

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

IN RE INVESTIGATION OF) OCAHO Subpoena No.
HENSON AVIATION, INC.) 93-2-00005
_____)

ORDER OVERRULING MOTION TO QUASH SUBPOENAS
(February 18, 1993)

On January 29, 1993, this Office was requested by the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), to issue three subpoenas tendered by OSC in this investigation. On February 1, 1993, I issued said subpoenas. On February 12, 1993, Henson Aviation, Inc. (Henson) filed a petition to quash the subpoenas and enjoin further investigation.

In the interest of time, this order issues without further delay to await acknowledgment or response by OSC.

The petition is overruled. The subpoenas were requested and issued in a timely manner pursuant to 8 U.S.C. §1324b(f)(2) and 28 C.F.R. §68.25. (1991). Henson contends that OSC is out of time to pursue its investigation because more than 120 days has elapsed since the charge which initiated it was filed with OSC. However, Title 8 U.S.C. §1324b(d)(2) makes clear in terms that expiration of the 120 day period "shall not affect the right of the Special Counsel to investigate the charge" during the 90 day period after the 120 days. Accordingly, OSC's pending investigation is lawful. I hold that in aid of investigations of charges before OSC as contemplated by §1324b(d)(2), administrative law judges retain authority to issue subpoenas pursuant to §1324b(f)(2) for at least the duration of the 90 day period which follows the initial 120 day period after filing of such charges.

There is merit to Henson's suggestion that its personnel, Clarence Braddock and Jean Herman, be deposed in or around Salisbury, Maryland, in lieu of Baltimore as initially commanded. OSC and Henson are encouraged to negotiate promptly for a mutually conve-

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nient time and place for the depositions without need for further participation by the judge.

Henson asserts a claim of right to a copy of the charge which initiated the investigation, conceding that OSC did provide a "paraphrased synopsis." I am unaware of any predicate for Henson's claim to a constitutional "requirement" that it be afforded the charging document. As a matter of comity, however, OSC should consider providing a redacted copy which obliterates that textual matter which OSC determines should be kept confidential.

All other objections set out in the petition to quash are denied.

SO ORDERED.

Dated and entered this 18th day of February, 1993.

MARVIN H. MORSE
Administrative Law Judge