

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

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324a PROCEEDING
) OCAHO CASE No. 90100326
NOEL PLASTERING & STUCCO,)
INC.,)
Respondent.)
_____)

ORDER GRANTING IN PART AND DENYING
IN PART COMPLAINANT'S MOTION FOR SUMMARY DECISION
AND GRANTING COMPLAINANT'S MOTION TO AMEND
COMPLAINT

On November 5, 1990, Complainant United States of America, through its agency Immigration and Naturalization Service (INS), filed the above captioned Complaint against Respondent Noel Plastering & Stucco, Incorporated. The Complaint alleged Respondent has violated the Immigration Reform and Control Act of 1986 (IRCA) in eight counts. Thereafter, on November 7, 1990, the Executive Office for Immigration Review, Office for Chief Administrative Hearing Officer, issued a Notice of Hearing on Complaint in this case.

The Complaint's first count alleged Respondent continued to employ fourteen aliens after learning they were not authorized for employment in the United States in violation of IRCA. Count two alleged Respondent violated IRCA's paperwork requirements when it failed to ensure that thirteen employees have properly completed section one of their employment eligibility verification forms (I-9 forms). Count three alleged Respondent's failure to properly complete section two of the I-9s for another sixty one employees. Count four alleged improper completions of both section one and section two of sixteen I-9s by the Respondent. Count five alleged Respondent failed to produce for INS

inspection one hundred and ninety five of its employees' I-9 forms.¹ Count six alleged Respondent failed to timely present another five I-9 forms for INS inspection. Count seven alleged Respondent failed to update the six of its employees' employment eligibility. Finally, count eight alleged Respondent had failed to update another three I-9s in addition to failing to ensure the proper completion of section one of the three forms. Complainant sought a civil monetary fine in the amount of one hundred forty three thousand and six hundred dollars from the Respondent for the alleged violations.

On December 13, 1990, Respondent filed its answer to the Complaint. In addition to denying the allegations made by the INS, Respondent also advanced seven affirmative liability defenses through its answer. By my order dated February 12, 1991, six of Respondent's claimed affirmative defenses were stricken from the answer. Respondent's only remaining liability defense alleges that it could not present a number of its employees' I-9 forms for inspection by the INS since they have been destroyed by a fire which occurred in Southern California.

On June 25, 1991, Complainant filed a motion for partial summary decision. In this motion, Complainant seeks summary adjudication with respect to all liability issues contained in counts one, two, three, four, six, seven and eight of the Complaint. Additionally, Complainant also seeks summary adjudication with respect to one hundred sixty eight instances of the alleged IRCA paperwork violations contained in count five of the Complaint.

A Response to Complainant's Motion for Partial Summary Decision was filed by Respondent on July 31, 1991. This Response disputes the propriety of a partial summary decision only as to count one's "continuing-employment" issue.

On August 13, 1991, Complainant filed a Supplementary Points and Authorities in Support of Complainant's Motion for Summary Decision. In this document, the INS requests summary adjudication with respect to additional issues in this case. Complainant argues that appropriate civil money penalties should be summarily imposed in those instances where Respondent's IRCA liability have been established by the evidence presented for purposes of this motion.

¹ Although count five listed 197 separate allegations, number 177 was left blank and another allegation is repetitive. Hence, in reality, only 195 I-9s are the subject of this count.

Finally, on September 20, 1991, Complainant filed a motion to amend Complaint. Through this motion. Complainant seeks to correct the name of one Noel employee alleged in the Complaint, correct the proposed fine amounts, reduce one allegation of violation, delete one redundant allegation and withdraw twenty six additional allegations pursuant to the holding of New Peking, Inc. d/b/a New Peking Restaurant, OCAHO Case No. 90100301, Modification by Chief Administrative Hearing Officer (June 18, 1991). In IRCA cases, amendments to the pleadings are liberally allowed pursuant to 28 C.F.R. §68.8 (1991). Thus, Complainant's present motion to amend the Complaint is granted in its entirety.

LEGAL STANDARDS APPLICABLE IN SUMMARY DECISION
PROCEEDING

The Rules of Practice and Procedure promulgated by the Department of Justice for IRCA proceedings allow for the entry of summary decisions "...if the pleadings, affidavits, materials obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. §68.36(c) (1990). A material fact has been defined by the United States Supreme Court to be one which can potentially influence the outcome of a case. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986).

