

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

UNITED STATES OF AMERICA,)	8 U.S.C. § 1324b PROCEEDING
Complainant,)	
v.)	
CROP PRODUCTION SERVICES, INC.,)	OCAHO CASE NO. _____
Respondent)	

COMPLAINT

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

1. Pursuant to 8 U.S.C. § 1324b, the Immigrant and Employee Rights Section (“IER”) brings this action on behalf of the United States to enforce the provisions of the Immigration and Nationality Act (“INA”) relating to immigration-related unfair employment practices prohibited under 8 U.S.C. § 1324b(a)(1)(B).
2. This suit arises out of Defendant Crop Production Services Inc.’s (hereinafter “Respondent”) denial of employment to Ramiro Torres, Ramiro Salinas, Javier Salinas (collectively “the Injured Parties”), and other similarly situated individuals yet to be identified, based on their citizenship status in violation of the anti-discrimination provision of the INA, 8 U.S.C. § 1324b(a)(1)(B).
3. Specifically, Respondent refused to allow Javier and Ramiro Salinas to start working in Seasonal Technician jobs at Respondent’s rice breeding facility in El Campo, Texas, during the 2016 work season, and refused to interview Ramiro Torres for a Seasonal Technician job

during the 2016 season, because Respondent preferred to hire only temporary foreign workers for those jobs rather than employing qualified U.S. workers such as the Injured Parties.

JURISDICTION

4. Pursuant to 8 U.S.C. §§ 1324b(c)(2) and (d)(1), the Immigrant and Employee Rights Section is charged with investigating charges, initiating investigations, and prosecuting complaints alleging immigration-related unfair employment practices prohibited by 8 U.S.C. § 1324b.
5. Ramiro Torres, Ramiro Salinas, and Javier Salinas are United States citizens and are protected from discrimination based on citizenship status under 8 U.S.C. § 1324b(a)(1).
6. Respondent Crop Production Services, Inc., with principal offices at 3005 Rocky Mountain Avenue, Loveland, Colorado, is a for-profit Delaware corporation engaged in the business of developing and marketing products and services to clients in the agricultural sector, and is a person or entity within the meaning of 8 U.S.C. § 1324b(a) that employed more than three employees during the period of the discrimination described below.
7. Respondent operates a rice breeding and research and development facility in El Campo, Texas, where it develops hybrid rice seeds for commercial sale and distribution.
8. On August 19, 2016, less than 180 days after Respondent discriminated against Ramiro Salinas and Javier Salinas, the Immigrant and Employee Rights Section accepted as complete charges of citizenship status discrimination filed on their behalf by Dave Mauch, Esq., of Texas RioGrande Legal Aid ("TRLA"). (Attachment A).
9. On August 22, 2016, 180 days or less after Respondent discriminated against Ramiro Torres, the Immigrant and Employee Rights Section accepted as complete a charge of citizenship status discrimination filed on his behalf by Dave Mauch, Esq., of TRLA. (Attachment B).

10. On December 15, 2016, counsel for Ramiro Torres, Ramiro Salinas, and Javier Salinas received written notice of their right to file a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) within 90 days of receipt of IER's letter (Attachment C).¹
11. On March 12, 2017, Ramiro Salinas filed a complaint with OCAHO, alleging that Respondent subjected him to an unfair employment practice based on his citizenship status in violation of 8 U.S.C. § 1324b(a)(1).
12. On March 13, 2017, Javier Salinas and Ramiro Torres filed complaints with 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).
13. On March 8, 2017, IER and Respondent executed the first in a series of five tolling agreements that, taken together, extended any applicable complaint filing deadline to September 29, 2017.
14. The United States files this Complaint with the Office of the Chief Administrative Hearing Officer pursuant to 8 U.S.C. § 1324b(e)(1).

BACKGROUND

15. 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 by reviewing one or more designated documents establishing an employee's identity and employment authorization. 8 U.S.C. § 1324a(b).
16. Having created an employment eligibility verification requirement through 8 U.S.C. §

¹Due to a clerical error, these letters were incorrectly dated December 16, 2016, and December 20, 2016, respectively. All three letters were received by counsel for Ramiro Torres, Ramiro Salinas, and Javier Salinas on December 15, 2016.

1324a(b), Congress also amended the INA to protect work-authorized individuals 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.

17. The INA's anti-discrimination provision at 8 U.S.C. § 1324b(a)(1)(B) prohibits employers from subjecting protected applicants or employees to citizenship status discrimination in hiring or discharge.
18. Under 8 U.S.C. § 1324b(a)(1) & (3), United States citizens and nationals, certain lawful permanent residents, asylees, and refugees are protected individuals against whom employers may not discriminate in recruiting and hiring based on their citizenship status.
19. Employers that seek and receive permission to hire non-immigrant foreign nationals to satisfy their seasonal agricultural workforce needs through the H-2A guestworker visa program the Department of Labor administers, 8 U.S.C. § 101(A)(15)(H)(ii)(a), must comply not only with the rules for that program, but also must comply with their obligations to avoid discriminating in recruiting and hiring based on citizenship pursuant to 8 U.S.C. § 1324b(a)(1).

