

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

In Re Investigation of South Florida Tomato  
and Vegetable Growers Association, Inc.  
File No. 90-2-01-00033AO  
(Case No. 90S033A0)

**ORDER OVERRULING RESPONDENT'S OBJECTION TO ISSUANCE OF SUBPOENA**

(September 19, 1990)

On September 5, 1990, Administrative Law Judge Paul Merlin issued an investigatory subpoena upon the request of the United States Department of Justice, Office of Special Counsel (OSC) in the investigation of South Florida Tomato and Vegetable Growers Association, Inc. (Association or Respondent). OSC's investigation is conducted pursuant to 8 U.S.C. § 1324b(f)(2).

On September 17, 1990, Respondent filed an Objection to Issuance of Subpoena (Objection) on the grounds that, because Respondent has only three (3) employees, OSC has no jurisdiction over this matter based on either a national origin or citizenship discrimination claim under the Immigration Reform and Control Act of 1986. Respondent requested a telephonic conference to hear argument on these issues. I was assigned this matter on September 17, 1990. I held a telephonic conference on September 19, 1990. As confirmed by this Order, following colloquy in that conference with Kirk M. Flagg, counsel for OSC and Wilson E. Hodge, counsel for the Association (who was accompanied on the telephone by Edward Caron, Executive Director of the Association), I overruled Respondent's objection to the subpoena for the reasons enumerated below.

1. It appears that Respondent acts as agent in completing the employment eligibility verification documentation (Forms I-9 of the Immigration and Naturalization Service and related documents) and in verifying employment eligibility of individuals hired by farmers who are Association members, but not recruited or referred by the Association to its members. Respondent retains more than 13,000 Forms I-9 in its possession as of the date the Objection was prepared.

2. OSC is investigating a charge pursuant to 8 U.S.C. § 1324b to the effect that Respondent as agent for one or more of its members is demanding documentation of employees in excess of statutory requirements, i.e., 8 U.S.C. § 1324a(b). Such demands may be in violation of the statutory prohibition against unfair immigration-related employment practices. See Jones v. DeWitt Nursing Home, OCAHO Case No. 88200202, June 29, 1990; U.S. v. Marcel Watch Corp., OCAHO Case No. 89200085, March 22, 1990, amended May 10, 1990.

3. OSC is not investigating the hiring practices of the Association with respect to its own staff.

Title 8 U.S.C. § 1324b establishes jurisdiction over national origin discrimination claims where a person or entity employs four (4) to fourteen (14) individuals, and establishes jurisdiction over citizenship discrimination claims where four (4) or more individuals are employed (but without any ceiling on the number of employees).

As I stated at the conference, it is premature at this investigatory juncture to determine that any particular farmer member, on whose behalf Respondent acts as agent in completing the Forms I-9, in fact employs less than four (4) individuals or more than fourteen (14) individuals. It is not a condition precedent to an investigation into compliance with 8 U.S.C. § 1324b, that it first be determined that none of the members of the Association fit the statute's jurisdictional parameters.

Accordingly, Respondent's objection is overruled. The parties are encouraged to continue in dialogue to resolve the logistics inherent in the investigation of Respondent's voluminous records.

**SO ORDERED:** This 19th day of September, 1990.

MARVIN H. MORSE  
Administrative Law Judge