In summary adjudication proceedings, the party which is seeking summary relief shoulders the initial burden to establish the lack of any genuine issues of material fact. Richards v. Neilsen Freight Lines, 810 F.2d 898, 901 (9th Cir. 1987). This burden is a heavy one since all evidentiary ambiguities and reasonable factual inferences must be resolved in favor of the nonmoving party. See Harbor Ins. Co. v. Trammell Cross Co., Inc., 854 F.2d 94 (5th Cir. 1988), cert. denied 109 S.Ct. 1315, 103 L.Ed.2d 584. Only where the moving party has satisfied its initial burden must the nonmoving party then come forward with significant probative evidence which lends to support its claims or defense. See Richards v. Neilsen Freight Lines, supra.

The present Motion for Partial Summary Decision will be evaluated in accordance with the aforementioned legal standards.

COMPLAINANT'S EVIDENCE AND APPLICABLE LAW

COUNT ONE

In this count, Complainant alleges Respondent has violated IRCA when it continued to employ fourteen workers after learning they were unauthorized for employment in the United States.

8 U.S.C. §1324a(a)(2) prohibits an employer from continuing the employment of alien workers in the United States if it subsequently discovers that the workers are not authorized for such employment.

A "continuing-employment" violation can be established whenever an employer fails to reverify its workers' employment eligibility after receiving specific and detailed information that the workers may in fact be ineligible to work in the United States. Under such circumstances, the employer is held to have constructive knowledge of the employees' unauthorized status. Its failure to terminate such employees thus constitutes unlawful continuing employment. New El Rey Sausage Co., Inc. v. I.N.S., 925 F.2d 1153, 1158 (9th Cir. 1991), see Mester Mfg. Co. v. I.N.S., 879 F.2d 561, 566-567 (9th Cir. 1989).

For purposes of the present motion for partial summary decision, Complainant argues that Respondent possessed constructive knowledge regarding the unauthorized status of the fourteen employees alleged in count one. Hence, the burden rests with the Complainant to establish that there exists no genuine issues of material fact with respect to all requisite violation elements.

From the statute and case law, the elements of a "continuing-employment" violation premised upon the constructive knowledge theory are: 1) Respondent is an individual or entity, that; 2) hired an individual for employment in the United States after 1986, and; 3) that it acquired a duty to reverify the individual's employment eligibility after receiving specific and detailed information regarding that individual's possible unauthorized status; 4) that Respondent continued to employ that individual without taking appropriate steps to reverify his or her employment eligibility, and; 5) that the individual was in fact an unauthorized alien. 8 U.S.C. §1324a(a)(2); see Mester, supra.

Respondent did not dispute the first two violation elements in its Response to Complainant's Motion for Partial Summary Decision.

Instead, Respondent contends the INS has failed to establish the third violation element. Respondent argues that it retained no duty to reverify the fourteen relevant employees' work eligibility because INS had failed to provide it with the "required prima facie notice." A fair reading of Respondent's contention reveals that it is, in effect, asserting that INS must provide it with irrefutable evidence of the employees' 'illegal' status before it can acquire a duty to reverify their employment eligibility. Respondent cites New El Rey as authority for its contention.

However, Respondent's argument is without merit.

The constructive knowledge standard applicable in IRCA proceedings is modeled after the criminal law concept of "imputed-knowledge" which holds that a deliberate failure to investigate suspicious- circumstances imputes knowledge. See New El Rey, supra at 1157-8. This standard implies that an employer acquires an affirmative duty to reinvestigate its employees' work eligibility whenever it becomes aware of specific information which would arouse suspicion regarding its employees' work eligibility. An employer's failure to reverify its workers' employment eligibility then constitutes violation of its IRCA duty. In these situations, an employer cannot avoid IRCA liability by claiming INS should have offered irrefutable proof of its workers' unauthorized status; this is an untenable position since one central purpose of IRCA is to shift the burden of employment eligibility verification onto employers' shoulders. See Mester, supra at 566-7.