STATEMENT OF FACTS

20. On or around December 21, 2015, Respondent initiated the first of several steps necessary to obtain fifteen (15) Seasonal Technicians to work at its El Campo, Texas facility for the 2016 agricultural season by submitting a job order to the Texas Workforce Commission ("TWC"). The job order is the U.S. Department of Labor "Agricultural and Food Processing Clearance Order ETA Form 790," which is a bilingual form in English and Spanish that Respondent completed to advertise its Seasonal Technician positions through TWC. TWC assists work-

authorized individuals residing in Texas in obtaining employment.

21. To receive a certification to obtain workers under the H-2A guest worker program, Respondent was required to engage in recruitment to identify and hire qualified and available U.S. workers until at least 50% of the anticipated period of employment listed in the job order had passed.
22. The job order Respondent submitted to the TWC, and its subsequent filings with federal agencies, listed the period of employment as March 1, 2016 to November 30, 2016.
23. From approximately December 2015 through March 2016, Respondent used TWC's referral services to advertise for U.S. workers before hiring foreign H-2A workers to fill its Seasonal Technician positions.
24. As required by H-2A program rules, Respondent's December 21, 2015 job order detailed the hiring qualifications and the application process Respondent required for Seasonal Technicians, which were substantially the same as the information Respondent provided in its subsequent filings with the Department of Labor ("DOL") and the United States Citizenship and Immigration Services ("USCIS").
25. The boxes that Respondent checked off to specify its requirements for the Seasonal Technician positions included the ability to lift fifty pounds, tolerate extreme temperatures, walk extensively, and stoop frequently. Respondent also checked a box on the job order form indicating that no previous experience was required.
26. Respondent typed, in the space on the job order for providing additional requirements, that a "[d]rug screening and criminal background check [would be] conducted at [the] employer's expense after [an] employment offer [was] made per Crop Production Services, Inc.'s corporate-wide hiring policy." It did not include any other requirements, such as English

language proficiency.

27. Respondent's job order identified Dr. Kirk Johnson as its point of contact for information for referrals for the Seasonal Technician positions.
28. In approximately February 2016, Ramiro Torres, Ramiro Salinas, Javier Salinas, and eight other individuals sought employment through TWC. After comparing their qualifications and experience to Respondent's job order, TWC referred these individuals to Respondent for employment as Seasonal Technicians.
29. Despite the job order's indication that no previous experience was required, at the time TWC referred them to Respondent, Ramiro Salinas and Javier Salinas each had approximately 13 years of agricultural experience.
30. Despite the job order's indication that no previous experience was required, when TWC referred Ramiro Torres to Respondent, he had many years of agricultural experience and knew how to operate farm machinery, like tractors.
31. Ramiro Torres, Ramiro Salinas, and Javier Salinas were all qualified and available for employment by Respondent as Seasonal Technicians for the 2016 agricultural season.
32. The injured parties presented themselves for an interview that TWC had scheduled for them at TWC's office on February 23, 2016. Respondent cancelled this interview and rescheduled it for February 24, 2016. The injured parties attended this February 24, 2016 interview.
33. Dr. Kirk Johnson refused to interview or otherwise consider Ramiro Torres for employment as a Seasonal Technician despite his attendance at the February 24 interview, and despite the availability of an interpreter, because Mr. Torres did not speak English.
34. Though Ramiro Salinas and Javier Salinas did not speak English fluently, Respondent interviewed their three bilingual nephews, who spoke on the group's behalf at the February

24, 2016 interview, and conditionally agreed to hire the entire group (hereinafter, "the Salinas crew").

35. After the interview, Respondent demanded that the Salinas crew submit job applications to Respondent to proceed in the hiring process. TWC transmitted Javier and Ramiro Salinas' applications to Respondent on or about February 26, 2016, including information from their driver's licenses.
36. Respondent subsequently also asked TWC to provide the name of a city near Ramiro and Javier Salinas to facilitate a pre-employment drug test.
37. Respondent also asked TWC to provide copies of Social Security cards and driver's licenses for Ramiro and Javier Salinas. Respondent claimed these were necessary to complete the pre-employment background check and schedule the drug screening.
38. Respondent did not allow Ramiro and Javier Salinas to travel to El Campo to complete the hiring process and start work there and instead insisted that it needed them to provide the requested additional documentation to proceed with the hiring process.
39. On or around March 22, 2016, Respondent again asked TWC to provide Javier and Ramiro Salinas' Social Security numbers, claiming that Respondent could not onboard them without the numbers because they were required for Respondent's computer system.
40. Respondent ultimately filled all 15 available Seasonal Technician positions with H-2A visa holders from Mexico, and those workers arrived at El Campo to start work on or around April 25, 2016.
41. Respondent allowed all of the H-2A visa holders to complete Respondent's employment application on their first day of work at El Campo.
42. Respondent allowed eight H-2A visa holders it hired the 2016 season to provide samples for

the drug test at a facility near El Campo, Texas, on or after their first day of work, and did not require seven of the H-2A visa holders it hired to take a drug test during 2016 at all.

