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

March 31, 2016

UNITED STATES OF AMERICA, Complainant, v. FRIMMEL MANAGEMENT, LLC D/B/A UNCLE SAM'S Respondent.	)))))))))	8 U.S.C. § 1324a Proceeding OCAHO Case No. 15A00073

ORDER GRANTING COMPLAINANT'S MOTION TO QUASH NOTICES OF DEPOSITION AND DENYING RESPONDENT'S MOTION FOR EXTENSION OF DISCOVERY DEADLINE

I. RESPONDENT'S NOTICES OF DEPOSITION

On February 22, 2016, respondent filed with the Office of the Chief Administrative Hearing Officer (OCAHO) Notices of Deposition for five individuals scheduled as follows: (1) Ryan Miller at 9:00 a.m. on April 5, 2016; (2) Matthew C. Allen at 9:00 a.m. on April 7, 2016; (3) Harold Beasley at 9:00 a.m. on April 12, 2016; (4) Pat Contreras at 9:00 a.m. on April 14, 2016; and (5) Joshua Henderson at 9:00 a.m. on April 21, 2016. All depositions are scheduled to be held at the office of respondent's attorney in Goodyear, Arizona.

II. COMPLAINANT'S PENDING MOTION TO QUASH NOTICES OF DEPOSITION

On March 7, 2016, complainant United States of America filed a "Motion To Quash Notices of Deposition" and a "Motion for Expedited Ruling On Motion To Quash Notices of Deposition." Complainant United States of America, Department of Homeland Security, Immigration and Customs Enforcement (DHS, ICE or complainant) is represented by Elly Laff, Assistant Chief Counsel for ICE. On March 18, 2016, respondent Frimmel Management, LLC, filed its "Response to Motion to Quash Notices of Depositions." Respondent Frimmel Management,

LLC (Frimmel Management)[1] is represented by Christopher J. Brelje, Esquire. As set forth below, complainant's Motion To Quash Notices of Deposition is granted.

Complainant does not contest respondent's Notice of Deposition for Homeland Security Investigations (HSI) Auditor Ryan Miller. ICE admits that the deposition of Auditor Miller is appropriate because Auditor Miller initiated and conducted the underlying audit that resulted in the Notice of Intent to Fine issued to Frimmel Management. In addition, ICE's prehearing statement identifies Auditor Miller as the only witness ICE intends to call to testify at a hearing. Moreover, ICE contends that all other Notices of Deposition should be quashed as the testimony of the four other individuals noticed would be "irrelevant and unnecessarily duplicative" to the testimony provided by Auditor Miller.

ICE argues that the Notices of Deposition for Matthew C. Allen and Harold R. Beasley should be quashed because they are both high level officials at HSI and because they

> are not directly involved in the day to day operations of worksite inspections and audits. Their involvement with the instant case is as management signatories who bear no direct knowledge of the facts and circumstances that lead to the audit . . . . Thus, any testimony they would provide would be irrelevant and duplicative . . . of the information [ ] obtained from Auditor Miller.

ICE's Motion To Quash at 3-4.

ICE also argues that respondent does not need to take the depositions of these two "high level managers" because the guidance respondent seeks is referenced and available in the former Immigration and Naturalization Service's "Immigration Officer's Field Manual for Employer Sanctions (Field Manual)," which is identified in two early OCAHO cases. *ICE's Motion To Quash* at 3 (referencing *United States v. Moyle*, 1 OCAHO no. 212, 1413, 1422 (1990);[2] *United*

[1] Respondent initially denied in its answer that "Frimmel Management, LLC does business as Uncle Sam's" as alleged by ICE in its complaint. At the telephonic prehearing conference on February 10, 2016, the undersigned instructed ICE to ascertain the appropriate name of respondent and to file a motion if needed to amend the case caption. No such motion has been filed and this issue has not yet been resolved. Notably, however, respondent refers to "Uncle Sam's restaurants" numerous times in its Response to Motion to Quash Notice of Deposition, as the alleged unlawful police raid by the Maricopa County Sheriff's Office occurred at Uncle Sam's restaurants. Respondent's own reference to "Uncle Sam's" undermines its denial of doing business as this entity.

[2] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that

States v. Big Bear Mkt., 1 OCAHO no. 48, 286, 295 (1989)). In addition, ICE claims that Mr. Beasley lives and works in Washington, D.C., that it would be unduly burdensome to force him to "travel over 2,000 miles at his expense to attend this deposition," and that any information he has regarding this case would be based on the testimony of Auditor Miller. *Id.*

Moreover, complainant argues that the Notice of Deposition for Pat Contreras should be quashed because respondent failed to explain the relevancy of this individual's testimony and failed to identify "who this person is, who he or she works for, or how he or she is involved in the instant matter." *ICE's Motion To Quash* at 4.