Additionally, contrary to Respondent's assertions, New El Rey did not require the INS to provide an employer with "absolute" evidence of its workers' unauthorized status as a prerequisite to finding the employer possessed a reverification duty. Rather, a reverification duty attaches to an employer so long as the INS has provided it with specific and detailed information which would arouse suspicion regarding its workers' employment eligibility. New El Rey, supra at 1158. The crucial inquiry in constructive-notice cases is whether Respondent has deliberately failed to investigate suspicious circumstances brought to its notice by the INS.

In New El Rey, the INS informed the employer which of its employees were considered to be unauthorized and why the INS reached that conclusion. Such information was adequate to arouse the employer's suspicion; hence the court held that a duty of reverification attached to that employer. The information which the INS provided

to the employer in New El Rey is the same type which had been provided to Respondent in the present case.

Here, INS informed the Respondent in writing that "You are hereby put on official notice that these employees (their names were separately listed) may be unauthorized to work in the United States." Further, the INS specifically informed Respondent that the reason why it believed the employees might be unauthorized was because they have used work eligibility documents which did not pertain to them.

The fact that INS employed the words "may be unauthorized" with respect to the employees did not diminish Respondent's awareness of the suspicious circumstances. It is apparent Respondent has received information which would arouse the suspicion of any reasonable employer with respect to the work eligibility of those workers. Therefore, Respondent cannot in good faith assert that it had not acquired a reverification duty with respect to those employees.

Despite the above discussion, I find Complainant has failed to establish the absence of any genuine issues of material fact with respect to count one's allegations. Thus, it is not entitled to a favorable summary decision as to count one of the Complaint.

There exists no genuine factual issues as to whether Respondent hired the named individuals for employment in the United States after 1986. Neither is there any material factual issue remaining on the question of whether Respondent acquired a duty to reverify the employees' employment eligibility. However, Complainant's own evidence establishes the presence of other issues of material fact in count one. In particular, there remain material factual issues with respect to the fourth violation element, i.e. whether Respondent has taken adequate steps to reverify the employees' work eligibility?

Complainant offered the deposition testimony of Lawrence L. Noel and Charlie Noel in an attempt to demonstrate that Respondent has failed to take adequate steps to determine the employment eligibility of the named employees. However, it is clear that the two men claimed they took some steps to reverify the workers' employment eligibility. Complainant argues that the vague and non-specific testimony of the two men shows Respondent's reverification effort was so inadequate such that there exists no genuine issues of fact on this violation element. Complainant's argument is unpersuasive.

In summary decision proceedings all evidentiary ambiguities and reasonable inferences are resolved in favor of the nonmoving party. In this case, there is some evidence that Respondent has sought to reverify the employees' eligibility. Respondent has also produced additional documents which pertain to some of the named employees; this demonstrates that it had expended some efforts to reverify the workers' eligibility. Furthermore, Respondent stated that it had terminated a number of the relevant employees because they failed to produce additional eligibility documents. In light of such evidence, and in view of the standard for evidence evaluation in summary adjudication proceedings, I am not prepared to find there is a lack of any genuine issues of material fact in this count. Instead, I find that the question of whether Respondent's has conducted a good faith reverification effort can be fairly solved only after an evaluation of all the surrounding circumstances; such circumstances can best be brought out by the examination of the witnesses during a hearing.

At this point, I note that even if an employer has attempted to reverify an employee's eligibility, it will nevertheless have violated IRCA's continuing-employment prohibition if it did not terminate that employee after "a reasonable period" during which the worker failed to present adequate documentations. See Mester, at 568 n.9. What constitutes a reasonable period, however, has not been specifically defined by the courts. However, it appears that the numbers of days elapsed since the employer first received notification regarding the employee's status is not the only determining factor; circumstances surrounding the reverification process may also help define what constitutes a 'reasonable' period in a particular case. See id.

Here, Complainant argues that Respondent has failed to take corrective actions with respect to the relevant employees in a timely manner. However, I find that material issues of fact exist as to whether Respondent has terminated the employees within a reasonable time, since there is a dearth of evidence which pertains to the circumstances surrounding the termination of each of the fourteen relevant employees.

Complainant argues that Respondent should bear the burden of establishing that it acted in a timely manner. While Respondent may indeed retain the burden of evidence production on this issue during the hearing (Respondent may be in a better position to obtain and produce such information), this burden of production issue is irrelevant for the present summary decision proceeding. In this proceeding, Complainant necessarily bears the initial burden to establish

the lack of any genuine issues of material fact; Complainant cannot escape this responsibility by making a burden allocation argument.

