

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”), the terms of which are set forth in parts II and III below, is made and entered into between National Systems America, LP (“NSA” or “Respondent”) and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively the “parties”).

I. BACKGROUND

WHEREAS, on December 17, 2018, IER notified Respondent by letter that IER opened an independent investigation (DJ no. 197-75-145) of Respondent (“Investigation”) to determine whether its hiring, recruiting, and/or employment eligibility verification practices violated the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b(a)(1) and/or (a)(6).

WHEREAS, IER concluded, based upon the Investigation, that there is reasonable cause to believe that NSA engaged in a pattern or practice of hiring discrimination by imposing unlawful citizenship status restrictions on the candidates it would consider referring for employment opportunities, thereby excluding certain Lawful Permanent Residents (“LPRs”), asylees and refugees from job opportunities, in violation of 8 U.S.C. § 1324b(a)(2)(C).

WHEREAS, IER also concluded, based upon the Investigation, that Respondent engaged in a pattern or practice of unfair documentary practices against LPRs based on their citizenship status in violation of 8 U.S.C. § 1324b(a)(6). Specifically, IER concluded that from at least March 30, 2016, until at least May 31, 2018, NSA routinely discriminated against LPRs by requesting that they provide a copy of their Permanent Resident Card (“PRC”) to prove their authorization to work in the United States, and subjected at least 19 LPRs to this practice. Respondent made such unfair documentary requests based on citizenship status as part of its regular screening and hiring process for interested candidates, and LPR candidates’ compliance with such requests was a prerequisite to Respondent submitting the candidate to a client for consideration as the next stage in Respondent’s hiring process.

WHEREAS, Respondent denies IER’s allegations and any wrongdoing. NSA disputes, in good faith, IER’s allegations and claims. Nothing contained in this Agreement shall be construed as an admission by NSA unless specifically so stated.

WHEREAS, the parties wish to resolve the Investigation without further delay or expense and hereby acknowledge that they are voluntarily and freely entering into this Agreement.

NOW, THEREFORE, in consideration of the following mutual promises, conditions and obligations, the parties hereto agree to fully and finally resolve the Investigation as follows:

II. TERMS OF SETTLEMENT

1. This Agreement becomes effective as of the date of the latest signature on the dually-signed Agreement, which date is considered to be and referenced herein as the “Effective Date.” The term of the Agreement shall be three years following the Effective Date.
2. Respondent shall pay a civil penalty payment to the United States Treasury in the total amount of \$34,200.00 (thirty-four thousand, two hundred dollars) via the FedWire electronic fund transfer system within ten business days of the Effective Date or receipt of fund transfer instructions from IER, whichever is later. No later than five days after the Effective Date, Respondent shall provide IER via email to Silvia.Dominguez-Reese@usdoj.gov and Katelyn.Davis@usdoj.gov the name and contact information for the person(s) who will make the payment on its behalf. On the day of payment, Respondent shall confirm payment via email to Silvia.Dominguez-Reese@usdoj.gov and Katelyn.Davis@usdoj.gov. Such emails shall have Respondent’s name and the DJ number, 197-75-145.
3. The parties acknowledge that all conditions necessary for contract formation including sufficient consideration exists in connection with this Agreement.
4. IER shall not seek from Respondent or any of its principals (who are Mukesh Shah, Seelam Reddy and Hari Patro) any additional civil penalty, beyond that referenced in paragraph 2, for the above-referenced alleged patterns or practices of hiring discrimination and unfair documentary practices in violation of 8 U.S.C. § 1324b(a)(6) through the Effective Date.
5. The terms of paragraphs 5 through 14 concerning non-discrimination and compliance with 8 U.S.C. § 1324b shall apply to all of Respondent’s business activities that involve potential candidates for contract or direct employment positions located in the United States, regardless of whether Respondent’s recruiters are direct, joint or contractor employees of Respondent, or individuals performing recruiting services on Respondent’s behalf pursuant to a contract, and regardless of whether the potential candidate for employment is to be a direct or indirect employee of Respondent.
6. Respondent shall not discriminate against individuals based on citizenship status (to include visa status), immigration status, or national origin, during its recruitment, screening, referral, hiring, firing, or employment eligibility verification (“EEV”) processes, including re-verification processes, in violation of 8 U.S.C. § 1324b.
7. Except as authorized by law under 8 U.S.C. § 1324b, Respondent shall not use the citizenship status or immigration status of a potential candidate for employment as a basis or justification for treating candidates differently with respect to its

procedures or the timing of its recruitment, screening, referral, hiring, firing, or EEV processes for an employment position.

