

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

_____)
_____ and _____)
_____)
COMPLAINANT, _____)
_____ and _____)
UNITED STATES OF AMERICA, _____)
COMPLAINANT-INTERVENOR, _____)
v. _____)
JERRY ESTOPY and _____)
d/b/a ESTOPY FARMS, _____)
RESPONDENTS. _____)
_____)

8 U.S.C. § 1324b PROCEEDING

OCAHO CASE NO. 12B00011

**UNITED STATES' MOTION TO INTERVENE AND
FOR LEAVE TO FILE ACCOMPANYING COMPLAINT-IN-INTERVENTION ON
BEHALF OF COMPLAINANT _____**

The United States of America, through the Office of Special Counsel for Immigration Related Unfair Employment Practices ("Office of Special Counsel") moves pursuant to 28 C.F.R. § 68.15 to intervene in this proceeding on behalf of _____ and for leave to file the accompanying Complaint-in-Intervention on Behalf of Complainant _____. In support of its motion, the Office of Special Counsel states as follows:

1. Under 8 U.S.C. § 1324b, the Office of Special Counsel is assigned primary jurisdiction over enforcement of the anti-discrimination provision of the Immigration and Nationality Act (the “INA”), 8 U.S.C. § 1324b.
2. On January 18, 2011, the Office of Special Counsel docketed two complete charges of citizenship status discrimination filed by K. Blair Craddock, Esq. on behalf of her clients, [REDACTED], and [REDACTED], Complainants herein, against Jerry Estopy and [REDACTED], d/b/a Estopy Farms, Respondent herein.
3. On April 20, 2011, at the request of the Office of Special Counsel, this Court issued a subpoena (hereinafter “Subpoena”) directing Respondent to provide no later than May 4, 2011, documents and information sought by the Office of Special Counsel. Among the documents required to be produced under the subpoena were “all documents relating to [Complainant [REDACTED]’s] application for employment, including...interview evaluations...” and “all documents regarding [Complainant [REDACTED]’s] application and rejection, including...notes...”
4. Respondent failed to fully comply with the Subpoena, and on August 17, 2011, this Court authorized the Office of Special Counsel to seek judicial enforcement of the Subpoena, and further ordered that the Office of Special Counsel’s complaint-filing deadline was extended until 60 days after Respondent responded to the Subpoena issued.
5. Despite the Office of Special Counsel’s efforts to obtain the information and documents covered by the Subpoena, Respondent has yet to fully satisfy the requirements of the Subpoena. For example, Respondent stated in an April 10, 2012 deposition that it took

notes during or immediately after Complainant [REDACTED]'s job interview, and that it possibly still had the notes in its possession. Respondent has not produced these notes, nor has it indicated whether the notes have been destroyed.

6. Due to Respondent's continued failure to comply with the Subpoena, the Office of Special Counsel has not yet exceeded the extended complaint-filing deadline pursuant to the Subpoena.
7. On November 14, 2011, Complainants filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent subjected them to an unfair employment practice based on their citizenship status in violation of 8 U.S.C. § 1324b(a)(1).
8. In addition to its right to initiate its own action under 8 U.S.C. § 1324b(d)(2) and the terms of this Court's Order of August 17, 2011, the Office of Special Counsel may petition to intervene in unfair immigration-related employment cases before OCAHO pursuant to 28 U.S.C. § 68.15.
9. In order to preserve judicial resources and as an alternative to exercising its right to initiate its own action and to seek consolidation under 28 C.F.R. § 68.16, the Office of Special Counsel seeks leave to intervene the instant proceeding pursuant to 28 C.F.R. § 68.15.
10. The intervention of the Office of Special Counsel as a Complainant-Intervener would assist in the development of the factual record and the refinement of the legal issues presented in this proceeding.

11. Because the claims and allegations set out in the Office of Special Counsel's accompanying Complaint-in-Intervention on Behalf of Complainant [REDACTED] closely parallel those of the Complainants' complaint and raise common questions of law and fact, neither of the existing parties in the proceeding will be prejudiced by this Court's grant of the Office of Special Counsel's motion.
12. Respondent filed its answer in this matter on January 23, 2011. On March 20, 2012, Complainants filed a prehearing statement and on April 20, 2012, Respondent filed its prehearing statement. On July 25, 2012, there was a telephonic conference between this Court and the parties. No further proceedings have occurred; therefore the Office of Special Counsel's participation as a Complainant-Intervener will not unduly delay OCAHO's ability to expeditiously adjudicate this matter.
13. On July 24, 2012, Counsel for Complainants was advised of the Office of Special Counsel's intent to seek intervention. Counsel for Complainants authorized the Office of Special Counsel to advise the Court that Complainants do not interpose any objection to the grant of the instant motion.

14. On March 7, 2012, March 13, 2012, July 25, 2012 and September 4, 2012,

Respondent's counsel was advised of the Office of Special Counsel's intent to seek intervention. On these dates, the Office of Special Counsel asked Respondent's counsel whether Respondent would oppose the United States' intervention. To date, Respondent's counsel has not indicated whether Respondent opposes the United States' intervention.