In advancing the evidence allocation argument at this time, Complainant has misunderstood the rationale underlying summary decision proceedings. The process of summary adjudication is not intended to function as a full-fledged evidentiary hearing that requires the parties to produce all relevant evidence; rather, it is intended to streamline the eventual hearing by disposing of issues in which no genuine factual disputes exist. For this reason, the party moving for summary adjudication is required to establish the non-existence of any material factual issues in the first instance. The fact that the moving party has little information on certain material factual issues, as is apparently the case here, merely signifies that further proceedings on that issue may be warranted; it does not imply that the moving party is entitled to either shift the burden of proof or a favorable summary decision.

I find there remain genuine issues of material fact with respect to the question of whether Respondent has made a sufficiently good faith effort to reverify the fourteen employees' work eligibility. Additionally, I find there also exist issues of material fact as to whether Respondent terminated the relevant employees in a timely manner after beginning the reverification process. For these reasons, summary decision is inappropriate at this time with respect to count one of the Complaint. Complainant is thus not entitled to a favorable summary decision on this count.

COUNT TWO

Count two alleges that Respondent has failed to ensure the proper completion of section one of thirteen forms I-9.

At this point, I note that Complainant has moved to correct the name of one employee alleged in this count from "Guevara-Malagon, AKA Guevara, Guillermo" to "Guevara-Malagon, Guillermo, AKA Guevara, Guillermo". The Complaint will be amended to reflect this correction.

Failure to properly complete I-9 forms is a violation of 8 U.S.C. §1324a(b) and 8 C.F.R. §274a.2 (1990).

Complainant introduced photocopies of the thirteen relevant I-9s to support its instant claims. It also introduced Respondent's admission that it hired the relevant employees for employment in the United

States after November 1986. Further, it appears that Respondent has admitted the photocopies to be true and accurate reproductions of the original I-9 forms.

An examination of the photocopied I-9 forms reveals they were completed in an ineffectual manner as has been alleged by the INS. In addition, Respondent has not disputed that summary decision is appropriate with respect to this count.

Based upon the above evidence, I find there exists no genuine issues of material fact as to count two and that Complainant has demonstrated it is entitled to a summary decision on this count.

COUNT THREE

In this count, the Complaint originally alleged Respondent had further violated IRCA's paperwork requirements by improperly completing section two of sixty-one I-9 forms. Though the motion to amend the Complaint, this count now alleges sixty-two instances of violations. Complainant has removed the allegation concerning an employee named Jose D. Ramos-Gomez from count four (where both section one and section two violations have been alleged), to this count.

Again, Complainant introduced Respondent's admissions as well as photocopies of the relevant I-9 forms as evidence to support its present summary decision motion. The evidence is, to say the least, voluminous; and it unequivocally demonstrates all the requisite liability elements. Most importantly, the evidence establishes Respondent has stipulated that it did not record acceptable eligibility and identification documents in section two of the relevant I-9s. I also note Respondent has not disputed the propriety of a summary decision as to this count in its Response to Complainant's motion.

Consequently, I find there exists no genuine issue of material fact in this count. I further find Complainant has demonstrated it is entitled to a favorable summary decision with respect to the sixty-two I-9s alleged by count three of the Complaint.

COUNT FOUR

Count four alleges Respondent has violated IRCA by failing to properly complete both sections one and section two of fourteen forms I-9.²

As support for its summary decision motion as to this count, Respondent has presented the same types of evidence it has already introduced for the previous counts. Complainant's evidence consists of party admissions, joint stipulations and accurate photocopied reproductions of the relevant forms.

After a thorough examination of Complainant's evidence, I find Complainant has established Respondent's liability with respect to the instant allegations. Since Respondent has not presented any evidence which would establish the existence of factual issues as to this count, I therefore find there is a complete lack of genuine issues of material fact in this count. Complainant is thus entitled to a summary decision with respect to count four of the Complaint.

COUNT FIVE

This Count originally alleged Respondent has failed to produce one hundred and ninety five form I-9s for its present and former employees in violation of IRCA paperwork requirements.³ By its motion to amend Complaint, Complainant has withdrawn twenty five allegations in this count; consequently, this count presently numbers one hundred and seventy instances of alleged violations.