8. Respondent shall not ask any individual about their specific citizenship or immigration status, specific type of work visa, or the specific basis for the individual's work authorization status during any stage of the recruiting, screening, referral or hiring processes that precede an individual's offer and acceptance of a position with Respondent, except as necessary to comply with a citizenship status requirement permitted under 8 U.S.C. § 1324b(a)(2)(C). Notwithstanding that prohibition, Respondent may ask a potential candidate or applicant if the candidate or applicant is currently authorized to work in the United States, or would require employer sponsorship to work for Respondent in the United States.
9. Respondent shall not request documentation from any individual for purposes of confirming the individual's authorization to work in the United States, or for any part of an EEV process, unless and until the individual accepts an offer of employment. When conducting any part of the EEV process, Respondent also shall not request more, different, or specific documentation for purposes of determining authorization to work in the United States than is required by 1324a, nor shall it request a document that confirms the citizenship status to which a candidate attests unless a citizenship status restriction is authorized by 8 U.S.C. § 1324b(a)(2)(C).
10. When Respondent conducts its EEV process or any part thereof, Respondent shall (a) honor documentation that reasonably appears on its face to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b); (b) not request specific, more or different documents than are required by law; and (c) permit all employees to present any document or combination of documents for EEV acceptable by law.
11. Whenever one of Respondent's clients or managed service providers ("MSPs") requests that Respondent restrict hiring for an employment position based on citizenship status and Respondent hires an individual to fill that employment position, Respondent shall:
 - (a) request in writing from the client or MSP the legal basis or justification for the citizenship status hiring restriction; and
 - (b) preserve and retain for that position the following:
 - (i) all communications between Respondent and the MSP and/or client;
 - (ii) all communications between Respondent and potential candidates; regardless of who initiates the communication;
 - (iii) the legal basis or justification, if known, for the hiring restriction;

- (iv) the client contact information with full name, email, and telephone number;
 - (v) name, citizenship status (if known), and contact information for each applicant or potential candidate Respondent screened or otherwise considered, but did not forward to the client or MSP, and the reason for not doing so; and
 - (vi) the name, citizenship status (if known), date of hire, title of position, rate of pay, and contact information of each candidate Respondent forwarded to the client or MSP.
12. When Respondent is required to comply with Paragraph 11 of this Agreement, Respondent shall provide the following information to IER by email to both Silvia.Dominguez-Reese@usdoj.gov and Katelyn.Davis@usdoj.gov on a quarterly basis by the end of the month following the quarter (e.g., for all positions for January 2021 through March 2021, Respondent will provide the information by April 30, 2021):
- (a) the identity of the client or MSP that requested Respondent restrict hiring for an employment position based on citizenship status;
 - (b) a copy of the position requisition/request and, if not already included in that copy, the date the client or MSP sent the position to Respondent, the position title, and number of vacancies for the position; and
 - (c) a copy of all documentation and information collected pursuant to Paragraph 11 of this Agreement.
13. Within 60 days of the Effective Date, Respondent will review and, if none exist, create policies that relate to nondiscrimination based on citizenship or immigration status and that are consistent with this Agreement. Such policies shall be created with or revised to include provisions that:
- (a) Prohibit discrimination on the basis of citizenship, immigration status, or national origin in the (1) hiring, recruiting, referring, or firing processes, and (2) during the EEV process;
 - (b) Provide for the referral of individuals who complain, formally or informally, of discrimination in the hiring, firing or Form I-9/E-Verify EEV processes immediately to IER by directing the affected individual to IER's worker hotline (800-255-7688) and website, <https://www.justice.gov/ier>, and advising the affected individual of his or her right to file a charge of discrimination with IER; and
 - (c) Prohibit recruiters whom NSA directly employs and recruiters who provide recruiting services to NSA under contract from using internet and job board search protocols that filter or exclude potential candidates based on citizenship status or visa type without prior written authorization from a

supervisor, except that the need for sponsorship may be a basis for screening candidates under 8 U.S.C. § 1324b.

