

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

IN RE INVESTIGATION OF: Modern Maintenance Company, Inc.

File No. 91-2-00060

ORDER DENYING MOTION TO QUASH SUBPOENA AND
AUTHORIZING ENFORCEMENT

(August 1, 1991)

On June 14, 1991 I issued an investigatory subpoena duces tecum upon the request of the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) in an investigation styled In Re Investigation of Modern Maintenance Company, Inc. (Modern). By Motion to Quash Subpoena dated July 19, 1991, filed July 22, 1991, Modern (including Harold VandeHaar) recites its opposition to the subpoena, maintaining in effect that it is illegal because OSC has failed to show specific probable cause to believe Modern has violated 8 U.S.C. §1324b and otherwise lacks a general administrative plan for enforcement of 8 U.S.C. §1324b.

By Opposition to Motion to Quash filed July 31, 1991, OSC asks enforcement, arguing that (1) Modern's motion is out of time; (2) the subpoena is statutorily authorized as reflected in implementing regulations; (3) the subpoena is proper in light of reference to OSC by the Immigration and Naturalization Service (INS) of alleged discriminatory treatment by Modern between U.S. citizens and other employees; and (4) the documents sought are relevant.

The subpoena was received, as appears from the United States Postal Service return receipt (Exh. B to OSC's Opposition), by Counsel for Modern on June 24, 1991. The Postal Service receipt was served by certified mail, service thereby being perfected in accord with 28 C.F.R. §68.23(a). OSC correctly argues that a timely request to the judge to revoke or modify the subpoena by any person "who intends not to comply with it" must be filed within 10 days after it was served.

28 C.F.R. §68.23(d). The motion, having been filed July 22, 1991, is clearly untimely.

Moreover, Modern's contentions are without merit. OSC's investigation followed upon information received from INS. As OSC correctly observes in its Opposition, the subpoena is authorized by statute, 8 U.S.C. § 1324b(d)(1) and (f)(2), without a probable cause requirement. In my judgment, the INS referral constitutes reasonable cause for investigation, obviating the need for any further predicate, and entitling OSC to obtain its subpoena in aid of that investigation. U.S. v. Morton Salt Co., 338 U.S. 632, 642-43, 652-53 (1950). Cf. U.S. v. Westinghouse Electric Corp., 788 F.2d 164, 170 (3rd Cir. 1986) (Inspector General's power to require by subpoena the production of all information "necessary in the performance of the functions assigned by [the Inspector General] Act . . ."). I am satisfied that the reasonable cause standard is all that need be met, and that the INS reference satisfies that requirement. 28 C.F.R. §44.304(a). See U.S. v. Powell, 379 U.S. 48, 57 (1964) (no probable cause requirement for the issuance of summons by the Commissioner of Internal Revenue); see also 8 U.S.C. §1324b(b)(1) (an officer of INS may charge a violation of §1324b).

I am satisfied also that the litany of Information and Document Requests (Subpoena Duces Tecum at 2) comprises relevant and presumptively appropriate materials at this stage of a proper OSC investigation. See Powell, 379 U.S. at 57-58. For all the foregoing reasons, the Motion to Quash is denied.

In its Opposition, OSC requests enforcement of the subpoena issued on June 14, 1991. In the event it does not otherwise obtain compliance as a result of this ruling, this Order authorizes OSC without further application here to seek enforcement in the United States District Court for the District of Kansas. 8 U.S.C. §1324b(f)(2), 28 C.F.R. §68.23(e).

SO ORDERED.

Dated this 1st day of August, 1991.

MARVIN H. MORSE
Administrative Law Judge