

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

In Re Investigation of St. Christopher-Ottilie

File Nos. 88-2-01-0016A0, 88-2-01-0016B0, 88-2-01-0016C0,
88-2-01-0016D0
(Case Nos. 88S0016A0,88S0016B0,88S0016C0,88S0016D0)

ORDER

On March 16, 1988, I issued four subpoenas duces tecum upon request of the Office of Special Counsel (OSC) in the investigation styled In Re Investigation of St. Christopher-Ottilie. The first subpoena was directed to Patricia Dooley, Quality Assurance Director, St. Christopher-Ottilie, the second to the Custodian of Documents, St. Christopher-Ottilie, the third, to Rosemary Slepatis, Support Services Director, St. Christopher-Ottilie, and the fourth to Gary Kipling, Executive Director, St. Christopher-Ottilie. All four subpoenas were addressed to the attention of Stuart Kirshenbaum, Attorney, at One Hundred and Fifteen South Corona Avenue, Valley Stream, New York 11580.

By substantially similar petitions to quash dated March 21, 1988, St. Christopher-Ottilie, by counsel, moves to quash on the grounds that the OSC investigation which provides the premise for these investigatory subpoenas is time barred as not having been commenced within the 180 day period from the date of the alleged discriminatory act as provided by 8 U.S.C. 1324b(d)(3).

By memorandum of points and authorities dated April 5, 1988, OSC has replied to the several allegations of the petitions to quash. This is a matter of first impression under the Immigration Reform and Control Act. Nevertheless, upon review of the authorities cited by OSC for guidance, the question of authority to proceed by subpoena in aid of investigation appears to favor OSC. This tentative conclusion is consistent also with the Special Counsel's authority under 8 U.S.C. 1324b(d)(1) to conduct an investigation on his own initiative whether or not a charge has been filed.

St. Christopher-Ottillie argues, inter alia, that one subpoena is defective because it contained a patently erroneous return date. While as tendered and regrettably, as issued, the subpoena addressed to the Custodian of Documents did specify a return date earlier than the date of issuance, that error, given the circumstances, cannot have been prejudicial to St. Christopher-Ottillie. If, as the result of this subpoena practice, OSC is authorized to obtain subpoenas, OSC will be expected to tender revised subpoenas with new return dates.

By this Order, St. Christopher-Ottillie, is provided an: opportunity to file a responsive pleading addressed to OSC's memorandum. Such a response will be timely if received by me by Friday, April 22, 1988. The invitation to file a response to OSC's April 5, 1988, memorandum answers St. Christopher-Ottillie's inquiry (in its letter transmitting the petitions) as to the ``manner by which the Petitions To Quash are to be considered.''

SO ORDERED.

Dated this 11th day of April, 1988.

MARVIN H. MORSE
Administrative Law Judge