they would agree with the characterization offered by folks you interviewed. There may have been cases that OGC felt should be appealed for legal reasons. If so, that is them doing their job, but if they did I do not think they were motivated by ill will. Obviously, all I can submit is what I understood was occurring in the process from the reports I was getting that there were findings and that at several points in time we had more findings than many other departments larger than USDA.

I am not sure how Mr. Wright can say that I failed to advocate for the payment of claims that were barred during a prior administration. I advocated for this in the budgeting process by including it in our budget, in making sure that members of the House and Senate Agriculture Appropriations Subcommittees were aware of the importance of providing justice to all those discriminated against by the Department, and in working with Tony West at the White House and the DOJ. We did get pushback from the DOJ on our efforts since some of the claims would be paid out of the fund DOJ controlled. At the end of the day some things make into a budget and somethings don't. Most of the time the budget decisions are made by members of the House and Senate with White House involvement. It is amazing to me that anyone would be critical of the Obama Administration in connection with civil rights claims given the work we did to try resolving over 25,000 claims that had been ignored by the previous administration.

Organic farming is a high value proposition. It would provide help to smaller sized operations because the prices paid for organic products is higher than basic commodity prices. We did a lot to help producers in this space. Investments in research and conservation programs were significantly increased. Crop insurance opportunities were created for products that heretofore had no risk management protection. We promoted export opportunities as well. So, I have not changed my mind. The key barrier to more organic production is access to land. The transition is expensive. At the end of the Administration we began an effort to try to figure out how to aid that tradition by developing a staggered increase in prices for organic products produced during the 3 year transition period. Not sure what the current administration is doing about all of this.

To answer the question about shares of investments I would have to see what data you are reviewing. It is possible that many of loans made to minority farmers were for smaller amounts because they may have had smaller operations impacting how much credit they needed and how much security they could pledge. But, without knowing precisely the data you are reviewing and what you are focusing on it would be difficult for me to answer the question you have poised. I can say that we made a concerted effort to make sure people were aware of our programs and tried to encourage people to use USDA.

The sales figures you mentioned in the email are not surprising. Larger operations across the board sell more. Whether there is stiff competition may depend on the nature of the local market. If we are talking about sales to local grocery chains I would not be surprised if there is an advantage. If the sales are to local restaurants, schools, or farmers markets I am not sure what the advantage might be. The bottom line is that we made an effort to build a more robust local and regional markets. At the end of the Administration we were working with foundations to strengthen supply chains to create even more opportunity.

I guess I do not think the criticism in the Census is fair. We made it clear that we were going to try to do a better job of outreach to count folks that had not been counted before. There was an increase in the number of minority farmers. I suspect there were some new farmers and some farmers counted for the first time. Bottom line I believe the Census gave a more accurate count (which is what the Census is suppose to do) than it had before which is important because that fact can be used to promote policies or direct resources.

Tom Vilsack

Sent from my iPad

On May 10, 2019, at 3:29 PM, Nathan Rosenberg <[REDACTED]> wrote:

Hi Secretary Vilsack,

Thank you again for your response. I have some follow-up questions, which I've included below. I can give you some additional time to address the claims I mention below, but I'll need your responses by **12 pm Eastern on Tuesday** in order to include them in the story. I'd also be happy to chat on the phone before then if that would be more convenient for you.

Nate

Question 1.

I wanted to clarify what I meant by "systematically rejected discrimination complaints" and ask you a follow-up question. I interviewed more than 18 different former and current USDA civil rights employees and many described irregularities in USDA's complaint process, including the Office of General Counsel's (OGC) alleged improper involvement in reviewing complaints. Here's a typical remark from one of our sources, who asked to remain anonymous:

"Even if someone has a compelling case, it goes to OGC and OGC figures out a way to draft something up ... that basically denies or closes out the complaint."

Our sources told us that OGC played an important role in the systematic rejection of complaints and that its involvement with both EEOC and program complaints corrupted the civil rights process at USDA during your tenure. Could you respond to these claims?

Question 2.

The House twice passed legislation to extend the statute of limitations to allow the Bush era complaints to be addressed. According to Lloyd Wright, these provisions were passed due to the efforts of advocacy groups and the CBC. When it came to getting it through the Democratically-controlled Senate, he says that you never actively advocated for its passage. Could you respond to this claim?

You also mentioned that you met with congressional members to allow the reopening of Bush era claims. Could you tell me which congressional members you met with to discuss extending the statute of limitations and what kind of resistance, if any, you met with when advocating for the provisions?

Question 3.

You point to an impressive amount of initiatives and programs that were designed to meet the needs of black and other minority farmers. But I want to return to the fact that the share of lending to white farmers went up during your administration, while the share of lending to black farmers (and farmers of color more broadly) went down. Why do you think that was? And do you think ongoing discrimination within USDA played a role?

