

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

In Re Investigation of Chan's Apparel

File No. 88-2-01-0004A0
(Case No. 88S004A0)

ORDER

On January 12, 1988, upon written application of the Office of Special Counsel, by counsel, for issuance of an investigatory subpoena duces tecum in the name of the United States, I issued same pursuant to statute, 8 U.S.C. 1324b(f)(2), as implemented by the regulations of the Attorney General, i.e., the rules of practice and procedure of this Office. Subsection (f)(2) of 8 U.S.C. 1324b provides as follows:

In conducting investigations and hearings under their subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof. (Emphasis added).

The Office of Special Counsel by written Request filed March 10, 1988, representing that said subpoena was duly served as shown on the return of service, further representing that Chan's Apparel has failed to comply, invokes the aid of the administrative law judge in obtaining compliance with the subpoena. That aid is available, consistent with the statutory provision quoted above, as provided in the implementing rules at section 68.21(e), 52 Fed. Reg. 44972 at 44979 (November 24, 1987) (to be codified at 28 CFR Section 68.21). Section 68.21 provides as follows:

Upon the failure to (sic) any person to comply with an order to testify or a subpoena issued under this Section, the Administrative Law Judge may, where authorized by statute or by law, apply through appropriate counsel to the appropriate dis-

strict court of the United States for an order requiring compliance with the order or subpoena. (Emphasis added).

Section 68.21 (d) provides that "Any person served with a subpoena who intends not to comply with it shall, within ten (10) days after the date of service of the subpoena upon him or her, petition the Administrative Law Judge to revoke or modify the subpoena." No such petition or any other pleading requesting relief on behalf of the person served with the subpoena has been received by the Administrative Law Judge or this Office.

This Order is issued upon the unilateral application of counsel for the Special Counsel, without notice to the person served and without awaiting the ten (10) day period after service of a written motion within which time "any party to the proceeding may file an answer in support of, or in opposition to, the motion..." as contemplated by section 68.7(b) of the interim final rules of practice and procedure, supra. The rules, for notice and time to answer, apply only to parties in an adjudicatory proceeding and, this being subpoena practice in aid of investigatory authority under 8 U.S.C. 1324b(f)(2), and not an adjudicatory proceeding, no such notice is required.

The Office of Special Counsel, by counsel, having initiated this subpoena practice and having sought assistance in aid of compliance, is by this Order (issued pursuant to the statute and regulation quote above), found to be an appropriate counsel to make application to, and is hereby, authorized to apply (through Department of Justice representation, whether by a United States attorney or otherwise) to the appropriate district court of the United States for an appropriate order.

SO ORDERED.

Dated this 11th day of March, 1988.

MARVIN H. MORSE
Administrative Law Judge