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

March 30, 1992

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. 1324b Proceeding
	)	OCAHO Case No. 91200152
LOUIS PADNOS, IRON & METAL CO. Respondent.	)	

ERRATA NOTICE

The Order Granting Complainant's Motion for Summary Decision and Denying Respondent's Motion for Summary Decision dated March 27, 1992, is hereby amended in the following respects:

1. On page 1, line 3 of the caption wording the statutory designation "8 U.S.C. 1324a" is stricken and the designation "8 U.S.C. 1324b" is substituted therefore.

2. On page 1, paragraph 1, beginning on line 1 therein the wording "Immigration and Naturalization Service (complainant)" is stricken and the wording "Office of Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice (OSC/ complainant)," is substituted therefore.

3. On page 10, paragraph 1, at the end of line 2, the word "the" is added, following the word "of".

JOSEPH E. MCGUIRE
Administrative Law Judge

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March 27, 1992

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. 1324b Proceeding
	)	OCAHO Case No. 91200152
LOUIS PADNOS IRON & METAL CO., Respondent.	)	

ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION AND DENYING RESPONDENT'S MOTION FOR SUMMARY DECISION

On September 5, 1991, the Office of Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice (OSC/complainant), initiated this proceeding by filing a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). That Complaint alleged that Louis Padnos Iron & Metal Co. (respondent) violated the provisions of 8 U.S.C. §1324b(a)(6) by specifically requesting an INS-issued card from Mr. Jorge Arriola-Gomez (Arriola-Gomez) for 8 U.S.C. §1324a(b) purposes.

More specifically, complainant alleged that when Arriola-Gomez was hired by the respondent on October 31, 1988, he presented an I-688 Temporary Resident Card, with an expiration date of January 1, 1991. On January 2, 1991, respondent learned that Arriola- Gomez did not possess an INS-issued extension of his Temporary Resident Card. Resultingly, he was discharged pending his receipt of an INS-issued document demonstrating his work authorization, despite the fact that he did present to respondent a genuine state-issued identification card, as well as a genuine Social Security card.

Complainant alleges that respondent's request of Arriola- Gomez that he provide an INS-issued card was made for the purposes of

satisfying the requirements of 8 U.S.C. 1324a(b), and that that request for an INS-issued card was in effect a request for more or different documentation than is necessary for Form I-9 purposes, a practice proscribed by the 1990 amendments to IRCA, specifically those set forth at 8 U.S.C. §1324b(a)(6).

On October 9, 1991, respondent filed its Answer to the Complaint. In that responsive pleading, which included six affirmative defenses, respondent admitted having requested an INS-issued document from Arriola-Gomez but denied that that request had been made for 8 U.S.C. §1324a(b) purposes, that such request was in violation of 8 U.S.C. §1324b(a)(6), or that it constituted an unfair immigration- related employment practice. Respondent also admitted that Arriola-Gomez possessed an identification card and a Social Security card on January 2, 1991, but denied that those documents were adequate proof of his eligibility to work in the United States. Respondent also admitted that it had requested that Arriola-Gomez provide evidence of the extension of his temporary work eligibility.

As noted earlier, respondent's Answer also contained six affirmative defenses. Initially, respondent asserted that the Complaint fails to state a claim upon which relief may be granted. The second defense avers that Arriola-Gomez is not a protected individual within the meaning of 8 U.S.C. §1324b(a)(3). Thirdly, respondent states that if Arriola-Gomez is deemed to be a protected individual within the meaning of the statute, respondent is then exempt under 8 U.S.C. §1324b(a)(2)(c). Respondent's fourth affirmative defense is that its discharge of Arriola-Gomez was lawful and required pursuant to the provisions of 8 U.S.C. §1324a(a)(2). In its fifth defense, respondent asserts that its actions were performed in good faith and in reliance on the U.S. Department of Justice's Handbook for Employers. In its final affirmative defense, respondent states that it reserves the right to plead additional affirmative defenses upon completion of discovery.

On December 12, 1991, complainant filed a Motion for Summary Decision, along with a supporting memorandum, in which complainant requested that, pursuant to the provisions of 28 C.F.R. §68.38a, summary decision be entered in its favor.

On January 24, 1992, respondent filed an opposing Motion for Summary Decision, along with a Brief in Opposition to the United States' Motion for Summary Decision, requesting therein that a summary decision be entered in its favor.

On February 7, 1992, complainant responded to respondent's Motion for Summary Decision, renewing its contention that complainant, rather than respondent, is entitled to a summary decision.

