

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

RAMIRO VILLALOBOS,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	Case No. 94B00065
)	
ROUMIGUIERE VINEYARDS,)	
Respondent.)	
_____)	

ORDER GRANTING RESPONDENT'S MOTION FOR A
CLARIFICATION OF WHAT ITS ANSWER SHALL COVER AND
PROVIDING ADDITIONAL TIME TO FILE AN ANSWER AND
DIRECTING COMPLAINANT TO ANSWER ALJ'S
INTERROGATORIES

This case arises under section 102 of the Immigration Reform and Control Act of 1986 ("IRCA"), as amended. Before me is Respondent's request for a clarification of the allegations in the complaint for purposes of filing an appropriate answer.

On July 20, 1993, Ramiro A. Villalobos ("Complainant" or "Villalobos") filed a charge (in Spanish) on a charge form (Form OSC-1A, Apr. 92) with the Office of Special Counsel ("OSC"), alleging that Roumiguiere Vineyards ("Respondent" or "Roumiguiere") discriminated against him based on his citizenship, in violation of IRCA, by discharging him from his job sometime between May 9, 1993 and May 22, 1993.

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More specifically the charge form states that (in an English translation attached to the form):

"The unjust practice was that Mr. Ernesto discriminated against us from work and took [the job] away from me and my friends. In order to give it to others who are illegal, or that have false documents. He speaks to us with lies, that he's going to give us work and he never talks to us later about working. What we want is for you to call his attention to it and [that he] return the work because we need it. We have worked for a long time and I think it's unjust what he did to us. And we all want for him to pay us the loss time that he has done to us by having us, or waiting for him to call is. Thank you for the time you have given us.

* * * * *

I Ramiro Villalobos worked for Formen Ernesto Aquino Roumiguere Vineyards [.] We worked for this man on contract and he wanted us to work 9 hour daily for him [.] We are three brothers Javier and Migel Villalobos and they laid us three off and we already had work since 1987 [.] Then this man laid us off in order to put in new people and we by contract earned an average of 100 dollars a day and we want our job back because it's not just that they take the job from us who have more time that they that don't even have permission to work here.....[signature]."

In a letter dated December 2, 1993, OSC notified Complainant that it had investigated the charges filed by he and Martin Hernandez against Roumiguere Vineyards and had determined that "there is insufficient evidence of reasonable cause to believe the charging parties were discriminated against as prohibited by 8 U.S.C. § 1324b."

Pursuing his right to bring a private action under 8 U.S.C. § 1324b(d)(2), on April 11, 1994, Villalobos, proceeding pro se, filed the complaint in this case with the U.S. Department of Justice, Office of Chief Administrative Hearing Officer ("OCAHO"), alleging that Roumiguere Vineyards has discriminated against him because of his national origin when it fired him on March 4, 1994 from his job as a "grape picker." Villalobos also alleged in his complaint that he was a citizen of Mexico but also a permanent resident of the United States authorized for employment in the United States who obtained his permanent resident status on August 26, 1987. He further alleges that he applied for naturalization in May of 1985 but has never obtain his U.S. citizenship.

On April 25, 1994 Respondent, pro se, filed a letter in response to the complaint stating that Roumiguere "found it difficult to ascertain the exact charges in order to complete our answer" because "[the Charge seems to be contesting the July 1993 case which was dismissed by Special Counsel in December 1993 whereas the complaint appears to deal with the April 1994 discharge of Mr. Villalobos." Respondent

requests that the administrative law judge ("ALJ") clarify which charge it should respond to. I view Respondent's letter as a "motion for a clarification of what its answer should cover and for a continuance to file an appropriate answer." I am granting the Respondent's motions with the following instructions:

The regulations that govern this proceeding cover what an answer shall contain at 28 C.F.R. § 68.9(c)(1)(2) and (d). The pertinent part of the regulation reads as follows:

"Answer. Any respondent contesting any material fact alleged in a complaint, or contending that the amount of a proposed penalty or award is excessive or inappropriate, or contending that he/she is entitled to judgment as a matter of law, shall file an answer in writing. The answer shall include:

- (1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation; a statement of lack of information shall have the effect of a denial; any allegation not expressly denied shall be deemed to be admitted; and
- (2) A statement of the facts supporting each affirmative defense.
- (d) Complainants may file a reply responding to each affirmative defense asserted."

I suggest that Respondent's answer provide detailed information showing the nature of its business, the form of its business (corporation, offices, locations, number of employees), how many employee it employed on the date or dates Complainant was discharged or laid off, the work history of Complainant, when he first began his work, his job description, his work performance, the reasons for his discharge(s) or when he was laid off, statements made to or from Complainant concerning his discharge or work performance including the submission of any letters or business memoranda, and anything else that would be helpful to understanding and responding to the allegations of both the charge with OSC and the Complaint filed with this agency. In filing its answer Respondent should respond in the most comprehensive matter because date or times alleged by complainant may not be accurate. What is important is to set forth the facts that related to his discharge, firing or temporary lay off from work. Moreover, Respondent should address the specific allegations that it hired or had a policy of hiring illegal aliens over permanent resident aliens authorized for employment in the U.S. or whose national origin was Mexican or Hispanic.

I am also concerned that Complainant, Ramiro A. Villalobos may not be a "protected individual" under IRCA, and therefore, I am submitting

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a number of interrogatories for him to answer. The purpose of the interrogatories is to determine if I can sua sponte issue a summary decision.

Accordingly, it is hereby **ORDERED** that:

1. Respondent's motion for additional time to file an answer is GRANTED and Respondent is directed to file its answer to the complaint on or before May 16, 1994 in accordance with the directions given herein.

2. Complainant, Ramiro A. Villalobos is directed to submit a written statement in English describing: (1) how and when he entered the U.S. State; (2) when or what date he obtained his permanent resident alien status; (3) if he is married to a U.S. citizen, when did he get married and for how long has he remained married; (4) when or what date did he applied for his naturalization for U.S. citizenship; and (5) why he did not obtain his U.S. citizenship through the naturalization process. Complainant shall file his response to these question with this office and mail a copy thereof to Respondent on or before May 16, 1994.

ROBERT B. SCHNEIDER
Administrative Law Judge

DATED: April 29, 1994
San Diego, CA