

[NOT SCHEDULED FOR ORAL ARGUMENT]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CARL PARKER, et al.,
Plaintiffs-Appellants,

v.

U.S. DEPARTMENT OF
AGRICULTURE,
Defendant-Appellee.

No. 19-5301

**REPLY IN SUPPORT OF APPELLEE'S MOTION
FOR SUMMARY AFFIRMANCE**

As explained in the government's motion for summary affirmance, the district court (Friedman, J.) properly dismissed plaintiffs' complaint for failure to state a claim, and denied plaintiffs' "re-petition for mandamus." *See* Ex. A. The district court concluded that plaintiffs, who were all claimants under the *Pigford* consent decree, expressly waived their rights to "seek review in any court" of a decision made under that consent decree, foreclosing all relief requested here. The court thus correctly held that it lacked authority to award any relief to plaintiffs, who are unsatisfied with the results they obtained in administrative proceedings under the consent decree. Ex. A at 23-24, 26, 30. Plaintiffs' response to the government's motion

identifies no evidence or legal authority refuting this conclusion and summary affirmance is therefore appropriate.

As explained in the government's motion, decisions under the *Pigford* consent decree by a Track A adjudicator or a Track B arbitrator are final and subject to review in limited circumstances by a court-appointed monitor. The district court thus recognized—and plaintiffs concede, Opp. 10—that it had no authority to review administrative decisions resolving plaintiffs' claims under the consent decree. Ex. A at 25-26. Indeed, the district court has long since wound down the consent decree, foreclosing any further relief for plaintiffs under that agreement. Ex. D; *see also* Ex. A at 6.

In arguing (Opp. 12-15) that the district court “failed to enforce” the consent decree, plaintiffs ignore the plain terms of the agreement, which makes decisions by an arbitrator or adjudicator final and binding and gives the district court no authority to review those decisions. Plaintiffs' lengthy recitation (Opp. 4-9) of the history of discrimination faced by Black Farmers—as well as early problems with class counsel's failure to timely file claims from 2000 to 2001—provide no basis for ignoring the plain language of the consent decree. In light of extraordinary circumstances, this Court long ago permitted the consent decree to be modified to extend certain filing

deadlines missed by class counsel, *see Pigford v. Veneman*, 292 F.3d 918, 927 (D.C. Cir. 2002), but the Court emphasized that it could not unilaterally modify other terms of the consent decree, *see id.* at 924, 927 (stressing that any modification must “preserve the essence of the parties’ bargain”).

Plaintiffs’ entire opposition rests on the mistaken view that the consent decree conferred plenary authority on the district court to review plaintiffs’ claims that they were subjected to unfair or unlawful treatment in the administrative process. Plaintiffs’ suit thus amounts to a direct challenge to adverse decisions made long ago under the consent decree, raising nearly identical arguments to those that have been repeatedly rejected by numerous courts. See Motion at 14-15 (citing numerous decisions rejecting plaintiffs’ collateral attacks on Track A and Track B decisions in various courts). Plaintiffs nowhere acknowledge these decisions, much less seek to distinguish them or argue that they were wrongly decided.

Plaintiffs’ additional arguments opposing summary affirmance have no merit. First, plaintiffs attempt (Opp. 11-12) to distinguish *Pigford v. Vilsack*, No. 12-5302, 2013 WL 4711685 (D.C. Cir. July 30, 2013), in which this Court summarily affirmed the district court’s dismissal of a different plaintiff’s challenge to the disposition of his claim under the *Pigford* consent decree.

Plaintiffs contend that they “raise a substantive issue on the merits,” while that case purportedly concerned a procedural defect. This is a distinction without a difference: in both that case and here, the district court held that it lacked authority under the consent decree to review the underlying decision. *See* Ex. A at 23 n.13 (discussing the dismissal of that *Pigford* claimant’s case and several others, under the plain terms of the consent decree).

Second, plaintiffs argue (Opp. 12) that “additional briefing” is necessary, and repeatedly contend (Opp. 12, 16, 18) that a “more fully developed record” is necessary to determine whether the district court “failed to enforce” the consent decree. That is incorrect. The district court held that it lacked authority to consider plaintiffs’ claims of unlawful and unfair treatment under Track A and Track B, Ex. A at 24-26, and no additional briefing is necessary to determine whether that legal determination was correct. As Judge Friedman recognized, the plain terms of the consent decree foreclose the sort of roving and belated judicial review of final Track A and Track B decisions that plaintiffs seek here. No amount of additional briefing or argument by plaintiffs can change that result, and plaintiffs have not identified any specific evidence or arguments that they intend to develop further on plenary briefing.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be summarily affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 32(g)(1) and 27(d)(2)(C) because it contains 785 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word in CenturyExpd BT 14-point font, a proportionally spaced typeface.

/s/ Casen B. Ross

CASEN B. ROSS

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2020, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Casen B. Ross

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