The rules of practice and procedure for administrative hearings before Administrative Law Judges in cases involving allegations of unlawful employment of aliens and unfair immigration-related employment practices provide for the entry of a summary decision if the pleadings, affidavits, material obtained by discovery or otherwise, show that there is no genuine issue as to any material fact. 28 C.F.R. §68.38(c). As to materiality, only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

One of the principal purposes of the summary judgment rule is that of isolating and disposing of factually unsupported claims or defenses. However, a party seeking summary judgment always bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrates the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317(1986).

Mindful of those parameters, an examination of the argumentation in the parties' cross motions for summary decision is in order.

Complainant's Motion for Summary Decision listed those facts upon which the parties agree:

(1) That the respondent is an entity which employed more than three persons on January 2, 1991.

(2) That respondent operated as a corporation under the laws of the State of Michigan on January 2, 1991.

(3) That the events alleged in the complaint occurred at or near the offices of respondent in Michigan.

(4) That on or about October 31, 1988, respondent hired Mr. ArriolaGomez at its Michigan facility.

(5) That as part of respondent's hiring process, Arriola-Gomez was required to complete an INS Form I-9 for the purpose of establishing

his identity, as well as verifying his employment eligibility to work in the United States.

(6) That in order to satisfy the Form I-9 identity and work authorization proof, Arriola-Gomez presented an I-688 Temporary Resident Card, which contained an expiration date of January 1, 1991.

(7) That on January 2, 1991, Arriola-Gomez began work at respondent's firm and upon investigation, respondent discovered that he did not possess an INS-issued extension of his Temporary Resident Card.

(8) That respondent requested from Arriola-Gomez an INS- issued card.

(9) That on January 2, 1991, respondent requested that Arriola-Gomez provide evidence of "an extension" of his authorization to work in the United States.

(10) That on January 2, 1991, Arriola-Gomez presented a state- issued identification card, together with a Social Security card.

(11) That on January 4, 1991, Arriola-Gomez presented to respondent a notice of his then upcoming INS appointment in Detroit, Michigan on February 14, 1991, for the purpose of applying for proof of his permanent residence status.

Complainant contends that these facts, as agreed upon, establish a violation of 8 U.S.C. §1324b(a)(6), per se, and therefore its entitlement to a summary decision.

Complainant further maintains that no genuine issue of material fact exists as to the facts surrounding Arriola-Gomez's citizenship status, even though the parties dispute the legal significance of those facts. For example, complainant contends that at the time of Arriola-Gomez's discharge, he was a permanent resident alien, and thus, permanently work authorized since work authorization is an implied characteristic of an individual's citizenship status. To demonstrate that fact, complainant sets forth the legal elements which establish a violation of 8 U.S.C. §1324b(a)(6):

(1) Respondent is an entity which made a request for employment eligibility verification.

(2) Respondent's request was made for the purpose of satisfying the requirements of §1324a(b).

(3) Respondent's request for such document is, per se, a request pursuant to §1324a(b).

(4) Respondent's request was for more or different documents than are required under §1324a(b), and that request constitutes document abuse.

Complainant then addressed respondent's affirmative defenses in an attempt to demonstrate the absence of any issues of material fact, and began by noting that none of the six affirmative defenses equate to a legal defense to an unfair document practice, and went on to explain why none of those defenses are valid.

Respondent filed its cross Motion for Summary Decision, accompanied by a Brief in Opposition to Complainant's Motion for Summary Decision and in Support of Respondent's Motion for Summary Decision. In the brief, respondent urges that the standard to be applied is whether any genuine issue of material fact exists, and if not, whether either party is entitled to a summary decision as a matter of law. Respondent, while conceding that complainant is correct in stating that no genuine issue of material fact exists, explains that these facts are insufficient to support complainant's Motion for Summary Decision. However, respondent has failed to provide any statutory, regulatory or decisional bases in support of that contention.

Respondent accepts the summary of the facts as outlined in complainant's motion, but maintains that it did not commit an unfair document practice in violation of 8 U.S.C. §1324b(a)(6) by requesting that Arriola-Gomez provide it with evidence of an extension of his employment eligibility. That because its request was not for more or different documents than are required under §1324a(b). Rather, respondent argues, its request was only for documents which were necessary for respondent to satisfy its obligations in re-establishing Arriola-Gomez's work authorization.