IRCA requires employers to retain and produce form I-9s for INS inspections. An employer's failure to produce the forms during a properly scheduled I-9 inspection constitutes a violation of IRCA's paperwork requirements. See 8 U.S.C. §§1324a(b)(3), 1324a(a)(1)(B) (1990).

² The allegations with respect to Mario Ascencion have been withdrawn from the Complaint by Complainant's motion to amend the Complaint. Additionally, I note that the allegations concerning Jose D. Ramos-Gomez have now been removed to Count Three also as a result of the motion to amend Complaint.

³ This count numbered one hundred and ninety seven instances of alleged violations. However, number 177 was left blank by error. Furthermore, number 67 (regarding Gustavo Espinoza) was redundant. Complainant has since withdrawn these allegations through its Motion to Amend Complaint. Therefore the total number of original allegations is actually one hundred and ninety five.

Respondent never disputed Complainant's allegation that it failed to produce the one hundred and ninety five relevant I-9s for INS inspection on July 7, 1989. However, it claims an affirmative defense as to these allegations. It is Respondent's contention that it could not produce a number of the I-9s since they have been destroyed by a fire that occurred in one of its construction trailers where the forms were kept.

Complainant argues that Respondent's fire defense does not present any issues of material fact with respect to one hundred and sixty eight out of the original one hundred ninety five alleged violations. It contends that the fire could not have destroyed one hundred sixty eight of the relevant I-9 forms. This argument is premised upon the fact that Respondent has already admitted it did not keep the records for its Northern California and Arizona workers in the fire-destroyed trailer; rather, it appears that the destroyed trailer contained only the paperwork and records of Respondent's Southern California workers. Furthermore, Complainant claims that a number of Respondent's I-9s also could not have been affected by the fire since they were not completed until after the date of the fire. The INS claims the parties have stipulated that the fire occurred on September 30th, 1988; thus, according to the INS, Respondent cannot claim the fire had destroyed the I-9s for those employees who were hired after that date.

However, an examination of the evidence produced by Complainant reveals numerous ambiguities in its instant arguments.

For instance, it is clear that Charlie Noel, a former superintendent for Respondent, did not unconditionally stipulate to the date of the fire. By the manner in which Complainant's own counsel had phrased the stipulation during a deposition, Charlie Noel stipulated to September 30th, 1988 as the fire date for purposes of the deposition questions only. Although a fire report furnished by Respondent appears to bear the date of the fire, Complainant did not introduce that item into evidence. Hence, there is insufficient evidence for me to find that the fire occurred on September 30, 1988.

Complainant has also failed to present unambiguous evidence which establish that one hundred sixty eight of the employees named by count five were in fact employed outside of Southern California. Complainant introduced into evidence voluminous copies of documents entitled "quarterly check history". These documents apparently consist of Respondent's payroll records for its employees. Such "quarterly check history" includes the following notation: "Field Labor

-- N. California". From this notation, Complainant argues that all employees whose names appear in these documents must have been employed in Northern California instead of Southern California; therefore these employees' I-9 forms were not located in Southern California and could not have been destroyed by the alleged fire.

However, Complainant's evidence does not clearly establish the lack of any genuine issues of material fact with respect to the one hundred and sixty eight employees. While it seems likely that the notation "N. California" signifies Northern California, it is not self-explanatory. In addition, even if I take "N. California" to signify Northern California, this does not thereby establish that all employees whose names appeared in the "quarterly check history" must have been employed in Northern California. Complainant has not laid a foundation for establishing a relationship between the notation "N. California" and the employees' place of employment.

As a result of the above discussions, it is unclear whether the employees who are subjects of the present summary decision motion were indeed employed outside of Southern California. It is also unclear whether they were hired before or after the date of the alleged fire. I note again that in a summary decision proceeding, all reasonable inferences are resolved in favor of the nonmoving party. Therefore, I find there exists genuine issues of material fact as to whether the I-9s which form the subjects of the instant motion were indeed destroyed by a fire that occurred in Respondent's construction trailer located in Southern California. As a result, summary decision is not appropriate at this time with respect to the allegations contained in count five.