Question 4.

You mentioned organic production as a way to improve opportunities for smaller-scale farms twice in our interview. Have you changed your mind about that?

According to USDA data, the largest 4 percent of farms in local markets - just 6,900 farms overall - take in almost 60 percent of local sales, which suggests that small-scale farms

face stiff competition from large-scale ones in local and regional markets. Do you think that's a fair characterization of the data?

Question 5.

While I heard many positive things about USDA's efforts to improve its count of black farmers, many of the people I interviewed for this story were concerned that USDA never clearly explained to the public that the "increase" in black farmers was the result of improved outreach and changes to the COA's methodologies. According to the many of the dozens of farmers and advocates I interviewed, this made it more difficult for them to advocate for programs designed to benefit black farmers and to address ongoing discrimination since it appeared as if black farmers were actually increasing in number (rather than being counted better). For example, in your 2016 Medium post, you wrote that the "United States saw a 12 percent increase in the number of black farmers" between 2007 and 2012 without mentioning that the increase was not statistically significant or that it was the result of methodological changes and improved outreach. Do you think that criticism of how you handled the census results is fair?

From: Nathan Rosenberg
Sent: Friday, May 10, 2019 11:51:44 AM
To: Thomas Vilsack
Cc: Omar Syed
Subject: Re: Response to Questions

Thank you for these extensive responses. My co-author and I have some follow-up questions, which I'll send to you shortly. I'm going to check with my editors to see if we can give you some additional time to respond to them.

Thanks again,
Nate

From: Thomas Vilsack <[REDACTED]>
Sent: Friday, May 10, 2019 10:37:12 AM
To: Nathan Rosenberg
Cc: Omar Syed
Subject: Re: Response to Questions

Nate - only additional information is to make sure you were aware of an ADR system we set up in Civil Rights to allow folks to resolve claims more quickly to avoid the problem of the department taking too long as it had during the Bush Administration. As for Mr.McDonald's claim I learned he opted out of the Pigford II process. The Administrative Law Judge sided in his favor and the matter was referred to the OGC for final determination of payment or appeal. At no time did I suggest that his claim be ignored or not treated above board. The Administrative Law Judge decision may have been appealed. I am not sure if it was or not. If it was appealed the decision to do so would have been made by OGC on what that office felt were good faith grounds.

Tom Vilsack

Sent via iPhone

On May 8, 2019, at 9:52 AM, Thomas Vilsack <[REDACTED]> wrote:

Nate - thank you for the chance to respond to the questions you have raised in the article you are writing. I will likely respond to several questions in this email and follow it up with another email after I check with folks who might be more knowledgeable on some of the more specific questions. I will make every effort to get you any additional information by close of business Friday.

Question 1.

I am not sure what is meant by “systematically rejected discrimination complaints”. If the meaning is that complaints were not reviewed and summarily rejected without thought and consideration I would strongly disagree. When I came into the Secretary’s office I was told about the fact that complaints were not reviewed and decisions were not made in a timely way so some complainants lost their right to appeal. I directed the Civil Rights Office to make sure that appeal rights were preserved in a timely way so if we found no discrimination the complainant has time to appeal that decision. There was every effort made to consider complaints carefully but doing it in a way that allowed folks the right to appeal if they disagreed. I received reports from the Office on the status of complaints in our Office and a report that compared our Office’s work to other departments of government. We processed more complaints and often had more findings of discrimination than other larger departments.

QUESTION 2

I am saddened by the assertions made by Mr. Wright. We hired him to help us work through the mess that we inherited. I had two goals with reference to the past complaints: get the 2008 Farm Bill provisions limiting the award of Pigford II to \$100 million dollars increased so we could provide more justice to more people and to allow us to reopen the complaints that had lapsed under the Bush Administration. Both had to be done in the context of the legislative process. I advocated with members of the administration and with congressional members for both actions. It required congressional action for both. I went to the President in an Oval Office meeting that I requested asking him to weigh in. He did. We succeeded in getting the Pigford II authority raised to \$1.1 billion which allowed us to help thousands of farmers who were not treated fairly. The Congress did not agree to allowing a reopening of the lapsed claims. At the time this was resolved we were dealing with Republican control of the House and there was resistance to our efforts. I strongly disagree with Mr. Wright’s conclusion that I did and the Department did not actively support the legislation. We proposed and advocated it for years to no avail because we were dealing with a Congress that resisted our efforts.

