

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

RUBEN URIAS-BOJORQUEZ,

Defendant/Petitioner.

CIVIL ACTION

**Case Nos. 07-2479-CM
 04-20121-02-CM**

ORDER

This case was previously set for an evidentiary hearing on September 10, 2008, but upon motion of petitioner Ruben Urias-Bojorquez, the court continued the hearing to October 15, 2008. In advance of the first setting, the government served a subpoena on petitioner's former counsel, directing him to appear at the hearing and bring his file and documents related to petitioner. Petitioner's former counsel filed a Motion to Quash Subpoena (Doc. 136), arguing that (1) the contents of his client file are privileged; (2) allowing the government to see the file would be unfairly prejudicial to petitioner; and (3) the file has been lost or destroyed. The government responds that (1) petitioner waived privilege as to the issues raised in his § 2255 motion; (2) the government is not asking counsel to turn over the entire file before the hearing; only to bring it with him to the hearing, which is proper under Fed. R. Crim. P. 17; and (3) if counsel no longer has the file, he can testify to the loss at the hearing.

The court determines that quashing the subpoena is inappropriate. Petitioner's former counsel need not turn over the file to the government in advance of the hearing, and if he no longer has the file, the other arguments are moot. Counsel represents that he has an independent

recollection of the events that are the subject of petitioner's motion and states that he has informed the government that he will testify in court regarding the issues raised by petitioner's motion. The court therefore denies the motion to quash.

IT IS THEREFORE ORDERED that the Motion to Quash Subpoena (Doc. 136) is denied.

Dated this 7th day of October 2008, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge