

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. §1324b Proceeding
) Case No. 94B00151
ZABALA VINEYARDS,)
Respondent.)
_____)

ERRATA TO ORDER ISSUED FEBRUARY 17, 1995
(February 27, 1995)

At page 1, footnote 1, the third sentence is deleted. At page 2, first full paragraph, the reference to the March 1, prehearing conference should be 2:30 p.m. EST, and not 2:00 p.m.

SO ORDERED.

Dated and entered this 27th day of February, 1995.

MARVIN H. MORSE
Administrative Law Judge

UNITED STATES DEPARTMENT OF JUSTICE
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v.) 8 U.S.C. §1324b Proceeding
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ZABALA VINEYARDS,)
Respondent.)
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ORDER
(February 17, 1995)

By letter/pleading delivered by facsimile transmission on February 10, 1995, Respondent, by counsel, advised in effect as follows:

that Alberto Magallun, of the State of California Employment Development Department is believed to have initiated this case by a "written complaint to the U.S. Department of Justice"; that pursuant to subpoena, Magallun recently appeared for and gave his deposition but failed to produce and refused to produce relevant "books and papers"; that Magallun asserts that documents are being withheld because they are "confidential" pursuant to a 1979 opinion of his Department's counsel; that he is the appropriate security officer who made the decision not to produce the documents.

Respondent asserts that at hearing, Complainant will call Magallun as a witness and selectively seek to introduce into evidence certain of the documents. By the letter/pleading, Respondent seeks disclosure of the subpoenaed documents through Complainant. Failing production, Respondent asks that I dismiss the case, claiming such failure denies "fair and meaningful discovery and hearing. . . ."

In order to maintain the hearing schedule which as early as October 18, 1994, was agreed would be held during March 1995, this Order issues without any longer awaiting response by Complainant.¹

¹ Although Respondent's filing omits the required certificate of service, it does show a copy to counsel for Complainant. If delivered on the day it was transmitted to the judge, Complainant's response is past due. Counsel are advised that all filings by facsimile transmission must be followed immediately by hard copy addressed to the judge and any other party.

Neither Respondent's filing nor this Order addresses the materiality of Magallun's evidence to Complainant's case. There is no showing of prejudice as a predicate for the relief sought. To the extent Respondent's letter/pleading is understood as a motion to dismiss the complaint, it is denied. Counsel are referred to the rules of practice and procedure of this office, specifically 28 C.F.R. §§68.22, .23, for guidance as to deposition practice.² More pointedly, however, in light of the issue of production of documents raised by Respondent, this Order provides the following directions:

Complainant will be expected to use its best efforts to provide the documents to Respondent's counsel in advance of the March 1, 1995 conference. Subject to explanation as to why any text should be withheld, portions may be redacted. At a minimum, I will expect the documents to be available in their entirety at hearing for in camera inspection by the judge.

The third telephonic prehearing conference for March 1, 1995, at 2:00 p.m., EST, will address preparation for hearing in further elaboration of ground rules discussed at the January 10 conference, as confirmed by the Second Prehearing Conference Report and Order (1/11/95).

SO ORDERED.

Dated and entered this 17th day of February, 1995.

MARVIN H. MORSE
Administrative Law Judge

² See Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1994), as amended by 59 Fed. Reg. 41,243 (1994) (to be codified at 28 C.F.R. § 68.2(i), (k)) [hereinafter cited as 28 C.F.R. pt. 68].