Dated: September 10^m, 2012

Respectfully Submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

EVE HILL
Senior Counsel
Office of the Assistant Attorney General
Civil Rights Division



SEEMA NANDA
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UNITED STATES OF AMERICA,) 8 U.S.C. § 1324b PROCEEDING
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COMPLAINANT-INTERVENOR,)
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v.)
) OCAHO CASE NO. 12B00011
JERRY ESTOPY and _____)
d/b/a ESTOPY FARMS,)
)
RESPONDENT.)
_____)

**UNITED STATES' COMPLAINT-IN-INTERVENTION
ON BEHALF OF COMPLAINANT _____**

Complainant-Intervenor, the United States of America, alleges as follows:

1. This action is brought on behalf of the Office of Special Counsel for Immigration-Related Unfair Employment Practices (the "Office of Special Counsel") to enforce the provisions of the Immigration and Nationality Act ("INA") relating to immigration-related unfair employment practices pursuant to 8 U.S.C. § 1324b.

2. In 1986, as part of an effort to advance new immigration policy, Congress amended the INA to require every employer to ensure that each employee is eligible to work in the United States, through the review of one or more specified documents establishing an employee's identity and work authority. This employment eligibility verification process is codified at 8 U.S.C. § 1324a(b).
3. Having mandated an employment eligibility verification process through 8 U.S.C. § 1324a(b), Congress also amended the INA to protect employees from employment discrimination based on citizenship status or national origin in the hiring, firing, or referral or recruitment for a fee of employees. This anti-discrimination provision is codified at 8 U.S.C. § 1324b.
4. The INA's anti-discrimination provision at 8 U.S.C. § 1324b(a)(1)(B) prohibits employers from subjecting applicants or employees to citizenship status discrimination in hiring or discharge.
5. This suit arises out of the discriminatory conduct of Jerry Estopy and [REDACTED] d/b/a Estopy Farms (hereinafter "Respondent") in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(1)(B) with regard to discrimination against [REDACTED] ("Complainant [REDACTED]") based on his citizenship status.

JURISDICTION

6. Pursuant to 8 U.S.C. §§ 1324b(c)(2) and (d)(1), the Office of Special Counsel is charged with investigating charges, initiating investigations, and prosecuting complaints alleging immigration-related unfair employment practices.
7. Complainant [REDACTED] is a United States citizen and is protected from discrimination based on

citizenship status and national origin under 8 U.S.C. § 1324b(a)(1).

8. Respondent Estopy Farms, upon information and belief, is a for-profit Texas corporation that provides harvesting services to other farms, and produces crops itself. It maintains its principal offices at 2401 North 10th Street # B135, McAllen, Texas, and is a person or entity within the meaning of 8 U.S.C. § 1324b(a).
9. Jerry Estopy, upon information and belief, is a for-profit Texas corporation, maintains its principal offices at 4812 N. 10th Street No. 815, McAllen, Texas, and is a person or entity within the meaning of 8 U.S.C. § 1324b(a).
10. On January 18, 2011, less than 180 days after Respondent discriminated against Complainant [REDACTED], the Office of Special Counsel accepted as complete a charge of citizenship status discrimination from the Charging Party, K. Blair Craddock, Esq., counsel for Complainant [REDACTED].
11. On April 20, 2011, this Court, at the request of the Office of Special Counsel, issued a subpoena (hereinafter "Subpoena") directing Respondent to provide no later than May 4, 2011 documents and information sought by the Office of Special Counsel.
12. Respondent failed to fully comply with the Subpoena, and on August 10, 2011, the Office of Special Counsel sought authority from this Court to seek enforcement through the Federal District Court for the Southern District of Texas.
13. On August 17, 2011, this Court authorized the Office of Special Counsel to seek judicial enforcement of the Subpoena, and further ordered that the Office of Special Counsel's complaint-filing deadline was extended until 60 days after Respondent responded to the Subpoena.

14. On August 22, 2011, Complainant [REDACTED]'s counsel received written notice of the right to file a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) within 90 days of receipt of the Office of Special Counsel's letter.
15. On November 14, 2011, the Charging Party filed a complaint with OCAHO on behalf of Complainant [REDACTED] and [REDACTED] ("Complainant [REDACTED]"), alleging that Respondent subjected them to an unfair employment practice based on their citizenship status in violation of 8 U.S.C. §1324b(a)(1).
16. The Office of Special Counsel attempted to obtain information and documents covered by the Subpoena through alternative means short of formal judicial enforcement by noting the depositions of relevant Respondent witnesses. Therefore, on April 9 and 10, 2012, Jerry Estopy and [REDACTED] submitted to depositions to address the information that had not yet been produced pursuant to the Subpoena.
17. During his April 10, 2012 deposition, Mr. [REDACTED], a Respondent supervisor, indicated that he had taken notes during Complainant [REDACTED]'s job interview that were responsive to the Subpoena.
18. Given the existence of important and responsive documents, the Office of Special Counsel attempted for several months to obtain the notes Mr. [REDACTED] referenced or confirm their destruction without success. Respondent has thus not yet fully satisfied the requirements of the Subpoena.
19. Jurisdiction of the Office of the Chief Administrative Hearing Officer is invoked pursuant to 28 U.S.C. § 68.15.

