

1992 WL 159495

Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern
Division.

ALLIANCE TO END REPRESSION, et al.,
Plaintiffs,
Chicago Cispes, Petitioners,

v.

CITY OF CHICAGO, et al., Defendants,
Federal Bureau of Investigation, Respondent.

Nos. 74 C 3268, 75 C 3295. | June 26, 1992.

Opinion

MEMORANDUM OPINION AND ORDER

ANN CLAIRE WILLIAMS, District Judge.

*1 In a Memorandum Opinion and Order dated October 2, 1991, this court granted summary judgment in this case in favor of petitioners, CISPES, and determined that discovery in this case would be reopened “for the limited purpose of exploring what training regarding compliance with the requirements of the Consent Decree the FBI now provides, and what additional or different training might better assure future compliance.”

On January 24, 1992, the petitioners renewed their motion to permit supplemental discovery in this case.¹ CISPES’ motion seeks discovery from respondent, the Federal Bureau of Investigation (“FBI”) concerning interviews admittedly conducted by the FBI of Arab–Americans during the time surrounding the Persian Gulf War in early 1991. Petitioners assert, based on reports published in the *Congressional Record*,² that the FBI conducted interviews of individuals who were not suspected of criminal activity, and selected individuals to interview based on their ancestry or national origin. The entries in the *Congressional Record* also report that Arab Americans were asked questions about their political beliefs.

Petitioners seeks discovery of these interviews on the grounds that the interviews are relevant to open issues concerning relief, namely whether additional training for FBI agents and employees would improve future compliance with the consent decree in this case. Plaintiff ACLU also argues that it is important to discover whether the FBI has recently engaged in intrusive, politically over broad investigation in order to determine whether the FBI’s training, which had changed after the 1988 CISPES

investigation, was now adequate. The court ordered full briefing on the supplemental motion, and referred the motion to the Magistrate Judge for ruling.

In a well reasoned decision, dated April 7, 1992, Magistrate Judge Lefkow determined that some discovery concerning the Arab–American interviews should be allowed. She specifically explained that:

The proper focus here is not on the terms of the Agreement or the connection between the discovery and the CISPES petitioners but whether the as yet unspecified discovery concerning the Arab–Americans is relevant in Rule 26 terms to whether additional or different training is needed to improve the FBI’s compliance with the consent decree. Petitioner’s theory of relevance derives from FBI’s position on the summary judgment motion that new training procedures put in place after the CISPES investigation eliminated any danger of recurrence. The court did not reject that view but opened the issue for further exploration. The recurrence of violations after the implementation of new training procedures is relevant because it would tend to lead the court to believe that the new procedures were not as effective as FBI hoped. It is not appropriate to limit petitioners’ discovery to evidence of recurrence precisely concerning CISPES members. The very notion of government al investigation of political beliefs implies that investigations will follow the controversial issues of the day, not issues that have been resolved or are presently on the back burner. Discovery confined to recurrence of an investigation involving CISPES activists would likely produce nothing since all will presume that FBI will obey the rulings of the court and not engage in such activity in the future. The area sought on the motion is relevant to whether the FBI has in place effective training to prevent future violation of the decree. Therefore, some discovery will be

allowed.

*2 Memorandum Decision, April 7, 1992, p. 4.

This matter is currently before the court on respondent FBI's objections to the Magistrate Judge's ruling. After review of the Magistrate Judge's order, the parties' briefs, and the relevant case law, the court affirms the Magistrate Judge's order.

Discussion

Pursuant to Fed.R.Civ.P. 72(a), a Magistrate Judge's ruling on a non-dispositive matter, such as discovery, should be overruled by the district court only if the ruling is "clearly erroneous or contrary to law." Fed.R.Civ.P. 72(a), (b). Since the FBI does not argue that the discovery sought is privileged, or that production would be unduly burdensome, the only issue is whether the discovery sought is relevant, or could lead to the discovery of admissible evidence. Fed.R.Civ.P. 26(b)(1). Keeping these standards in mind, the court considers the respondents' objections to the ruling on supplemental discovery.

The FBI contends that the Arab-American interviews have nothing in common with the CISPES investigation, and did not violate the consent decree. Therefore, the FBI argues that the Magistrate Judge erred by not requiring the petitioners to show how they would benefit from the discovery sought, and by allowing the petitioners to conduct discovery on "non justiciable" claims. The court rejects these arguments. CISPES' motion for supplemental discovery identifies the specific aspects of the FBI's Arab-American interviewing which CISPES argues are "evidence of overly-broad, overly-intrusive FBI investigative activity."

