

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

In Re Charge of Jaime Giron: United States of America, Complainant  
v. Harris Ranch Beef Company, Respondent; 8 U.S.C. § 1324b Proceeding;  
Case No. 90200307.

ORDER GRANTING IN PART AND DENYING IN PART COMPLAINANT'S MOTION TO  
COMPEL

A Complaint was filed in this case on October 9, 1990, by the Office of Special Counsel charging Respondent, Harris Ranch Beef Company, with violating 8 United States Code section 1324b for alleged discrimination with respect to hiring against Jaime Giron because of his citizenship status.

The Complainant alleges, inter alia, that on or about April 20, 1990, Mr. Giron applied for an unskilled or semi-skilled entry level job at Respondent's plant. As part of the application process Ms. Alvarado, an employee of Respondent, asked Giron to present documents to satisfy the work authorization verification requirements of Section 101 of the Immigration and Reform Control Act of 1986. Mr. Giron presented his social security card and his driver's license. He was asked if he was an American citizen and when he replied he was not, he was asked for his work authorization. Mr. Giron presented his Alien Registration Receipt Card, but he was rejected for employment by Respondent ``solely on the basis of his citizenship status.''

On October 25, 1990, I issued an ``Order Directing Pre-Hearing Procedures'' and, inter alia, directed that ``no party shall serve on any other party more than twenty interrogatories in the aggregate without authorization of the ALJ or consent of opposing counsel.''

On November 20, 1990, Complainant filed a ``Motion for Leave to Propound Twenty-seven Interrogatories'' and advised the court that Respondent's counsel has refused to consent to the additional seven interrogatories.

On December 3, 1990, Respondent filed its objection to the Motion and generally argues that ``a review of the entire set of 27 interrogatories discloses that it is burdensome and oppressive and

is designed to force Respondent to settle the case rather than litigate a failure to hire one individual.'" Respondent specifically points to Interrogatories 16, 17, and 18 and states these interrogatories ``require Harris Ranch Beef Company to answer interrogatories pertaining to approximately 1,000 individuals'" and in ``light of the burdensome and oppressive nature of'" these interrogatories . . . it would be improper to require Harris Ranch to respond to additional discovery. . . .'" For the reasons stated below, I do not totally agree with Respondent.

Interrogatory 21 states: ``Identify all of the individuals working at the entrance guard post of Harris Ranch Beef Company on April 20, 199.'" Complainant argues that ``this interrogatory seeks to identify percipient witnesses who can help establish that the discriminatory act took place as alleged.'" Moreover, Complainant argues that ``only two or three individuals will have to be identified and unlike the individuals sought to be identified in Interrogatory 22, these individuals may not be known by Harris Ranch Beef to have relevant knowledge of material facts.'"

I find that Interrogatory #21 is relevant to obtaining evidence which relates to proving the charges in the Complaint. Moreover, I do not believe disclosing the names of witnesses who may have been working at the guard post on April 20, 1990, would be oppressive or overly burdensome to Respondent.

Interrogatory #22 states: ``Identify all present and former employees of Harris Ranch Company, and all other persons not elsewhere specifically identified in answers to these interrogatories, who have knowledge of any discoverable matter relating to this case and give a brief statement of the subject of their knowledge.

Complainant argues that the Rules of Court at 28 C.F.R. § 16.16(b) specifically provide for this type of discovery.

28 C.F.R. § 16(b) relates to the ``scope of discovery'" and states in pertinent part that ``the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including . . . the identity and location of persons having knowledge of any discoverable matter.'"

Clearly, Interrogatory #22 requests the type of information discoverable under this regulation. Moreover, Respondent does not assert that disclosure of this information will involve any privileged materials. I, therefore, find that the interrogatory is within the scope of discovery and could lead to information relevant to proving the charges in the Complaint.

Interrogatory #23 states: ``Identify all experts who have been consulted or hired by you for the purpose of testifying at the hear-

ing in this matter or for consultation relating to the Complaint and subsequent hearing.'

Complainant argues that ``the interrogatory seeks to identify all experts, already retained in this matter and those who may be retained in the future, as provided for by the Rules of this Court at section 68.16(b) and (d)(1)(ii).'' Complainant further states that ``counsel for Harris Ranch Beef has indicated that the company anticipates hiring at least one expert to testify at trial and discovery of the experts retained . . . will avoid surprise and lengthy cross-examination of those experts if they are later called to testify at trial.''

28 C.F.R. § 68.16(d)(1)(ii) states that ``a party is under a duty to supplement timely his response with respect to any question directly addressed to the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify and the substance of his testify.''

In view of the fact that Respondent has indicated to Complainant that it may call an expert witness, I find that Interrogatory #2 is proper and will as government counsel states ``avoid surprise and lengthy cross-examination at trial.''' Moreover, it will provide Complainant with an opportunity to determine whether or not it may need to have its own expert witness in rebuttal.

Interrogatories #4 through 27 ask Harris Ranch Beef whether or not it was denying certain facts relating to Giron's application for employment and if denied to (a) state all facts supporting its denials; (b) identify all documents relating to its denials; and (c) identify all persons with any knowledge of the facts supporting its denials. The Complainant argues that these interrogatories are made necessary by Respondent's denial of these matters in its answer to the Complaint.

Since these interrogatories relate directly to the application for employment of Mr. Giron and Respondent has not asserted that its responses may involve privilege matters, I find that the interrogatories are fair and reasonable and the responses thereto may provide evidence relating directly to the charges in this Complaint.

Although I find Interrogatories #1-27 proper and will order Respondent to answer these interrogatories within the time frame set out below, I am concerned about Respondent's statement that Interrogatories #16-18 will require Harris Ranch Beef Company to answer interrogatories pertaining to approximately 1,000 individuals. If true, answering these interrogatories may be oppressive and overly burdensome.

I do not know, however, what specifically Interrogatories 16 through 18 ask from Respondent because all the interrogatories

have not been filed with this office. I will not require Respondent to answer Interrogatories 16-18 until I am satisfied that these interrogatories are not overly burdensome or oppressive. I will therefore order Complainant to submit to this office a separate pleading, requesting that I issue an order to compel Respondent to answer Interrogatories 16-18. Complainant's pleading shall set forth the specific questions asked in Interrogatories #16-18 and why they are relevant and proper under the rules of discovery.

Accordingly, it is hereby ORDERED that:

1. Respondent shall answer Interrogatories 21 through 27 on or before December 28, 1990;

2. Respondent does not have to answer Interrogatories 16-18 until further order; and

3. Complainant's shall, on or before December 28, 1990, file a Supplemental Memorandum in support of its Motion to Compel Respondent to answer interrogatories 16-18. Respondent shall have until or before January 4, 1991, to answer the Supplemental Memorandum.

**SO ORDERED:** This 11th day of December, 1990, at San Diego, California.

ROBERT B. SCHNEIDER  
Administrative Law Judge