Respondent also argues that its request for documentation was made in good faith and in reliance on an official Departmental publication, the Handbook for Employers, as well as upon a conversation with a Border Patrol agent, and therefore, the complainant should be estopped from using respondent's actions directly resulting from that reliance as grounds upon which to find respondent liable for an unfair employment practice.

In reply, complainant maintains that based upon those acknowledged facts complainant, rather than respondent, is entitled to

summary decision. Complainant also addressed the one newly-asserted affirmative defense which has been subsequently asserted by respondent, estoppel. In addressing that defense, complainant argues that respondent fails to set forth sufficient facts to support an estoppel against the government, mainly because respondent has failed to set forth any reasonable reliance upon the government in discharging Arriola-Gomez, and because neither the Border Patrol agent, the alleged contents of the conversation, nor the alleged date of the conversation has been identified by the respondent.

While the parties are in agreement concerning the facts surrounding A-rriola-Gomez's discharge, respondent's Motion for Summary Decision disputes one legal issue concerning its liability namely, whether its request for an INS-issued document was more or different than that which is required by 8 U.S.C. §1324a(b). Respondent maintains that its request did not violate the statute, and that respondent was required to be shown an INS-issued document for reverification purposes.

Complainant, however, argues that respondent's interpretation of the reverifica-tion regulation ignores the language of the regulation as well as the dictates of reasonableness. Complainant advances this argument by pointing out that the regulation explains that the verification procedures shall be applied in exactly the same manner as the initial verification procedures. As a result, complainant explains that Arriola-Gomez could have presented any combination of legally acceptable documents on January 2, 1991, as proof of his identity and/or work authorization in order to meet the employment reverification requirements.

Complainant points out that respondent justifies its actions in dis-charging Arriola-Gomez upon respondent's ill-advised interpretation of a question and answer contained in the Handbook for Employers, rather than upon a reasonable interpretation of IRCA, its implementing regulations, and the forms which were provided to all employers.

Neither the regulations nor the pertinent wording in the Handbook for Employers are ambiguous concerning reverification. Both sources provide that an individual can present an employment eligibility document or a new grant of work authorization. 8 C.F.R. §274a.2(b)(vii).

In its Motion for Summary Decision, respondent maintains that even in the event that it should be found to have committed an unfair docu-ment practice, it should not be found liable for those actions owing to

the presence of estoppel elements. Respondent contends that it relied upon the government in taking the action which was taken and, therefore, the government cannot prosecute respondent for having done so. More specifically, respondent claims that it discharged Arriola-Gomez based upon the information contained in the Handbook for Employers, and as a result of its contact with an INS Border Patrol agent who assisted respondent in an interpretation of that publication.

In a proceeding involving more readily recognizable asserted elements of reliance concerning analogous governmental actions, the Supreme Court decided that issue adversely to respondent's position. Heckler v. Community Health Services, 467 U.S. 51(1984). In that case, the defendant received and spent government grant funds based that agency's acknowledged misinterpretation of CETA regulations, in addition to an oral representation by an agent of the government. The government commenced litigation in order to recover the funds and defendant asserted that the government should be estopped from doing so. The Supreme Court held that the actual source of the defendant's reliance was the oral representations rather than the complex written regulations, and noted that the defendant's action in consulting someone demonstrated the need for it to have obtained an interpretation of the regulations.

The precedential character of the Heckler analysis has been acknowledged previously in the course of evaluating an employer's attempt to avoid liability under IRCA by claiming that an INS agent had orally advised that attaching photocopies of documents without completing the INS Form I-9 would satisfy employment verification compliance. The Administrative Law Judge held that an oral representation by an INS agent does not establish an estoppel nor does it relieve the employer of liability. United States v. Manos & Associates, d/b/a The Bread Basket, 1 OCAHO 130 (February 8, 1989).

And in United States v. San Ysidro Ranch, 1 OCAHO 183 (May 30, 1990) the respondent consistently raised the affirmative defense that Border Patrol agents did not follow the dictates of the Field Manual in the course of conducting their inspection. The Administrative Law Judge ruled that such internal guidelines alone are not to be granted the efficacy of a statute or regulation, and thus do not carry the weight of law. In that posture, those internal guidelines do not confer substantive or procedural rights upon which to base an affirmative defense of estoppel.