The respondents are not required to demonstrate specific instances of illegality in the FBI's interviews prior to conducting discovery. As the Magistrate Judge explained, discovery with respect to the interviews of Arab-Americans is relevant in Rule 26 terms to whether additional or different training is needed to improve the FBI's compliance with the consent decree. "[T]he recurrence of violations after the implementation of new training procedures is relevant because it would tend to lead the court to believe that the new procedures were not as effective as FBI hoped."³ The court agrees with the Magistrate Judge's finding that the discovery is appropriate under Fed.R.Civ.P. 26.

The court specifically rejects the FBI's argument that discovery is inappropriate because the petitioner's request for a training remedy is not justiciable. The FBI contends that adjudication of the training issue "is [not] capable of solving the plaintiff's problems." In the October 2, 1991,

order this court specifically held that there is a danger of future harm to CISPES petitioners from recurrence of illegal FBI investigations of the petitioners. Accordingly, the court rejects the FBI's unsupported contentions that adjudication of the training issue will not benefit the petitioners.⁴

The FBI's other objections to the discovery ruling also stem from its contentions that the requested discovery is unauthorized given the facts of this case. The FBI contends that no discovery is authorized with respect to the Arab-American interviews because no petition has been filed challenging the FBI's interview of Arab-Americans, and there has been no showing that the interviews of Arab-Americans violated the consent decree. The court also rejects these arguments.

*3 First, the court finds that the requested discovery is authorized for the reasons explained in the Magistrate Judge's ruling at pp. 3-4. Further, the court agrees that once liability was found in this case, the court has authority to issue supplemental orders to prohibit extrinsic policies whose effect is to block progress towards the goals of the decree. Section 5.2 of the Consent Decree specifically provides that when the court has found a violation, "it shall make such order as it deems just and necessary to insure future compliance with Stipulation." The court is allowing supplemental discovery in this case because the requested discovery may aid the court in insuring future compliance with the Decree.

With respect to the FBI's concerns that there has been no showing that the interviews of Arab-Americans violated the consent decree, again the court notes that no such showing is required at this point in the case. Under Fed.R.Civ.P. 26 the discovery sought need only be relevant to these proceedings, or likely to lead to the discovery of relevant evidence. The discovery concerning the Arab-American interviews is sought to show that the FBI's new training program has failed to stop overly broad, overly-intrusive investigations. Given this goal, the court agrees with the Magistrate Judge's finding that "some discovery" regarding the interviews is warranted.⁵

As the Magistrate Judge ordered, the petitioners are given 30 days to propound discovery. Objections to particular requests may be timely asserted before the Magistrate Judge as appropriate under the rules governing discovery. As directed by the Magistrate Judge in her April 7th order, within the next thirty days, the parties are directed to meet together in the spirit of local Rule 12(k) in an effort to outline a scope of discovery adequate to the need but nevertheless limited to the training issue remaining to be resolved.

Conclusion

For the foregoing reasons the court affirms the Magistrate Judge's order permitting supplemental discovery.

Footnotes

- 1 Petitioner's motion for supplemental discovery was originally filed on April 11, 1991.
- 2 See Attachments C-1 through E-2 to petitioner's Motion to Permit Supplemental Discovery.
- 3 Memorandum Decision, April 7, 1992, p. 4.
- 4 Respondents' reliance on *City of Canton v. Harris*, 489 U.S. 378 (1989), to support its position on the training issue is equally unpersuasive, because *Harris* is not on point. As CISPES notes, *Harris* concerns the issue of the degree of insufficiency in training required to establish liability, and neither CISPES or the ACLU have ever claimed that the FBI's insufficiency in training created liability in this case. The question is, given the FBI's liability based upon illegal FBI investigative activity, should the court order additional training to ensure future compliance with the decree.
- 5 The court is of the opinion that almost all of the FBI's objections go more toward the amount of discovery which should be allowed in this case than towards whether any discovery is permissible. Since the FBI claims that its manner of investigating individuals involved in first amendment activity has changed, their interviews with the Arab-Americans concerning their political beliefs are relevant. How much of the interview material will be available to the petitioners is the more difficult question, which will be resolved by the Magistrate Judge after review of the requested discovery.