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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

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No. 13, Original

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF TEXAS,
Defendant

MOTION FOR ORDER TO TAKE ORAL DEPOSITIONS

PRICE DANIEL
Attorney General of Texas
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CLAUDE C. McMILLAN
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UNITED STATES OF AMERICA,
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STATE OF TEXAS,
Defendant

MOTION FOR LEAVE TO FILE

The State of Texas, by its Attorney General, asks leave of the Court to file its motion for order to take oral depositions.

PRICE DANIEL
Attorney General of Texas

MOTION FOR ORDER TO TAKE ORAL DEPOSITIONS

Now comes the State of Texas, defendant in the above-entitled cause, and moves for an order granting leave to take the oral deposition of Captain Thomas Fenlon of Hunt, Texas, at his residence near Hunt, Texas, on the day of December 2, 1949, at 2 o'clock in the afternoon, and the oral depositions of Robert H. Armiger, 945 Alma Street; Captain Richard Carey, 1165 Roberts Avenue; Richard Carey, Jr., 2396 Victoria Street; and Edgar Granger, 940 Roberts Avenue; all of Beaumont, Texas, at the law offices of Benckenstein, Wells and Duncan, 610 San Jacinto Building, Beaumont, Texas, on the day of December 5, 1949, at 10 o'clock in the forenoon, and from day to day until completed.

Statement

In a federal district court, at this stage of the proceedings, Rule 26(a) of the Federal Rules of Civil Procedure would permit defendant to take these depositions "without leave of court." However, since the Federal Rules of Civil Procedure are applicable here by analogy only, defendant asks leave of the Court to take the depositions.

Witness Fenlon is now 81 years of age; witnesses Robert H. Armiger, Captain Richard Carey, Richard Carey, Jr., and Edgar Granger are now 80, 90, 60, and 62 years of age respectively. The age and physical condition of some of these witnesses make it necessary that their depositions be taken im-

mediately in order that their testimony may be preserved.

Notice of this motion is given to the plaintiff by service of copies upon the Attorney General of the United States and upon the Solicitor General of the United States.

Respectfully submitted,

PRICE DANIEL
Attorney General of Texas
J. CHRYS DOUGHERTY
JESSE P. LUTON, JR.
K. BERT WATSON
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WALTON S. ROBERTS
CLAUDE C. McMILLAN
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November, 1949.