COUNTS SIX, SEVEN & EIGHT

Count six alleges Respondent violated 8 U.S.C. §1324a(a)(1)(B) and 8 C.F.R. §274a.2(b)(2)(iii) when it failed to present five I-9 forms during the INS inspection scheduled for July 7, 1988. This count alleges Respondent did not present the relevant I-9s until about October 31, 1989.

Count seven alleges Respondent failed to update the I-9s for six employees in violation of 8 C.F.R. §274a.2(b)(1)(vii).

Count eight alleges another three instances of IRCA violation by the Respondent on the ground that it failed to reverify three employees'

work eligibility in addition to failing to ensure the three employees have properly completed section one of their respective I-9 forms.

Evidence presented by Complainant in support of these claims consists of party admissions, stipulations as well as documentary evidence. An examination of the voluminous evidence clearly establishes the lack of any remaining material issues as to these allegations. The fact that Respondent's Response to the instant motion is silent on these counts merely reinforces this conclusion. Consequently, I find Complainant is entitled to a summary decision as to all allegations contained in counts six, seven and eight of the Complaint.

In view of the fact that I have found it is inappropriate to resolve count one and count five of the Complaint in a summary fashion at this time, and in light of the fact that these two counts contain more than half of the allegations made by the Complainant in this case, I therefore find that it is also not appropriate for me to determine the proper civil money penalties that should be imposed upon Respondent at this time. In particular, I find the remaining unresolved allegations may influence the appropriate penalties in this case because they can contribute to a proper determination of several IRCA penalty factors (e.g. seriousness of the violations, whether the violation involved the employment of unauthorized aliens). See 8 U.S.C. §1324a(e)(3) (1990).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As a result of the above discussions, I make the following findings of fact and conclusions of law:

A. That there remain genuine issues of material fact as to count one of the Complaint. Complainant is therefore not entitled to a summary decision on this count.

B. That Respondent violated 8 U.S.C. §1324a(a)(1)(B) by failing to ensure the proper completion of the employment eligibility verification forms by the following thirteen employees:

- | | |
|------------------------------|-------------------------------|
| 1. Marcos Cena-Garza | 2. Jose Luis Cortez |
| 3. E. Javier Estrada-Ibanez | 4. Alfonso Franco |
| 5. Marc Lynn George | 6. Cresencio Gomez-Villasenor |
| 7. Guillermo Guevara-Malagon | 8. Anthony Hernandez |
| 9. Marco Lugo-Castro | 10. Juan Madrigal-Vasquez |
| 11. Michael Montoya | 12. Luis Rodriguez-Lara |

13. Michael Woody

C. That Respondent violated 8 U.S.C. §1324a(a)(1)(B) by failing to properly complete section two of the employment eligibility verification forms for the following sixty-two employees:

- | | |
|------------------------------|------------------------------|
| 1. Freddie L. Aragon | 2. Angel Ayala |
| 3. Albert Barmes | 4. Michael G. Bejar |
| 5. James Richard Benda | 6. Robert Boozer, Jr. |
| 7. Wyomi I. Bresnick | 8. Katherine Burkett |
| 9. Gerardo Cadena-Sanchez | 10. Jorge Cadena-Sanchez |
| 11. Angel Campos-Lopez | 12. Hugo Campos |
| 13. Rafael Chavez-Gutierrez | 14. Donald Chee |
| 15. Jerome Clemons | 16. Richard L. Cordova |
| 17. Kevin L. Davis | 18. Robert William Deckman |
| 19. Hector Delgado | 20. Paul Richard Dorland |
| 21. Wade Elston | 22. Donald Scott Erskine |
| 23. Adan Fernandez-Mejia | 24. Robert Fortier |
| 25. Ron Fraijo | 26. Ramon Gallegos-Treviso |
| 27. Richard Gower | 28. Jason Gregory |
| 29. Kim Robert Harrington | 30. Vance Ray Harrington |
| 31. Joe Hill | 32. Tim William Kennedy |
| 33. Shad Edward Labriola | 34. Richard Duane Louis |
| 35. Lisa W. Low | 36. Raudel Lujano |
| 37. Benjamin Manning | 38. Mark Anthony Martinez |
| 39. Roberto Antonio Martinez | 40. Armando F. Moyza, Jr. |
| 41. Steven Gerard Mueller | 42. Theodore Cameron Mullins |
| 43. Shane Nelson | 44. Josephine M. O'Connor |
| 45. Donald Oldham | 46. Raul P. Perez |
| 47. Grant David Perkins | 48. James Albert Reeves |
| 49. Don Eugene Rife, Jr | 50. John Rubalcada |
| 51. Eddie John Rushing | 52. Norma Angelica Sanchez |
| 53. Thomas Dawson Stewart | 54. Jeffrey Robert Taylor |
| 55. Octavio Vasquez-Lombera | 56. Hilario Vasquez |
| 57. Rick Dee Waggoner | 58. Murray Williams, Jr. |
| 59. Bobby Yellowhair | 60. Johnny Yellowhair |
| 61. Julius Yellowhair | 62. Jose D. Ramos-Gomez |

