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COMMITTEE ON THE BUDGET

October 29, 2020

The Honorable George Ervin “Sonny” Perdue III
Secretary
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Secretary Perdue:

In light of a now-proven pattern of criminal conduct, I write to request the U.S. Department of Agriculture (USDA) initiate suspension and debarment proceedings against JBS USA, the U.S. subsidiary of the Brazilian-owned and controlled meatpacker JBS SA, and each of its companies, including but not limited to Pilgrim’s Pride. This relevant corruption and illegal behavior are directly related to the company’s entry to and consolidation of the United States meatpacking sector.

For several years, I have grown concerned about the continued and substantial payments to U.S. subsidiaries of the corrupt Brazilian-owned and controlled meatpacker, JBS. As part of USDA’s so-called ‘trade aid package,’ JBS has received more than \$100 million dollars in payments – assistance that was supposed to have been for struggling farmers and ranchers who have been hurt by the Administration’s failed trade policies.

But, many fail to realize the full extent of the USDA subsidies JBS has received. Unlike farmers and ranchers, JBS also receives payments, as procurement contracts, on an annual basis through the USDA’s Agricultural Marketing Service. In fact, U.S. taxpayers have subsidized JBS with hundreds of millions of dollars over the past several years.

JBS USA is controlled by the Brazilian agribusiness firm known as J&F Investimentos SA, which in turn controls JBS SA, a company owned and controlled by two convicted criminals, Joesley and Wesley Batista (the ‘Batista Brothers’). The Batista Brothers pled guilty to bribery

of many public officials in Brazil and received fines for criminal behavior in Brazil of approximately of \$3 billion.¹

Joesley Batista was JBS Chief Executive Officer (CEO) from March 2006 until January 2011 and Chairman of the Board of Directors until May 2017, when he was arrested, imprisoned and removed from his position as CEO and Chairman by the Brazilian government. Wesley Batista was CEO of JBS from 2011 until 2018 and was CEO and President of JBS USA from 2007-2011 (and was also a director and Chairman of the Board from 2009 through 2013).² In May 2020, Reuters reported that a Brazilian appeals court authorized the Batista Brothers to return to their managing positions with J&F because, according to the court, it no longer made sense to keep them from indirect or direct participation in the companies.³

Despite previous bipartisan pressure, USDA and USDA’s Inspector General’s office have in the past declined to act based on the Brazilian convictions, despite the indisputable fact that the Batista Brothers purchased JBS-controlled U.S. companies using funds obtained illegally from a massive bribery conspiracy that violated the U.S. Foreign Corrupt Practices Act. Given new information recently disclosed by the Justice Department and the U.S. Securities and Exchange Commission (SEC), USDA can no longer deny that which was already apparent.

On Wednesday, October 14, 2020, the Justice Department and the SEC made public the following three actions:

1. The Justice Department announced that J&F pled guilty to violating the U.S. Foreign Corrupt Practices Act and agreed to a \$256,497,026 fine in the U.S. District Court for the Eastern District of N.Y. in Brooklyn;
2. The SEC in Washington, D.C. accused J&F, the Batista Brothers and JBS of brazen misconduct and announced that J&F and JBS would pay approximately \$27 million to resolve charges arising out of an extensive bribery scheme, and the Batista Brothers would each be fined \$550,000; and
3. The U.S. District Court in Colorado, Pilgrim’s Pride, in which JBS holds a controlling interest, agreed to pay approximately \$110.5 million as part of pleading guilty to criminal price-fixing charges in the chicken broiler industry. The price fixing case is still ongoing, with JBS and Pilgrim’s Pride former executives criminally charged for what they have admitted was a seven-year long conspiracy of illegal price fixing.

¹ J&F Investimentos represented in a May 29, 2019 court filing to the District of Columbia Superior Court that: “On or around June 5, 2017 J&F itself entered into a ‘leniency agreement’ with Brazilian authorities pursuant to which it agreed to pay a significant amount in fines, 10.3 billion reais (approximately \$3.18 billion in U.S. dollars), and to cooperate in the ongoing corruption investigation.” Amended Complaint at 8, *J&F Investimentos SA v. Baker & McKenzie LLP et al.*, No. 2018 CA 002569 M (D.C. Super. Ct. filed May 29, 2019).

