

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

IN RE INVESTIGATION OF: Evodio Penaloza's Charge of an Unfair  
Employment Practice By The Taiwan Restaurant

File Number: 92-2-00065

PETITION FOR AUTHORIZATION TO SEEK  
ENFORCEMENT OF ADMINISTRATIVE SUBPOENA

1. Pursuant to 8 U.S.C. § 1324b(f)(2) and its implementing regulations, the Office of Special Counsel for Immigration Related Unfair Employment Practices ("Office of Special Counsel") hereby seeks an order authorizing it to petition the United States District Court for the Northern District of Texas for the enforcement of an administrative subpoena issued in this investigation and to seek costs associated with this subpoena's enforcement.

2. On May 2, 1992, Administrative Law Judge Marvin H. Morse issued a Subpoena Duces Tecum. OCAHO Subpoena number 92-2-00065 directed the Custodian of Records for the Taiwan Restaurant, to produce certain documents on May 26, 1992. A copy of the subpoena is attached as Exhibit A.

3. The Subpoena Duces Tecum was served on The Taiwan Restaurant by overnight mail as provided by the rules of this Court. 56 Fed. Reg. 50049, 50053 (1991) (formerly 28 C.F.R. § 68.23, to be codified as 28 C.F.R. § 68.25).

4. The documents sought by the United States are critical to the investigation of Mr. Penaloza's charge against The Taiwan Restaurant. Without such evidence, the Special Counsel is unable to make a proper determination of whether there is reasonable cause to believe that an unfair employment practice has been committed.

5. Specifically, Mr. Penaloza, a permanent resident alien, filed a charge alleging national origin discrimination claiming that the Chinese workers receive different (better) treatment than Hispanics.

Eventually Mr. Penaloza was discharged by The Taiwan Restaurant, he claims because of his national origin. The Office of Special Counsel has requested certain documentation from The Taiwan Restaurant which is necessary for the Special Counsel to make a proper determination of whether an unfair employment practice has been committed by The Taiwan Restaurant.

6. The Office of Special Counsel needs a broad range of documents and information to investigate the issues raised by Mr. Penaloza's charge. It is within the discretion of the investigating agency to determine what evidence it needs to carry out its investigatory function. Without the documents sought, the Office of Special Counsel will not be able to conclusively determine whether the Taiwan Restaurant discriminated against Mr. Penaloza because of his national origin and whether an unfair employment practice exists.

7. Since the Office of Special Counsel cannot properly complete its investigatory duties without the subpoenaed documents, authorization to seek enforcement of this administrative subpoena should be granted.

Therefore, the Office of Special Counsel applies for an Order authorizing it to petition for enforcement of these administrative subpoenas before the United States District Court for the Northern District of Texas and the assessment of costs against The Taiwan Restaurant.

Dated: June 2, 1992

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WILLIAM HO. GONZALEZ  
Special Counsel

By: \_\_\_\_\_  
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Office of Special Counsel  
For Immigration Related  
Unfair Employment Practices

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ORDER

THIS MATTER having come before the Administrative Law Judge on a Petition for Authorization to Seek Enforcement of Administrative Subpoena filed by the Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC"), and the Administrative Law Judge having considered OSC's request, and being fully advised of its basis,

**IT IS HEREBY ORDERED** that OSC is authorized to seek enforcement of the Subpoena Duces Tecum, issued on May 2, 1992, in the United States District Court for the Northern District of Texas.

8 U.S.C. § 1324b(f)(2); 56 Fed. Reg. 50049, 50053 (to be codified at 28 C.F.R. § 68.25(d)).

DATE: June 3, 1992

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MARVIN H. MORSE  
Administrative Law Judge