A similar argument was advanced in United States v. Irvin Industries, 1 OCAHO 139 (March 9, 1990). The respondent therein argued

that it should not be fined because it continued to employ several individuals but had done so only after it had received specific instructions from an INS agent that it was permissible to do so. The Administrative Law Judge rejected that defense, citing authorities which hold that it is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority. Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093, 1100 (9th Cir. 1981), cert. denied, 455 U.S. 948 (1982). See also Cheers v. Secretary of Health, Education and Welfare, 610 F.2d 463, 469 (7th Cir. 1979), cert. denied, 449 U.S. 898 (1980); Mukherjeev v. INS, 793 F.2d 1006 (9th Cir. 1986); Wagner v. Director, Federal Emergency Management Agency, 847 F.2d 515 (9th Cir. 1988); United States v. Killough, 848 F.2d 1523 (11th Cir. 1988).

In its Brief in Opposition to the Complainant's Motion for Summary Decision, respondent contends that even if it is proven that it did violate 8 U.S.C. §-1324b(a)(6), it should be relieved of legal responsibility on the basis of its affirmative defenses. Respondent bases this contention upon the fact that that section of IRCA is silent regarding the continued employment of an individual, and the steps necessary for reverification of employment eligibility. As a result, respondent relied on the question and answer section in the Handbook for Employers and respondent contends that a fair reading of that section instructs an employer that a document which is either an extension of employment eligibility or a new grant of work authorization is required to update the Form I-9. As a result of its uncertainty, respondent explains that it also telephoned a local Border Patrol agent. Respondent, while conceding that a written inquiry, which would have provided it with a written reply, would have been more helpful for our purposes, insists that it reasonably relied upon its interpretation of the statute and the regulations, as well as that of the telephonic opinion of the Border Patrol agent. For these reasons, respondent argues that the government should be estopped from prosecuting.

A response to that argumentation is available in the form of the ruling in United States v. Marcel Watch Corporation, 1 OCAHO 143 (March 22, 1990), to the effect that claims of compliance with the statute, whether or not in good faith, do not legitimize an otherwise unfair immigration-related employment practice. In that proceeding, the Administrative Law Judge noted that cavalier rejection of proffered documents and insistence on unnecessary ones, whether or not in a good faith effort to comply with the statute, is no justification. In its defense, Marcel Watch asserted that its conduct had been caused

by the complexity of the provisions of IRCA. It unsuccessfully argued that by trying to comply with the law it violated IRCA because of its failure to understand the requirements of the verification process.

Earlier, the Administrative Law Judge in United States v. LASA Marketing Firms, 1 OCAHO 141 (March 14, 1990) also expressed a similar view on this subject, stating that "I find that respondent failed to exercise reasonable care to acquire some minimally functional knowledge of the legal significance of immigration-related employment documents, and to conduct his operations in a fair and consistent manner."

Moreover, in Jones v. DeWitt Nursing Home, 1 OCAHO 189 (June 29, 1990), the Administrative Law Judge held that rejection of proffered, qualifying documents and insistence on unnecessary ones, whether or not in a good faith effort to comply with the statute, is no justification for conduct which is otherwise unlawful.

As noted previously, the party seeking summary judgment bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.

The rule applicable to summary judgments then requires that the nonmoving party go beyond the pleadings and by its own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate facts showing that there is in fact a genuine issue for trial and further provides that the party opposing the motion for summary judgment bears the burden of responding only after the moving party has met its burden of coming forward with proof of the absence of any genuine issues of material fact. Celotex v. Catrett, supra.

In reviewing the argumentation advanced by the parties in support of their cross motions, and mindful that respondent concedes that it agrees with those facts which have established the facts of violation and, therefore, is resting its position solely upon the asserted affirmative defenses of estoppel and good faith, I find that complainant has satisfactorily demonstrated the absence of a genuine issue of material fact in connection with his allegation of a document abuse practice violative of the provisions of 8 U.S.C. §1324a(a)(6).

It is further found that respondent, in the course of opposing com-plainant's Motion for Summary Decision as well as in advancing its

cross motion for parallel relief, has failed to designate facts which demonstrate that there is in fact a genuine issue for trial.

Accordingly, complainant's Motion for Summary Decision is hereby granted and respondent's Motion for Summary Decision is hereby denied.

Given that fact, I further find for complainant on the facts of violation namely, that respondent's request for the purposes of satisfying the requirements of 8 U.S.C. §1324a(b), that Arriola-Gomez provide an INS-issued card evidencing his authorization to work in the United States was in fact a request for more or different documentation than is required by that section of IRCA.

It is also further found that such request constituted an unfair immi-g ration-related employment practice violative of the provisions of 8 U.S.C. §1324b(a)(6).

