UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID CANTU, et al., Plaintiffs, v. THE UNITED STATES OF AMERICA, et al., Defendants.	)	Civil Action No. 11-541 (RBW)

ORDER

The plaintiffs in this putative class action are Hispanic farmers who seek redress for the defendants' alleged "unconstitutional treatment in the proposed settlement of discrimination claims by these Hispanic [p]laintiffs, on the one hand, as compared to the manner in which [the d]efendants have settled identical discriminations claims by similarly situated African American and Native American claimants, on the other hand," all of whom were purportedly "discriminated against in like manner by the United States Department of Agriculture ["USDA"] . . . in the administration of its farm credit and non-credit farm benefit programs." Class Action Complaint for Declaratory, Injunctive, and Other Relief ("Compl.") ¶ 1.[1] On May 5, 2011, the defendants moved for dismissal of the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Upon review of the submissions made in connection with the defendants' motion, the Court found that the parties failed to address several important issues and

[1] The complaint names the following defendants: (1) the United States of America, (2) the United States Department of Justice, (3) the USDA, (4) United States Attorney General Eric Holder, in his official and individual capacities, and (5) Secretary of the United States Department of Agriculture Tom Vilsack, in his official and individual capacities. Compl. at 1.

accordingly directed them to file supplemental memoranda addressing those issues. See November 1, 2011 Order, Cantu v. United States, No. 11-541 (D.D.C.). Among other things, the Court instructed the parties to answer the following question: "Are the plaintiffs' claims seeking declaratory and injunctive relief for the defendants' alleged constitutional violations 'ripe' for judicial resolution?" Id. at 2. Having reviewed the parties' supplemental briefs and all memoranda of law relating to the defendants' motion to dismiss,[2] the Court must answer this question in the negative.

"Ripeness is a justiciability doctrine 'drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.'" In re Aiken Cnty., 645 F.3d 428, 433 (D.C. Cir. 2011) (quoting Nat'l Park Hospitality Ass'n v. Dep't of Interior, 538 U.S. 803, 808 (2003)). Under this doctrine, federal courts can only entertain claims that are "'constitutionally and prudentially ripe.'" Wyo. Outdoor Council v. United States Forest Serv., 165 F.3d 43, 49 (D.C. Cir. 1999) (quoting Louisiana Envtl. Action Network v. Browner, 87 F.3d 1379, 1381 (D.C. Cir. 1996)). "Prudentially, the basic rationale of the ripeness doctrine 'is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" In re Aiken Cnty., 645 F.3d at 433 (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148-49 (1967)). "Refusing to involve the courts in ongoing

[2] In addition to the filings already identified, the Court considered the following submissions in rendering its decision: (1) the Memorandum in Support of Defendants' Motion to Dismiss ("Defs.' Mem."); (2) the Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss; (3) the Reply in Support of Defendants' Motion to Dismiss; (4) the Plaintiffs' Memorandum in Response to the Court's November 1, 2011 Order ("Pls.' Suppl. Mem."); (5) the Supplemental Memorandum in Support of Defendants' Motion to Dismiss ("Defs.' Suppl. Mem."); and (6) the Plaintiffs' Reply Memorandum to the Supplemental Brief in Support of Defendants' Motion to Dismiss Filed in Response to the Court's November 1, 2011 Order ("Pls.' Suppl. Reply").

administrative matters both protects judicial resources and comports with the judiciary's role as the governmental branch of last resort." Id. at 434. "The ripeness doctrine, even in its prudential aspect, is a threshold inquiry that does not involve adjudication on the merits and which may be addressed prior to consideration of other Article III justiciability doctrines."[3] Id. (citing Toca Producers v. FERC, 411 F.3d 262, 265 n.* (D.C. Cir. 2005)).

Under the two-prong analysis for prudential ripeness established by the Supreme Court in Abbott Labs., the Court must evaluate "[1] the fitness of the issue for judicial decision and [2] the hardship to the parties of withholding court consideration." 387 U.S. at 149. "'Among other things, the fitness of an issue for judicial decision depends on whether it is purely legal, whether consideration of the issue would benefit from a more concrete setting, and whether the agency's action is sufficiently final.'" Devia v. Nuclear Reg. Comm'n, 492 F.3d 421, 424 (D.C. Cir. 2007) (quoting Atlantic States Legal Found., Inc. v. EPA, 325 F.3d 281, 284 (D.C. Cir. 2003)). But even when a claim is "'predominantly legal in character,'" if it "'depends on future events that may never come to pass, or that may not occur in the form forecasted, then the claim is unripe.'" Id. at 425 (quoting McInnis-Misenor v. Maine Medical Ctr., 319 F.3d 63, 70 (1st Cir. 2003)). "Hence, a 'claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" Id. (quoting Texas v. United States, 523 U.S. 296, 300 (1998)).