QUESTION 3

This is a difficult question to answer because it involves a number of different angles. First, we made more loans to more people. For example we started a micro-loan program that had never been in place before. I suspect that opened up opportunities for more people that could have resulted in percentages of loans to certain groups increasing or decreasing. Efforts were made to expand outreach to beginning farmers that included outreach to not only black farmers but to women farmers, Native American farmers, Hispanic farmers, disabled farmers and returning veterans farmers. Many from those groups had felt the USDA was not working for them. We took two specific steps to help black farmers. First, I added minority members to county FSA committees using an authority never used before. I think we did that in over 150 counties primarily in the Deep South. This allowed more minority representation on those committees where farmers who felt they were not treated fairly could appeal a local office decision. Second, we instituted a program called Strike Force that focused on severely improvised areas in the country in an attempt to get more of the USDA programs working in areas left behind by previous administrations. We started this in 3 states: Georgia, Alabama and Mississippi. One of the benefits of this program was to

develop a program in Georgia for 80 black farmers to band together to sell collard greens and other vegetables they were growing to large scale grocery chains. By the end of the Administration we had Strike Force going in over 20 states and over \$26 billion invested in a variety of programs helping improvised areas with many of those areas having a disproportionate number of minority citizens. The term socially disadvantaged farmer has many definitions to include all the groups that had been treated unfairly or not at all by USDA.

QUESTION 4

My perspective on the need for local and regional markets has not changed. Let me first make the distinction between your question and my focus. You make reference to “local and organic markets”. I focused on “local and regional markets”. There is a difference between what you referred to in your question and where we focused our attention. We focused on building local and regional markets because it gave a smaller producer the ability to negotiate directly the price they would accept for whatever crop or livestock they were selling. This is unlike the commodity markets where the farmer is told what price will be paid by a pricing system based on global demand and supply. The farmer has no control over the commodity pricing system as there is no room to negotiate. In establishing a foundation for a local and regional markets we invested more in farmers markets, food hubs, Farm to School program, and Value Added Producer efforts that ultimately led to the inclusion of resources for these programs or increased levels for these in Farm Bills and Budget Bills. Our administration made thousands of investments in these local and regional markets creating more opportunities for smaller sized operations to have a say over the price they would receive. Local and regional food efforts were available to all types of production methods. When you change the discussion from local and regional to local and organic you change the discussion significantly. In the organic world you have many large producers -Organic Valley and Horizon come immediately to mind. Producers like that may be considered as one large producer but in fact as a coop the company is made up on hundreds of producers. I am proud of our record for expanding opportunities in the form of local and regional markets. I am hopeful the foundation we helped to build is expanded in the future. I think it is one strategy for encouraging diversity in agriculture of producers, size of operations, and production methods. I have no doubt that if you segregated the sales at farmers markets, at schools purchasing under a farm to school program, from products produced from the Value Added Producer Grant Program, and sales from food hubs the majority of sellers in those venues would be smaller scaled operations. When you included organic in the equation you then include sales that are going nationally to chain grocery stores and there it may be the Driscolls, the Organic Valleys and Horizons of the world that would give you a different outcome.

QUESTION 5

I am disappointed that our efforts to expand outreach on the Ag Census to get a cleared picture of what is really happening in rural America is deemed by some to be misrepresenting or manipulating data. There is no question that we make a concerted effort at outreach so more people would be contacted and more people would be included in the Census. We felt that the 2012 Census validated our approach that the data was better and more accurate in terms of the farming population in America. It showed more black farmers. I think that there is no question we counted more black farmers and that there were beginning black farmers. There is also no question that our farming population is aging and declining overall. I suspect black farmers are also aging and many are retiring or dying. I do not think that suggests misrepresentation or manipulation but a complex picture that involves more people counted, new people entering and some retiring or dying. The big difference in all of this was our effort to help beginning farmer (micro loans, local and regional food system investments, help with crop insurance and other risk management tools, Strike Force) and our effort to have a more accurate Census. Is there more work to be done on beginning farmers - no

doubt, but I think we made progress in an administration that had Congressional opposition for 6 out of 8 years.

QUESTION 6

I am checking with folks to see where this question is coming from as I am confident I never suggested to Mr. Wright or to anyone that we “override “ a judge’s decision in that case or any other case that was appealed through our system. Nor, would I have ignored any suggestion that claims of discrimination not be investigated. This is particular puzzling given the fact that we worked to settle thousands of claims of discrimination that had been ignored or shortchanged by a previous administration, created a specific program (Strike Force) to make sure our programs were working better in impoverished areas with high concentrations of minority populations and launched a Cultural Transformation effort within the Department after spending a significant sum of money with a law firm to review our practices and procedures to advance diversity and inclusion.

I appreciate the opportunity to respond. I hope you found the information useful. I may supplement this response before COB Friday. I once asked for a calculation of number of decisions that would be made across the mission areas of USDA in a year. I was surprised when the answer came back it was north of billion separate decisions made by the 90,000 to 100,000 hardworking folks that worked at USDA. I recognize that we no doubt made mistakes and that some may not think we did enough but I remain proud of what we did and what we attempted to do.

Tom Vilsack

Sent from my iPad