We move now to a discussion of the appropriate relief to be ordered.

In filing this Complaint, complainant requested that the respondent be ordered:

1. To cease and desist from the discriminatory practices described in this Complaint;

2. To comply with the requirements of 8 U.S.C. §1324a(b) with respect to individuals hired for a period of three years from the date of this order;

3. To retain for a period of three years the names and addresses of each individual who applies, in person or in writing;

4. To pay Arriola-Gomez back pay from January 2, 1991 to the date of his reinstatement along with interest to the time of judgment;

5. To pay a civil penalty of $1,000; and

6. Order such additional relief as justice may require, including complainant's costs in bringing this action.

More recently, in the course of filing its Motion for Summary Decision, complainant requested that upon a finding of an unfair immigration-related employment practice, and in accordance with the

provisions of the applicable procedural regulation, 28 C.F.R. §68.52(c)(2), respondent be ordered:

1. To cease and desist from any unfair employment practices, 8 U.S.C. §1324b(g)(2)(A);

2. To comply with the requirements of Section 1324a(b) for three years, 8 U.S.C. §1324b(g)(2)(B)(i);

3. To pay Arriola-Gomez a total of $4,646.40, plus interest to the date of judgment, (respondent rehired Arriola-Gomez effective May 6, 1991), 8 U.S.C. §1324b(g)(2)(B)(iii);

4. To pay a civil penalty of $1,000 to the United States Treasury, 8 U.S.C. §1324b(g)(2)(B)(iv)(IV);

5. To provide notice to each individual that respondent seeks to complete an INS Form I-9 of that individual's rights under the law, 8 U.S.C. §1324b(g)(2)(v); and

6. To educate all personnel involved in hiring and complying with Section 1324a(b), 8 U.S.C. §1324b(G)(2)(B)(vi).

Concerning complainant's request for a cease and desist order, under the provisions of 8 U.S.C. §1324b(g)(2)(A) an Administrative Law Judge, upon finding a violation of §1324b, as here, is required to issue and cause to be served upon such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice. In view of that fact, the requested cease and desist order is in order.

Complainant's second request for relief, that which involves the issuance of an order requiring that respondent comply with the requirements of 8 U.S.C. §1324a(b) with respect to individuals hired for a period of three years from the date of this order, is also in order.

The next request of complainant, that of the issuance of an order requiring that respondent retain the name and address of each individual who applies, in person or in writing, for hiring for an existing position for a period of three years, is also found to be justified.

The fourth composite request for relief made by complainant takes the form of an order requiring respondent to pay Arriola-Gomez back pay commencing on January 2, 1991 and continuing uninterruptedly

until the date of his reinstatement, May 6, 1991, specifically in the amount of $4,646.00, plus interest to the time of judgment.

Complainant has requested that Arriola-Gomez be paid interest at the rate of eleven percent (11%), the short-term Internal Revenue Service rate for the underpayment of taxes, from January 2, 1991 to the date of this order.

Respondent opposes that request, urging that back pay is not appro-priate in those instances, as here, in which the aggrieved party has failed to mitigate damages. LASA Marketing, 1 OCAHO 141 (March 14, 1990). But respondent does not assume that position free of coun-tervailing decisional authority, since the Supreme Court has impressed a public policy presumption in favor of granting compensatory back pay awards to victims of prohibited discrimination, and further noted that the discretion to deny back pay awards is extremely limited. Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).

In reply to that contention, complainant maintains that these facts disclose that Arriola-Gomez has properly mitigated his damages.

In determining whether Arriola-Gomez has mitigated his damages, the burden of proof is on the respondent to show that he did not do so. LASA Marketing, supra. Not only has respondent failed to address or meet that burden, it has merely stated that Arriola-Gomez should have contacted the INS and requested its assistance. More specifically, respondent argues that Arriola-Gomez could have contacted the INS in an effort to discern whether respondent was correct in its understanding of the law. Finally, respondent argues that the undersigned cannot grant the back pay award requested by complainant because it is still unclear what steps, if any, Arriola-Gomez took to mitigate his damages by looking for work with employers other than respondent. That despite the fact that Arriola-Gomez has provided an affidavit in which he has sworn that he applied for employment at seven entities during the relevant time period.