² *Raul v. De Souza*, No. 18-cv-00069-WJM-KLM at 6 (D. Co. Compl. January 10, 2018)

³ Reuters, *Brazilian appeals court authorizes Batista brothers to go back to JBS parent J&F*, May 26, 2020, <https://www.reuters.com/article/us-jbs-corruption/brazilian-appeals-court-authorizes-batista-brothers-to-go-back-to-jbs-parent-jf-idUSKBN23231I>

Any one of these criminal actions can serve as the basis to question that the Batista Brothers are ‘responsible’ government contractors, as required by the Federal Acquisition Regulations. These now proven actions, and the long history of numerous criminal violations, corrupt and illegal behavior by the Batista Brothers and the entities they control, demonstrate that USDA must take action to ensure that taxpayer dollars are not used to subsidize corrupt, foreign-controlled organizations.

The Secretary and USDA’s Inspector General must see that suitable suspension and debarment proceedings begin immediately in order to restore the public trust that USDA only conducts business with responsible entities and persons. Without such action, farmers, ranchers, and the taxpayers of this country will be left with the impression that USDA is willing to continue distributing federal funds to a corrupt, foreign-owned meatpacker even *after* learning of extensive corruption and, in the words of an SEC official, “brazen misconduct.”⁴

The Justice Department Found that J&F Violated the U.S. Foreign Corrupt Practices Act

On Wednesday October 14, 2020, J&F, which is controlled by the Batista Brothers, pled guilty in the U.S. District Court for the Eastern District of New York to a criminal charge of conspiring to violate the U.S. Foreign Corrupt Practices Act (FCPA).⁵ J&F admitted to paying millions of dollars in bribes to Brazilian officials in exchange for action benefiting J&F owned entities in violation of the FCPA.

Many of J&F’s activities took place within the United States and the Justice Department found:

- (1) J&F executives used bank accounts based in New York to facilitate the bribery scheme and to make corrupt payments;
- (2) J&F executives purchased and transferred a Manhattan apartment as a bribe; and,
- (3) J&F executives met in the United States to discuss and further aspects of the illegal bribery scheme. Brian Rabbitt, Acting Assistant Attorney General of the Justice Department’s Criminal Division said that “[a]s part of this scheme, executives at the highest levels of the company used U.S. banks and real estate to pay tens of millions of dollars in bribes to corrupt government officials in Brazil to obtain hundreds of millions of dollars in financing for the company and its affiliates.” To resolve the case, J&F agreed to pay a criminal monetary penalty of \$256,497,026.

The SEC Found that J&F and JBS Participated in an Extensive Bribery Scheme Related to the Acquisition of Pilgrim’s Pride

⁴ U.S. Securities and Exchange Commission, *SEC Charges Brazilian Meat Producers With FCPA Violations* (Wednesday, October 14, 2020) <https://www.sec.gov/news/press-release/2020-254>

⁵ Department of Justice, Office of Public Affairs, *J&F Investimentos S.A. Pleads Guilty and Agrees to Pay Over \$256 Million to Resolve Criminal Foreign Bribery Case* (Wednesday, October 14, 2020), available at: <https://www.justice.gov/opa/pr/jf-investimentos-sa-pleads-guilty-and-agrees-pay-over-256-million-resolve-criminal-foreign>

Simultaneously on Wednesday, the SEC announced that J&F and JBS agreed to pay the SEC disgorgement and prejudgment interest totaling approximately \$27 million and that the Batista Brothers each agreed to pay a civil penalty of \$550,000.⁶ The SEC found that the Batista Brothers’ extensive bribery scheme in part related to JBS’s 2009 acquisition of the U.S. based company Pilgrim’s Pride Corporation. The SEC noted that, “the Batistas exerted significant control over Pilgrim’s, which shared office space, overlapping board members and executives, accounting and SAP systems, and certain internal accounting controls and policy documents with JBS and its U.S. affiliate JBS USA.”

Charles Cain, Chief of the SEC Enforcement Division’s FCPA Unit, explained, “engaging in bribery to finance their expansion into the U.S. markets and then continuing to engage in bribery while occupying senior board positions at Pilgrim’s reflects a profound failure to exercise good corporate governance.” He went on to say, “this brazen misconduct flies in the face of what investors should expect from those occupying the role of an officer or director of a U.S. issuer.” The SEC further noted that Pilgrim’s Pride *still* had not finalized the implementation of a formal anti-bribery compliance program and lacked compliance personnel.⁷

Pilgrim’s Pride Entered into a Plea Agreement with the Justice Department for Price Fixing

Finally, also on October 14, 2020, Pilgrim’s Pride agreed to pay approximately \$110.5 million to settle federal price-fixing charges.⁸ The charges arose from a seven-year scheme to extinguish competition that affected contracts for the sale of chicken products to one customer in the United States.