Applying the first prong of the ripeness inquiry, the Court finds this case currently unfit for judicial review. The crux of this lawsuit is the plaintiffs' claim that the defendants' proposed alternative dispute resolution program ("ADR program") aimed at settling the discrimination claims of Hispanic farmers is, as presently configured, inferior in several respects to the ADR

[3] Mindful of this principle, the Court at this stage will not consider the defendants' challenge to the plaintiffs' Article III standing. See Defs.' Mem. at 1-2.

programs established for similarly situated African American and Native American farmers. As it currently stands, however, the proposed ADR program being challenged by the plaintiffs is just that—a proposal. The ADR program has not yet been instituted, its terms have not been finalized, and, according to the defendants, it may be revised in light of ongoing negotiations with plaintiffs' counsel in a related discrimination lawsuit brought by female farmers, Love v. Vilsack, No. 00-2502 (RBW) (D.D.C.).[4] See Defs.' Suppl. Mem. at 3. Based on these representations (the good faith of which the Court has no reason to doubt) and given that the ADR program has already been the subject of at least two substantial revisions since its announcement in May 2010, see, e.g., Compl. ¶¶ 76-77, 82, the Court is not confident that the version of the ADR program that the plaintiffs are now challenging will, in fact, be the version implemented by the defendants.

It is true that the issue presented in this case (i.e., whether certain terms of the ADR program are unconstitutional) is purely legal, and the defendants do appear likely to implement the ADR program in some form or another. Nevertheless, it would be both a waste of this Court's resources and an improper exercise of judicial power to assess the constitutionality of a program that may be materially altered or never adopted at all. The Court's consideration of this case thus "would benefit from a more concrete setting" because the defendants' actions are not "sufficiently final," and the plaintiffs' claims are based on "'contingent future events that may not occur as anticipated.'" Devia, 492 F.3d at 424 (quoting Texas, 523 U.S. at 300). Under these circumstances, prudential interests weigh heavily in favor of deferring judicial review.

[4] The plaintiffs dispute the defendants' claim that they may further modify the ADR program, asserting that the defendants have indicated on several instances that the current terms of the ADR program are final and non-negotiable. See Pls.' Suppl. Reply at 4-6. However, according to the plaintiffs' own complaint, the defendants have taken this stance with plaintiffs' counsel in this case since first announcing the ADR program in May 2010, and they nonetheless proceeded to "unilaterally announce[]" substantial modifications to the program's terms in February and March of 2011. Compl. ¶¶ 74, 77, 82. The defendants may very well make another unilateral modification of the ADR program's terms, including those terms being challenged as discriminatory in this case.

Turning to the "hardship" prong of the ripeness inquiry, the Court must consider the plaintiffs' "'interest in immediate review.'" City of Houston v. HUD, 24 F.3d 1421, 1431 (D.C. Cir. 1994) (quoting Better Gov't Ass'n v. Department of State, 780 F.2d 86, 92 (D.C. Cir. 1986)). "In order to outweigh institutional interests in the deferral of review, the hardship to those affected by the agency's action must be immediate and significant." Action Alliance of Senior Citizens of Greater Philadelphia v. Heckler, 789 F.2d 931, 940 (D.C. Cir. 1986). The plaintiffs assert that prompt review of their claims is necessary because they have been harmed by the defendants' alleged discriminatory ADR program, and they "confront the substantial hardship of having to choose between a program that is blatantly discriminatory . . . or incurring substantial costs" by pursuing litigation. Pls.' Suppl. Mem. at 11. But these purported hardships are not "immediate and significant," Heckler, 789 F.2d at 940, because the ADR program is not yet in place. Indeed, the plaintiffs cannot be presently harmed by a program that does not exist. Once the defendants' ADR program is finalized, the plaintiffs may raise their constitutional challenges to that program before the Court and will be in no discernibly worse position than they are now. Hence, the significant institutional interests in deferring review of the plaintiffs' claims outweigh the minimal interest of the plaintiffs in securing immediate judicial review.

For the foregoing reasons, the Court concludes that this case is not prudentially ripe. As noted above, however, it does appear from the parties' representations that the defendants will eventually implement some form of the ADR program. So instead of dismissing this case on ripeness grounds, the Court will hold the case in abeyance pending an announcement of the final version of the defendants' ADR program. See Devia, 492 F.3d at 426 (stating that courts have discretion to hold in abeyance, rather than dismiss, prudentially unripe cases).

Accordingly, it is hereby

ORDERED that all pending motions in this case are denied without prejudice. It is further

ORDERED that the parties shall notify the Court if and when the defendants finalize the ADR program for Hispanic farmers. At that time, the parties shall advise the Court whether they desire to have the pending motions in this case reinstated and taken under advisement by the Court. If such a request is made, the defendants shall submit for the Court's review a copy of the final version of the defendants' ADR program for Hispanic farmers. It is further

ORDERED that the defendants shall submit status reports to the Court and the plaintiffs every 30 days, starting from the date of entry of this order and until the ADR program is finalized, addressing the progress that has been made toward the finalization of the ADR program for Hispanic farmers. It is further

ORDERED that this case is administratively closed pending further order of the Court.[5]

SO ORDERED this 21st day of December, 2011.

REGGIE B. WALTON
United States District Judge

[5] This case will be administratively reopened and the motions that have been denied without prejudice will be reinstated (if requested by the parties) once the ADR program for Hispanic farmers is finalized.