Additionally, complainant argues that the Notice of Deposition for Joshua Henderson should be quashed because "he is a detective with the Maricopa County Sherriff's Office (MCSO)," he has no knowledge of the audit performed by Auditor Miller, and his only relevance to the case relates to a "two page summary report of the MCSO raid on Respondent's restaurant," which was previously served on respondent. *ICE's Motion To Quash* at 4. Complainant further explains that Detective Henderson "does not work with Complainant or with the Department of Homeland Security in any capacity and, therefore, does not have any information about the circumstances underlying the audit conducted by Ryan Miller, but only information about his own law enforcement raid of Respondent's property." *Id.* at 4-5. In conclusion, complainant claims that the only relevant testimony in the above-captioned matter is that of Auditor Miller, and that the deposition notices of the four other individuals should be quashed.

III. RESPONDENT'S RESPONSE TO THE MOTION TO QUASH NOTICES OF DEPOSITION

On March 18, 2016, Respondent Frimmel Management filed its response to complainant's Motion to Quash Notices of Depositions. Respondent once again raises its affirmative defense previously stated in its answer that the above captioned-action should be dismissed and that all evidence obtained by ICE "must be excluded under the fruit-of-the-poisonous-tree doctrine because [ICE] learned of the evidence that prompted its audit from the illegal [MCSO] raids on the Uncle Sam's restaurants." *Respondent's Response to Motion to Quash* at 2. Respondent also contends that "[e]vidence that is tainted by a fourth amendment violation must be excluded even in a civil matter and even where the matter is before a different sovereign. *INS v. Lopez-*

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volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

Mendoza, 468 U.S. 1032, 1050-51 (1984) (applying [the exclusionary rule] in a civil deportation matter)." *Id*.

Respondent also states,

> It is well established in state court proceedings that the MCSO raids on the Uncle Sam's restaurants were conducted in violation of the fourth amendment. The state court excluded all evidence obtained in those raids. Respondent intends to use the depositions at issue here to discover evidence that will prove the ICE audit of Respondent arose from information that came from the illegal MCSO raids. If the ICE audit was prompted by a direct communication from MCSO or by MSCO information obtained through an intermediary such as news media, all evidence obtained in that audit must be suppressed. . . . If ICE initiated its audit in response to MCSO communications or information from MCSO published by news media, the audit was tainted and the ALJ must suppress all evidence from the audit as fruit of the poisonous tree.

Respondent's Response to Motion to Quash at 3-4.

Respondent contends that "if ICE began its audit of Respondent after receiving [an email containing] Shift Summary DR#13-008988, then the ALJ must suppress all evidence obtained in that audit." *Respondent's Response to Motion to Quash* at 3-4. Respondent asserts that it has a "substantial need to conduct discovery into why MCSO sent Harold Beasley, Pat Contreras, and Ryan Miller this July 18, 2013, email. It appears that MCSO's intention was to cause ICE to initiate an audit of Respondent." *Id.* at 3. Respondent explains further in its response that it seeks to depose the individuals at ICE "who were in direct contact with MCSO regarding the raids" of Uncle Sam's restaurants and ICE supervisors "who signed key documents relevant to this case." *Id.* at 3-4.

Regarding the Motion to Quash the Notice of Deposition for Pat Contreras, respondent identifies in its response that an individual "named Pat Contreras was working in Arizona as an ICE or DHS employee," and that a Pat Conteras working at ICE received an email from MCSO dated July 18, 2013. *Respondent's Response to Motion to Quash* at 5. Although respondent admits that "no one named Pat Conteras has been associated with the MCSO investigation of Respondent other than through this email," respondent claims that deposing Pat Contreras is relevant. *Id*. Additionally, respondent attached to its response a news article dated December 28, 2013, about a "Patrick Contreras" who works for ICE in Dallas, Texas. *Id.* at Exhibit B. Respondent contends that although Patrick Contreras may no longer be working in Arizona, there is reason to believe that he remains employed by ICE and that his testimony is relevant.

Regarding the Motion To Quash the Notice of Deposition for Harold Beasley, respondent alleges that complainant failed to meet its burden of proving that Mr. Beasley would experience any hardship other than paying for travel associated with the deposition should he appear for his scheduled deposition. *Respondent's Response to Motion to Quash* at 5. Respondent also claims that it is reasonable for Mr. Beasley to absorb the cost of travel for the deposition when comparing "the magnitude of what is at stake," namely the civil fine assessed against respondent in excess of $380,000.00 versus the cost of travel for the deposition. Other than being a recipient of MCSO's email dated July 18, 2013, respondent does not explain the relevancy or necessity of Mr. Beasley's testimony.