USDA’s Unavoidable Responsibilities

Federal agencies are granted the discretion to suspend and/or debar persons or entities to ensure that the Government only does business with responsible persons. USDA issued Departmental Regulation (DR) 2280-001 in January 2013, to describe the USDA’s standards for suspension and debarment and to identify causes of suspension and debarment.⁹ DR 2280-001 identifies as a source for causes of suspension and debarment, investigations conducted by the Office of Inspector General (OIG) or the Justice Department, as well as civil or criminal court actions, and hotline complaints. Per USDA’s DR 2280-001, an indictment (let alone conviction) meets the standard of proof of adequate evidence for a suspension, and a conviction meets the preponderance of the evidence standard for a debarment.

⁶ U.S. Securities and Exchange Commission, *SEC Charges Brazilian Meat Producers With FCPA Violations* (Wednesday, October 14, 2020) <https://www.sec.gov/news/press-release/2020-254>

⁷ The full SEC Order is available here: <https://www.sec.gov/litigation/admin/2020/34-90170.pdf>

⁸ Pilgrim’s Pride, *Pilgrim’s Announces Agreement with DOJ Antitrust Division* (Wednesday October 14, 2020), <https://ir.pilgrims.com/news-releases/news-release-details/pilgrims-announces-agreement-doj-antitrust-division>

⁹ DR 2280-001 can be found here:

<https://www.ocio.usda.gov/sites/default/files/docs/2012/Suspension%20and%20Debarment.htm>

In an audit report by the USDA OIG regarding the enforcement of USDA’s suspension and debarment regulations, OIG noted an increased interest by USDA of using suspension and debarment in cases of international fraud and corruption.¹⁰ In 2017, OIG reviewed the USDA’s suspension and debarment program and provided examples of cases in which USDA should have taken action to ensure that the Government only conduct business with responsible persons.¹¹ In its report, OIG recommended that USDA do more to ensure that indicted, convicted, and other nonresponsible program violators are referred to the suspension and debarment official for case determinations. The Inspector General’s past decision to forgo investigating JBS USA for potential suspension and debarment runs contrary to the procedures outlined in DR 2280-001 and the recommendations in OIG’s past reports. Given the information the Justice Department and the SEC made public earlier this month, the Inspector General must act immediately to rectify this oversight.

Recently, other agencies have taken aggressive action against person and entities indicted for fraud. In a 2018 Report to Congress, the Department of Defense (DOD) OIG reported that between April 1, 2018 to September 30, 2018, investigations resulted in 4 contractor suspensions and 21 debarments.¹² In one instance, a contractor was alleged to have accepted illegal kickbacks. Following a guilty plea in 2018, DOD debarred the contractor from Government contracting and employment for three years. The OIG wrote that “[p]rocurement fraud includes, but is not limited to, cost and labor mischarging, defective pricing, price fixing, bid rigging, and defective and counterfeit parts. The potential damage from procurement fraud extends well beyond financial losses.”

The Pervasive Criminal Actions by JBS, Its Parent Entities, and the Batista Brothers Warrant Immediate Suspension and Debarment Proceedings

As demonstrated by the three federal actions made public on October 14, 2020, JBS SA, and its U.S. subsidiary JBS USA, have been involved in extensive criminal fraud and corruption in the United States over an extended period. Under USDA’s regulations, a person may be debarred for, among other things, a conviction of price fixing, bribery, making false statements, or “any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility.” (2 C.F.R. § 417.800). A person may be suspended upon adequate evidence (such as an indictment) of violation of antitrust statutes, or adequate evidence of bribery, making false statements, or “any other offense indicating a lack of business

¹⁰ United States Department of Agriculture, *Implementation of Suspension and Debarment Tools in the U.S. Department of Agriculture* (September 2017), available at: <https://www.usda.gov/sites/default/files/50601-14-AT.pdf>

¹¹ United States Department of Agriculture Office of Inspector General, *Effectiveness and Enforcement of Suspension and Debarment Regulations in the U.S. Department of Agriculture* (August 2010), available at <https://www.oversight.gov/sites/default/files/oig-reports/50016-0001-23.pdf>

¹² Inspector General of the U.S. Department of Defense, *Semiannual Report to the Congress April 1, 2018 through September 30, 2018*, available at: <https://media.defense.gov/2018/Dec/06/2002069859/-1/-1/1/SAR%20SEPT%202018.PDF>

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integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor." (48 C.F.R. 9.407-2).

The actions detailed by the Justice Department and the SEC warrant USDA initiating suspension and debarment proceedings. I urge you to take all necessary steps to ensure that such action is authorized. USDA's continued and sustained failure to act is unacceptable, and inaction has become unsustainable under rule of law.

Sincerely,



ROSA L. DeLAURO

Member of Congress

Cc: The Honorable Phyllis K. Fong, Inspector General, U.S. Department of Agriculture