43. At least two H-2A visa workers Respondent hired for the 2016 season arrived at El Campo to start work without having Social Security numbers, and Johnson helped them obtain the numbers after they arrived.
44. Respondent did not require all of the H-2A visa holders to complete a background check prior to reporting for work, did not initiate the background check process for several until after they started work, and did not request a background check at all for some of the H-2A visa holders it employed during 2016.
45. Three of the H-2A workers Respondent hired were returning guest visa workers whom Respondent knew to be bilingual and willing to interpret for other Spanish-speakers.
46. At least two H-2A workers Respondent employed for the 2016 season had no prior employment record with Respondent or its predecessor company. According to Johnson, Respondent's manager of the El Campo facility, at least two of the H-2A workers for the 2016 season had limited English proficiency.
47. Respondent's H-2A workers for the Seasonal Technician positions arrived for their first day of work in El Campo on April 25, 2016.

COUNT I

CITIZENSHIP STATUS DISCRIMINATION AGAINST RAMIRO TORRES

48. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 47 as if fully set forth herein.
49. Respondent knowingly and intentionally committed citizenship status discrimination against Ramiro Torres when it imposed unnecessary job requirements on him, particularly an

English proficiency requirement, because of his citizenship status.

50. Respondent knowingly and intentionally committed citizenship status discrimination against Ramiro Torres when it refused to hire him in order to hire H-2A guest workers.
51. Respondent's actions constitute an unfair immigration-related employment practice in violation of 8 U.S.C. § 1324b (a)(1)(A).

COUNT II

CITIZENSHIP STATUS DISCRIMINATION AGAINST RAMIRO SALINAS

52. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 47 as if fully set forth herein.
53. Respondent knowingly and intentionally committed citizenship status discrimination against Ramiro Salinas when it intentionally subjected him to a more exacting and onerous hiring process than it required for H-2A workers because of his citizenship status, including by refusing to allow him to complete the hiring process on his first day of work at El Campo, and thereby discouraged him from pursuing the Seasonal Technician position.

54. Respondent knowingly and intentionally committed citizenship status discrimination against Ramiro Salinas when it refused to employ him in order to employ H-2A guest workers.
55. Respondent's actions constitute an unfair immigration-related employment practice in violation of 8 U.S.C. § 1324b(a)(1)(A).

COUNT III
CITIZENSHIP DISCRIMINATION AGAINST JAVIER SALINAS

56. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 47 as if fully set forth herein.
57. Respondent knowingly and intentionally committed citizenship status discrimination against Javier Salinas when it intentionally subjected him to a more exacting and onerous hiring process than it required for H-2A workers because of his citizenship status, including by refusing to allow him to complete the hiring process on his first day of work at El Campo, and thereby discouraged him from pursuing the Seasonal Technician position.
58. Respondent knowingly and intentionally committed citizenship status discrimination against Javier Salinas when it refused to employ him in order to employ H-2A guest workers.
59. Respondent's actions constitute an unfair immigration-related employment practice in violation of 8 U.S.C. § 1324b(a)(1)(A).

COUNT IV
CITIZENSHIP DISCRIMINATION AGAINST SIMILARLY SITUATED U.S. APPLICANTS

60. Complainant incorporates by reference the allegations set forth in Paragraphs 1 through 47 as if fully set forth herein.

61. Upon information and belief, Respondent knowingly and intentionally committed citizenship status discrimination against qualified protected individuals by intentionally subjecting them to more exacting and onerous hiring standards than H-2A workers and/or subjected them to unnecessary job requirements because of their citizenship status.
62. Respondent knowingly and intentionally committed citizenship status discrimination against these individuals when it refused to consider them for employment in order to hire H-2A guest workers.
63. 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 respectfully requests:

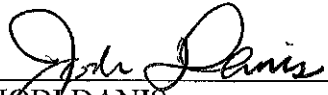
- A. That the Administrative Law Judge assigned to this proceeding grant the following relief:
 1. Order Respondent to cease and desist from the alleged illegal practices described in the Complaint.
 2. Order Respondent to provide full remedial relief to Ramiro Torres, Ramiro Salinas, Javier Salinas, and any other qualified protected individuals whom CPS did not hire due to Respondent's discriminatory 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.

Dated: September 28, 2017

Respectfully Submitted,

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STATEMENT PURSUANT TO 28 C.F.R. §§ 68.3, 68.7(b)(5)

Pursuant to 28 C.F.R. §§ 68.3 and 68.7(b)(5), the United States hereby provides the Office of the Chief Administrative Hearing Office the following service information in the above-captioned matter:

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Dated: September 28, 2017