Regarding the Motion to Quash the Notice of Deposition for Matthew Allen, respondent contends that it must depose Matthew Allen because his signature appears on several key documents, even though he is not listed as a recipient of MCSO's email dated July 18, 2013. Respondent states that Mr. Allen signed subpoenas and notices as "Special Agent in Charge" and that he appears to be Auditor Miller's supervisor. *Respondent's Response to Motion to Quash* at 4-5. Respondent asserts that "Mr. Allen was a part of the investigation that gave rise to the Notice of Intent to Fine and to this lawsuit. He therefore may have information relevant to the investigation and information relevant to the issue of the extent to which he and other decision makers at ICE learned about the tainted MCSO raids." *Respondent's Response to Motion to Quash* at 4-5. Therefore, respondent claims that the deposition of Mr. Allen "may yield relevant testimony," in that he may have supervised Auditor Miller's audit of respondent.

Moreover, regarding the Motion to Quash the Notice of Deposition for Joshua Henderson, respondent claims that deposing MCSO's Joshua Henderson, who was "the lead detective in the MCSO investigation and raids at issue[,] . . . will be highly relevant to determining how information uncovered in the illegal MCSO raids was communicated to ICE and potentially impacted the ICE decision to audit Respondent." *Respondent's Response to Motion to Quash* at 6. Respondent also claims that deposing Mr. Henderson "will allow inquiry into whether he knows of other communications between MCSO and ICE concerning Respondent." *Id.*

In addition, respondent states,

> The mere fact that the United States claims that Mr. Miller can testify from the ICE viewpoint as to "the role that MCSO had in his decision to initiate the audit" does not mean that Mr. Henderson's testimony on this issue is irrelevant. Surely, Respondent is not required to accept everything stated by Mr. Miller as incontrovertible truth. . . . Clearly, Respondent has a right to depose MCSO case agent Henderson, as he has information relevant to communications with Mr. Ryan Miller, Complainant's I-9 auditor, concerning MCSO's illegal raid and tainted evidence.

Respondent's Response to Motion to Quash at 6-7.

In the first instance, it is necessary to address the issues of whether any communication between MCSO and ICE is relevant to the instant action and whether any such communication implicates the Fourth Amendment's exclusionary rule in this case. Only after resolving these two issues can the Motion To Quash the Notices of Deposition be decided. As discussed more fully below, respondent failed to prove that any communications between MCSO and ICE are relevant to this action. As such, respondent failed to prove that the Notices of Deposition for Mr. Contreras, Mr. Beasley, Mr. Allen, and Mr. Henderson should be preserved instead of quashed.

IV. RESPONDENT'S IDENTITY IS NOT SUPPRESSIBLE AS THE FRUIT OF AN UNLAWFUL POLICE ACTION

In its response, respondent cites to the pertinent United States Supreme Court case of *Lopez-Mendoza*, 468 U.S. at 1045-46, 1050-51 (holding that the exclusionary rule can apply to suppress evidence in civil deportation proceedings to deter egregious Fourth Amendment violations committed by INS officers, but that the evidence stemming from "peaceful arrests by INS officers . . . need not be suppressed"). However, respondent fails to address a key finding in *Lopez-Mendoza*, which is directly on point and which undermines its arguments.

In *Lopez-Mendoza*, the Supreme Court squarely addressed the issue raised by respondent in the instant case, which is whether the "identity" of a respondent in civil proceedings is suppressible as the fruit of an unlawful police action. In *Lopez-Mendoza*, the Supreme Court stated,

> The "body" or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred. . . . At his deportation hearing Lopez-Mendoza objected only to the fact that he had been summoned to a deportation hearing following an unlawful arrest; . . . "[t]he mere fact of an illegal arrest has no bearing on a subsequent deportation proceeding."

468 U.S. at 1039-40 (internal citations omitted).

In the instant case, respondent seeks to suppress its "identity." Respondent's primary reason for issuing Notices of Deposition for Mr. Contreras, Mr. Allen, Mr. Beasley, and Mr. Henderson appears to be for the purposes of establishing the relationship between MCSO and ICE and ascertaining the method by which the identity of respondent was disclosed to ICE prior to ICE's decision to audit respondent's employment verification paperwork. Specifically, respondent argues that it "must be allowed to depose these individuals to ascertain, among other things, what

they knew, directly or indirectly, about how ICE came to decide to audit Respondent" because any evidence obtained from MCSO that "prompted" ICE's audit "must be excluded under the fruit-of-the-poisonous-tree doctrine." *Respondent's Response to Motion to Quash* at 2, 8.