STATEMENT OF FACTS

20. The Texas Workforce Commission (TWFC) assists work-authorized individuals residing in the United States in obtaining employment. TWFC does not help foreign workers, such as H-2A visa holders, find employment.
21. Since at least 2008, Respondent has utilized TWFC's referral services as part of Respondent's obligation to seek U.S employees as part of its procurement process for hiring foreign H-2A workers.
22. In approximately June 2010, Complainant [REDACTED] sought employment through TWFC and was referred to Respondent. At the time, Complainant [REDACTED] had over 12 years of experience operating cotton combines and tractors.
23. Shortly after his referral to Respondent, Complainant [REDACTED] met with Mr. Estopy and with Mr. [REDACTED], regarding employment with Respondent. At this meeting, both Mr. Estopy and Mr. [REDACTED] interviewed Complainant [REDACTED], learned of his work experience, and promised him employment beginning in July 2010 in Odem, Texas, paying \$10.41/hour. Mr. [REDACTED] stated that he would contact Complainant [REDACTED] regarding the exact start date.
24. Notwithstanding its offer of employment, Respondent never contacted Complainant [REDACTED] regarding the position he was promised and did not respond to numerous phone calls that Complainant [REDACTED] made to Mr. [REDACTED] in attempt to obtain a firm start date.
25. Respondent began harvesting cotton in July or August of 2010.
26. In late August 2010, at least four foreign H-2A workers began working for Respondent.

27. Upon information and belief, in addition to rejecting Complainant [REDACTED], Respondent rejected other qualified U.S. workers in favor of the foreign workers referenced in Paragraph 26.
28. On March 8, 2011, Mr. [REDACTED] stated in a taped interview that Complainant [REDACTED] told Respondent in the June 2010 interview that Complainant [REDACTED] had experience operating cotton picker machinery. Mr. [REDACTED] further admitted that Complainant [REDACTED] followed up on his employment offer “a million times,” and that based on what “lawyers” had advised Respondent, Mr. [REDACTED] could not explicitly reject any U.S. worker applicants.
29. On April 9 and 10, 2012, Mr. Estopy submitted to a deposition conducted by the Office of Special Counsel, wherein he testified that if an individual with more than a dozen years of combine and tractor experience had applied for a job, Respondent would have hired the individual.
30. On April 10, 2012, Mr. [REDACTED] submitted to a deposition conducted by the Office of Special Counsel, wherein he testified that Complainant [REDACTED] did not state he had machine harvesting experience during the June 2010 interview and that Complainant [REDACTED] did not follow up on his application.
31. In his deposition, when confronted with his prior inconsistent statements described in Paragraph 29, Mr. [REDACTED] acknowledged that “...if you tell me that I told you [in 2011 that Complainant [REDACTED] called], probably back then I did remember, and I spoke to him because I said so.”

COUNT I
CITIZENSHIP STATUS DISCRIMINATION AGAINST [REDACTED]
AND OTHER SIMILARLY SITUATED PARTIES

32. Complainant-Intervenor incorporates by reference the allegations set forth in Paragraphs 1 through 31 as if fully set forth herein.
33. Respondent knowingly and intentionally committed citizenship status discrimination against Complainant [REDACTED] when it refused to hire him.
34. Respondent's actions constitute an unfair immigration-related employment practice in violation of 8 U.S.C. § 1324b(a)(1)(A).

REQUEST FOR RELIEF

THEREFORE, Complainant-Intervenor respectfully requests:

- A. That the Administrative Law Judge assigned to this proceeding grant the following relief:
1. Order Respondent to cease and desist from the alleged illegal practices described in the Complaint.
 2. Order Respondent to provide full remedial relief to Complainant [REDACTED] and any other protected individuals who were not hired due to Respondent's practices, including back pay.
 3. Take other appropriate measures to overcome the effects of the discrimination.
 4. Order Respondent to pay an appropriate civil penalty as determined by the Administrative Law Judge for each violation of 8 U.S.C. § 1324b(a)(1) shown at trial to have been committed by Respondent.

5. Such additional relief as justice may require.

Respectfully Submitted,

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Dated: September 10, 2012

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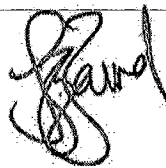
CERTIFICATE OF SERVICE

I hereby certify that on the 10th of September 2012, the United States sent Respondent and Complainant, through counsel, a copy of the United States' Motion to Intervene and Leave to File Complaint and United States' Complaint-in-Intervention on Behalf of Complainant _____). The parties were served via electronic mail and parcel post to the following addresses:

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