

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

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324c Proceeding
) CASE NO. 93C00208
ARMANDO ALVAREZ-SUAREZ,)
Respondent.)
_____)

ORDER GRANTING COMPLAINANT'S MOTION TO QUASH
NOTICE OF DEPOSITION AND SUBPOENA ISSUED BY
RESPONDENT'S COUNSEL UPON ENRIQUE VARGAS GARCIA,
GUADALUPE FIGUEROA TORRES, AND ANY OTHER
WITNESSES IN THIS PROCEEDING AND STAYING DISCOVERY

On June 17, 1994 Complainant filed a Motion Requesting the Administrative Law Judge to Quash a Notice of Deposition and Subpoena upon Enrique Vargas Garcia, Guadalupe Figueroa Torres, and other witnesses in this proceeding. Complainant's motion is based upon the provision of 28 C.F.R. §§ 68.22 and 68.25 which govern the taking of depositions and the scope of subpoena power in administrative proceedings. In view of the time constraints caused by the Respondent precipitately issuing the notice and the request by subpoena and Respondent's failure to follow our regulations governing these discovery requests, I advised the parties telephonically that I was granting the motion and would issue a follow-up order.

28 C.F.R. § 68.22(b) requires that any party who desires to depose a witness must give ten (10) days written notice to the witness and all other parties of the time and place of the deposition, and the name and address of each witness. If documents are requested, the notice shall include a written request for the production of documents.

28 C.F.R. § 68.25(a) covers the issuing of subpoenas and states in pertinent part that "an Administrative Law Judge, . . . upon request (emphasis added) . . . by a party once a complaint has been filed, may

issue subpoenas as authorized by statute, either prior to or subsequent to the filing of a complaint." 28 C.F.R. § 68.25(c) provides for an opportunity by the person served with the subpoena to file a petition to revoke or modify the subpoena within ten days after the date of the service of the subpoena.

Complainant's motion states that Respondent served Garcia with a Notice of Deposition and subpoena dated May 27, 1994. The Notice indicates that Torres has also been subpoenaed for deposition. Respondent's Notice of Deposition commands these witnesses to produce a number of documents listed in the notice. Respondent had scheduled the depositions at his place of business on June 20, 1994. Garcia was served with the Notice of Deposition on the evening of June 15, 1994. On June 16, 1994 Garcia contacted INS special agent Mark Steele regarding this notice, Agent Steele forwarded a copy of the notice to Complainant's counsel by facsimile on the afternoon of June 16, 1994.

Complainant moves to quash any notice of Deposition or subpoena that has been served upon any witness in connection with this lawsuit, because Respondent has not given 10 days notice of deposition to the witnesses, and has failed to serve Complainant's counsel. Moreover, Complainant argues that Respondent's counsel "has cloaked himself with the power to subpoena, a power that inheres only to this administrative body." Complainant further states that Respondent gave government counsel only one day's notice of the deposition. Complainant also questions the propriety of initiating deposition proceedings prior to my ruling on its Motions for Default and to Strike Affirmative Defenses. Complainant concludes its motion by arguing that "the Notice of Deposition and subpoena is untimely, unauthorized and incomplete" and "Complainant is incapable of responding to such notice in an effective and professional manner without experiencing considerable inconvenience and prejudice."

After carefully reviewing the pleadings and documents filed, I agree with Complainant that Respondent has failed to comply with our regulations and GRANT Complainant's Motion to Quash. I further ORDER that Respondent shall not begin any discovery in this case until after I have issued my decision on the pending motion to strike affirmative defenses and motion for default judgment. I further ORDER that, if I deny Complainant's motion for Default and set this case for an evidentiary hearing, discovery by both parties should begin immediately. If Respondent wants to subpoena anyone or any records for deposition, he is instructed to file an application with this office by

"motion" with suggestions in support thereof, and if granted, I will provide him with a signed and sealed subpoena(s). Respondent is reminded to make sure that his application for a subpoena takes into account the time I will need to rule on his motion, the time it will take to issue, mail and serve the subpoena and the time requirements of our regulations.

SO ORDERED on this 20th day of June, 1994.

ROBERT B. SCHNEIDER
Administrative Law Judge