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

October 30, 1996

UNITED STATES OF AMERICA, Complainant, v. NEW MEXICO STATE FAIR et al., Respondents.	)	8 U.S.C. §1324b Proceeding Case No. 96B00033

ORDER DENYING MOTION IN OPPOSITION TO SETTLEMENT AGREEMENT

Background

On September 11, 1995, the Albuquerque Border City Project filed on behalf of Arturo Quezado-Cordova (Quezado) a Charge of document abuse against the New Mexico State Fair with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). On April 8, 1996, OSC filed a 8 U.S.C. §1324b Complaint against the New Mexico State Fair, the New Mexico State Fair Commission, the New Mexico Department of Labor and the State of New Mexico (Respondents). The Complaint alleged document abuse against Quezado and a pattern or practice of document abuse. On June 5, 1996, OSC and Respondents filed a joint Motion To Dismiss the Complaint and a Settlement Agreement. Under the Settlement Agreement, Respondents agreed to comply with the law, post notices, and attend training provided by OSC.

On June 6, 1996, I issued an Order of Dismissal of the Complaint, which noted my understanding that the parties intended the entire case to be dismissed, settled with prejudice, the Complaint having sought no individual relief on behalf of Quezado, who entered no

separate appearance. The Order also noted that this case arises in the Tenth Circuit, which had recently decided *Hensel v. Office of the Chief Administrative Hearing Officer*, 38 F.3d 505 (10th Cir. 1994), *reh'g denied* (1994).

On June 21, 1996, Quezado as the charging party filed a Motion in Opposition to the Settlement Agreement. Quezado alleged that he was not included in the settlement negotiations or agreement; that the agreement prejudices his interests; that the agreement is inefficient because it does not resolve a related Charge of retaliation against the charging party; and that the comprehensive nature of the Settlement Agreement and Order of Dismissal may extinguish his rights in the related charge of retaliation.

On July 16, 1996, I invited OSC and Respondents to file responses to the charging party's Motion in Opposition to Settlement Agreement. On July 19, 1996, Respondents filed a Memorandum of Opposition to Motion in Opposition to Settlement Agreement. On July 30, 1996, OSC filed its Reply.

Discussion and Conclusion

I am bound by precedent established by the Tenth Circuit, the appellate court having judicial review over this case.[1] In *Hensel, supra*, the court found that "[i]n order for the state to be subject to suit, Congress must have made 'its intention unmistakably clear in the language of the statute.'" 38 F.3d at 507 (citing *Dellmuth v. Muth*, 491 U.S. 223, 228 (1989) (quoting *Atascadero State Hosp. v. Scanlan*, 473 U.S. 234, 242 (1985)). The *Hensel* court held that it could not discern in IRCA, which is silent on the subject of sovereign immunity, the requisite explicit intent to abrogate Eleventh Amendment immunity. 38 F.3d at 508.

The Hensel court held that "under the Eleventh Amendment, a citizen cannot sue a state absent the state's consent" and that the Office of the Chief Administrative Hearing Officer (OCAHO) has no jurisdiction over a state or its agencies absent a state's waiver of immunity. 38 F.3d at 507. The state agencies in this case are entitled to rely on *Hensel*. Moreover, Respondents have consented to conform

[1] 8 U.S.C. §1324 b(i)(1) provides that a party may seek review of a §1324b case "in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business."

their conduct to IRCA requirements in the signed Settlement Agreement. More than this is not required. Being bound by *Hensel*, I deny the charging party's Motion in Opposition to Settlement Agreement and confirm the Order of Dismissal.

A party aggrieved by this Order party may, within 60 days after entry, seek review of the order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. 8 U.S.C. §1324b(i)(1); 28 C.F.R. §68.53(b).

SO ORDERED:

Dated and entered this 30th day of October, 1996.

MARVIN H. MORSE
Administrative Law Judge