Respondent's arguments on this issue are not persuasive. IRCA was enacted in order to to emphasize that employers are not to erect barriers to the employment of authorized aliens. Rather than accept these responsibilities, the respondent has put forth the argument that Arriola-Gomez should have contacted the INS to discern whether respondent was correct in its understanding of the IRCA provisions. One wonders why it would have been Arriola-Gomez's responsibility to contact the INS to discern whether respondent was correct in its understanding of the law. The Conference Report accompanying the

Immigration Act of 1990 makes it clear that employers are subject to fines for engaging in such document abuse. Under §535 of the Confer-ence Report, an employer that does not accept a document that is among the list of documents that can be used to establish either identity or work authorization, or both, may be subjected to significant administrative fines. H. R. Conf. Rep. No. 955, 101st Cong., 2d Sess. 133-134 (1990). That report contains no mention that it is the employee's responsibility to contact the INS to discern whether an employer is correct in the latter's understanding of the law.

Accordingly, I find that Arriola-Gomez is entitled to back pay in the amount of $4,646 plus interest at an appropriate rate from January 2, 1991 until the date of issuance of this order, or for a period of some 15 months, or 1-1/4 years. The 11% rate suggested by complainant clearly exceeds the applicable money rates in money market funds and accounts, as well as the U.S. Treasury security rates, for that period.

An interest rate of seven-percent (7%) is more fair and realistic and is therefore being utilized. Resultingly, the back pay award of $4,646 plus 7% interest for a 15-month period, from January 2, 1991, to the date of this order, results in an interest sum of $406.53, or a total back pay award of $5,052.53.

Complainant's fifth composite request for relief involves an order requiring that respondent pay a civil penalty of $1,000 the maximum civil penalty sum authorized by the provisions of 8 U.S.C. §1324b(g)(2)(B)(iv)(I) for each individual discriminated against.

Upon reviewing all relevant facts addressed tho this issue, I find that a $500 civil penalty is in order, rather than $1,000, as complainant proposes. That because these facts do not clearly demonstrate a pattern of conduct on respon-dent's part which would justify the impo-sition of the maximum civil penalty allowable for the first documented infraction of this character.

I am satisfied that respondent's conduct herein resulted from its unfamiliarity with the IRCA provisions at issue rather than having been prompted by a firm policy or attitude based upon less proper motives. In the unlikely event that respondent is again cited for an infraction of this nature, its attention is invited to the provisions of 8 U.S.C. §1324b(g)(2)(B)(iv)(II), which provide that a civil penalty of not less than $2,000 and not more than $5,000 may be assessed for each such violation against a person or entity such as respondent, against whom or which a single order of this type, as here, has been issued.

Complainant's next request for relief concerns that of requiring respondent to post notices to its employees concerning their rights under 8 U.S.C. §1324b, as well as employers' obligations under 8 U.S.C. §1324a. That request is in order and is being granted.

The next composite request advanced by complainant is that of ordering respondent to educate all personnel involved in hiring and complying with this section or 8 U.S.C. §1324a about the requirements of both sections. Similarly, I find that request to be proper.

Complainant's final request for relief involves the issuance of an order granting such additional relief as justice may require, including com-plainant's costs herein, although no such costs have been pleaded or demanded.

In accordance with the provisions of 8 U.S.C. §1324b(g) upon a finding that respondent has violated the provisions of 8 U.S.C. §1324b(a)(6) in the manner alleged in the Complaint, respondent is hereby ordered:

1. To cease and desist from the discriminatory practices set forth in the Complaint;

2. To comply with the requirements of 8 U.S.C. §1324a(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

3. To retain for the period referred to in the preceding paragraph, 2., and only for purposes consistent with section 8 U.S.C. §1324a(b)(5), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

4. To post notices to employees about their rights under 8 U.S.C. §1324b and employers' obligations under 8 U.S.C. §1324a;

5. To educate all personnel involved in hiring and complying with 8 U.S.C. §1324b or 8 U.S.C. §1324a about the requirements of 8 U.S.C. §1324b or 8 U.S.C. §1324a.

6. To pay Arriola-Gomez back pay from January 2, 1991, to the date of his reinstatement, May 6, 1991, in the sum of $4,646, plus interest at the annual rate of seven-percent (7%), or a total interest sum of $406.53 for the 15-month period beginning on

January 2, 1991, and ending upon the date of the issuance of this order, or a total back pay and interest sum of $5,052.53; and

7. To pay the sum of $500 as the appropriate civil penalty assess ment in connection with this 8 U.S.C. §1324b(a)(6) violation.

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. §1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. §1324b(i), any person aggrieved by such Order seeks a timely review of that 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, and does so no later than 60 days after the entry of such Order.