D. That Respondent violated 8 U.S.C. §1324a(a)(1)(B) by failing to ensure the proper completion of section one, and by failing to properly complete section two, of the employment eligibility verification forms for the following fourteen employees:

- | | |
|-------------------------------|--------------------------|
| 1. Jose Luis Callado-Ermandes | 2. Juan Carrasco-Paredes |
|-------------------------------|--------------------------|

- | | |
|----------------------------|---------------------------------|
| 3. Tomas Carrasco | 4. Valentin Castro |
| 5. Manuel Delgado-Melendez | 6. Cornelio Antonio Gonzalez |
| 7. Efrain Gonzalez-Marrufo | 8. Guillermo Gonzalez-Vera |
| 9. Ramon Miranda | 10. Gabriel Moreno-Reyes |
| 11. Clyde James Northcutt | 12. Francisco Salceda-Rodriguez |
| 13. Michael R. Sullivan | 14. Daniel J. York |

E. That there remain genuine issues of material fact with respect to count five of the Complaint. Complainant is therefore not entitled to a summary decision as to this count.

F. That Respondent has violated 8 U.S.C. §1324a(a)(1)(B) by failing to make available for INS inspection, in a timely manner, the employment eligibility verification forms for the following five employees:

- | | |
|---------------------------|---------------------|
| 1. Terry Clugston | 2. Rhea Joan Hill |
| 3. Robert Scott McInturff | 4. Steven Mark Neff |
| 5. Andrew M. Santistevan | |

G. That Respondent violated 8 U.S.C. §1324a(a)(1)(B) by failing to update the employment eligibility verification forms of the following six employees:

- | | |
|----------------------------------|---------------------------|
| 1. Enrique Javier Barrios | 2. Ibrahim Barrios |
| 3. Reyes Manuel Carrasco-Paredes | 4. Hipolito Montova-Vacio |
| 5. Saul Mora-Cruz | 6. Emigdio Orozco-Olivera |

H. That Respondent violated 8 U.S.C. §1324a(a)(1)(B) by failing to update, and by failing to ensure the proper completion of section one, of the employment eligibility verification forms for the following three employees:

- | | |
|----------------------------|-------------------------|
| 1. Sergio Garibay-Gonzalez | 2. Rafael Nunez-Mendoza |
| 3. Simon Torres-Renterias | |

I. That issues of material fact remain to be resolved before a proper determination of the appropriate civil money penalties may be made in this case. Therefore Complainant is not entitled to a summary decision as to the appropriate civil money penalties that should be imposed for Respondent's current IRCA violations.

ACCORDINGLY, IT IS HEREBY ORDERED that Complainant's Motion for Partial Summary Decision is granted in part and denied in part as provided by the above findings of fact and conclusions of law.

2 OCAHO 377

IT IS FURTHER ORDERED that the Complaint's allegations relating to the following employees be deleted:

(Count Four) Mario Ascencion. (Count Five) Alfredo Aguirre-Orozco; Luis D. Aguirre-Orozco; Saeno Alvarez; Fernando Apericio; Christopher Bahe; Michael Barnes; Amos Begay; Ernest Begay; Jerordo Cadenas; Damon Dalet; Gustavo Espinoza; Fernando Fernandez; Humberto Flores; Juan Gomez; Paul Gust; Pedro Murgia; Natasha Paust; Scott Peterson; Magarito Roldhan; Todd Sisco; Bryan Steven; Bibiano Tinoco; Sergio Vandra; Charles Wilmoth; Leon Woodard; Donnie Yellowhair.

FREDERICK C. HERZOG
Administrative Law Judge

Dated: September 26, 1991