The fact that respondent's identity may have come to the attention of ICE auditors as a result of an allegedly unlawful police action[3] perpetrated by the MCSO is irrelevant to the case filed with OCAHO. Similar to the facts in *Lopez-Mendoza*, in which Lopez-Mendoza contested that his identity was brought to the attention of deportation officials at the former INS after an unlawful arrest, respondent in the instant action contests that its identity was brought to the attention of HSI and/or ICE officials by MCSO's allegedly unlawful police action. As stated by the Supreme Court in *Lopez-Mendoza*, a challenge to the identity of a respondent in a civil proceeding is "never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." 468 U.S. at 1039-40. Therefore, respondent's identity and the method by which it came to the attention of HSI and/or ICE, whether incident to an unlawful police action, cannot be suppressed in this civil proceeding before OCAHO.

Moreover, even if respondent sought to suppress evidence other than its identity, respondent has failed to prove that the Fourth Amendment's exclusionary rule could lead to the suppression of evidence in this action before OCAHO. Respondent has not alleged the occurrence of any egregious actions by relevant HSI or ICE officials who performed the audit of respondent's paperwork and assessed a fine against respondent. *Lopez-Mendoza*, 468 U.S. at 1045-46, 1050-51 (discussing that the Fourth Amendment's exclusionary rule could lead to suppression of evidence obtained through egregious actions by INS officials).

Additionally, respondent has not produced evidence or arguments to satisfy the threshold exclusionary rule requirement that the suppression of evidence should "provide a substantial and efficient deterrent" to the unlawful police action at issue in the case. *Adamson v. Comm'r*, 745 F.2d 541, 546 (9th Cir. 1984). Although respondent seeks to suppress evidence in this OCAHO action, there would be no "substantial and efficient deterrent" consequences for MCSO if evidence is suppressed or the case is dismissed. In fact, the United States Supreme Court in *Arizona v. United States*, 132 S. Ct. 2492, 2504-05 (2012), set forth that any police actions by MCSO or the State of Arizona related to employment verification paperwork violations within OCAHO's jurisdiction are preempted by federal immigration statutes. *See* 8 U.S.C. §§ 1324a(b)(5), 1324a(e)-(f), (h)(2). Therefore, respondent has failed to demonstrate that the suppression of evidence in this OCAHO case pursuant to the exclusionary rule's sanction would have a deterrent effect on MCSO, especially in light of the fact that OCAHO adjudications are

[3] Although respondent argues that the actions of MCSO were deemed unlawful, the state criminal charges filed against respondent were dismissed, and the evidence in those state cases was suppressed, respondent did not file any proof to support these contentions with OCAHO. Therefore, the state criminal charges referenced by respondent will be referred to as "allegedly unlawful police actions."

not within the "'zone of primary interest'" of MCSO police actions and any such actions are preempted by federal statute. *Arizona*, 132 S. Ct. at 2504-05; *Adamson*, 745 F.2d at 546 (quoting *United States v. Janis*, 428 U.S. 433, 458 (1976)).

V. COMPLAINANT'S MOTION TO QUASH NOTICES OF DEPOSITION IS GRANTED

Finally, because respondent has failed to demonstrate that its identity can be suppressed pursuant to the exclusionary rule and because respondent has failed to demonstrate that testimony relevant to the action pending before OCAHO would result from the depositions of Mr. Contreras, Mr. Beasley, Mr. Allen, and/or Mr. Henderson, these four depositions are cancelled. Importantly, respondent has not demonstrated that the depositions of Mr. Contreras, Mr. Beasley, Mr. Allen, and/or Mr. Henderson would result in necessary, relevant, and/or non-duplicative testimony because these depositions were scheduled primarily to obtain information regarding MCSO and ICE interaction prior to ICE's decision to audit respondent. 28 C.F.R. §§ 68.18, 68.22, 68.28. Therefore, complainant's Motion To Quash the Notices of Deposition for Pat Contreras, Harold Beasley, Matthew Allen, and Joshua Henderson is GRANTED.

However, the deposition of Auditor Ryan Miller should continue as planned at the law office of respondent's attorney in Goodyear, Arizona, at 9:00 a.m. on April 5, 2016. Should information obtained by Auditor Ryan Miller regarding the specific involvement in this case of Matthew Allen, Special Agent in Charge, demonstrate that Mr. Allen's testimony is necessary, relevant, and not duplicative of Mr. Miller's testimony, respondent may seek to depose Mr. Allen at a future date. 28 C.F.R. §§ 68.18, 68.22.

VI. RESPONDENT'S EXTENSION MOTION IS DENIED

On March 16, 2016, respondent filed a Motion for Extension of Discovery Deadline, which complainant did not oppose. In light of the cancellation of the depositions scheduled for Mr. Contreras, Mr. Beasley, Mr. Allen, and Mr. Henderson and in light of the finding that the Fourth Amendment's exclusionary rule is inapplicable in this particular OCAHO action, the motion for extension of time is DENIED.

SO ORDERED.

Dated and entered on March 31, 2016.

Stacy S. Paddack
Administrative Law Judge