- (d) Prohibit any reprisal against any individual for opposing any employment practice made unlawful by 8 U.S.C. § 1324b, or filing any charge, or participating in any lawful manner in any investigation or action under 8 U.S.C. § 1324b.
14. During the term of this Agreement, Respondent shall ensure that all individuals who are responsible for formulating, carrying out, or conducting training on Respondent's recruiting, hiring, firing, or EEV policies (collectively, "Human Resources Personnel"), including, but not limited to, those who have any role in the EEV processes, such as completing the Form I-9 or using the E-Verify system, can readily access the most current version of the Form I-9, USCIS Employment Eligibility Verification Handbook for Employers (M-274) ("Handbook"), available at www.uscis.gov/I-9Central, and, if Respondent uses E-Verify in the jurisdiction the employee is located, the most current USCIS E-Verify Manual (M-775) ("Manual"), available at www.uscis.gov/e-verify/publications/manuals-and-guides/e-verify-user-manual. Copies of these documents and future revisions of the Form I-9, Handbook, Manual, and guidance can be obtained from the United States Citizenship and Immigration Services at www.uscis.gov.
15. Within 90 days of the Effective Date, Respondent shall require all its Human Resources Personnel, Team Leads, and all recruiters Respondent employs directly or under a contract for recruiting services, to participate in a live, remote IER-led, training regarding compliance with 8 U.S.C. § 1324b.
- (a) Respondent will maintain records showing that the training was provided to all other recruiters not based in the United States and employed by Respondent at the time of the training;
 - (b) Respondent shall pay each employee who attends the training his or her normal rate of pay for the time spent at the training and shall bear all costs associated with the training;
 - (c) Respondent shall compile records listing the full name and title of all Human Resources Personnel, Team Leads, and recruiters indicating which of them attended the training and send the records via email to Silvia.Dominguez-Reese@usdoj.gov and Katelyn.Davis@usdoj.gov within ten days of each training session; and
 - (d) For the term of the Agreement, all of Respondent's new Human Resources Personnel who assumed such duties after the initial, live, remote training described above shall attend an IER Employer/HR webinar within 60 days of hire or promotion. Respondent shall compile and send attendance records for such employees per the instructions in the prior subparagraph.

16. During the term of this Agreement, Respondent shall include in any contract for recruiting services a provision requiring recruiters to comply with the policies referenced in paragraphs 10 through 13, and shall require them to sign an acknowledgment that they will comply with the requirements set forth in paragraphs 5-15 of this Agreement when engaging in recruiting activities on behalf of NSA. For the term of this Agreement, NSA shall retain copies of all such acknowledgements and prior supervisor written authorizations pursuant to paragraph 13(c) in a distinct, readily accessible electronic or physical location, and will produce them to IER, upon IER's request, within 5 business days.
17. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for participation in the Investigation or exercise of any right or privilege secured by 8 U.S.C. § 1324b.
18. Respondent shall post IER's "If You Have The Right to Work" poster ("IER Poster"), in color and measuring no smaller than 18" x 24," an image of which is available at <https://www.justice.gov/crt/worker-information#poster>, in all places at their U.S. locations where notices to employees and job applicants are normally posted. The IER Poster shall be so posted within fourteen days of the Effective Date and shall remain posted for at least the term of the Agreement. Respondent shall post the IER Poster in English, Spanish, and any other available language that is the preferred language of Respondent's employees, if that language is known.
19. IER reserves the right to make reasonable inquiries with Respondent to determine their compliance with this Agreement. As a part of such review, IER may request written reports concerning compliance, inspect Respondent's premises, examine witnesses, and examine and copy Respondent's documents. Respondent shall comply with IER's requests of this nature within 30 days, unless IER grants Respondent additional time to comply.
20. If IER has reason to believe that Respondent is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Respondent, as appropriate, of the purported violation before initiating a new investigation or seeking to judicially enforce the Agreement. If IER notifies Respondent then Respondent will have 30 days from the date of IER's notification to cure the violation to IER's satisfaction before IER deems Respondent to be in violation of this Agreement.
21. This Agreement does not affect the right of any individual to file a charge with IER alleging an unfair immigration-related employment practice, IER's authority to investigate or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Respondent's employment practices.

III. ADDITIONAL TERMS OF SETTLEMENT

22. This Agreement sets forth the entire agreement between the parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by both parties and shall not be construed against any one party in the event of a subsequent dispute concerning the terms of the Agreement. The parties agree that the paragraphs set forth in part II of this Agreement and attachments (entitled "Terms of Settlement") are material terms, without waiver of any party's right to argue that other terms in the Agreement are material.
23. The United States District Court for the Eastern District of Texas shall be the preferred venue for enforcement of any claims over which that court has subject matter jurisdiction. Otherwise, a party must bring any claim or counterclaim to enforce the Agreement in a court of competent jurisdiction. This provision does not constitute a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement or counterclaims asserted against it.
24. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and term or provision shall be deemed not to be part of this Agreement. The parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
25. The parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER has stated that it has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.
26. This Agreement addresses alleged violations of 8 U.S.C. § 1324b and proposed remedies for such alleged violations. It does not address, contemplate, incorporate, or reference compliance with other laws that may apply,
27. The parties shall each bear their own costs, attorneys' fees and other expenses incurred in this action.
28. Nothing herein shall be considered, alleged or deemed a waiver of Respondent's right to counsel or to seek legal advice or services at any time.

29. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The parties agree to be bound by facsimile signatures.

National Systems America, LP


By:


Mukesh Shah, Managing partner

Dated: 12/15/20

**U.S. Department of Justice
Civil Rights Division
Immigrant and Employee Rights Section**

By:


Alberto Ruisanchez
Deputy Special Counsel

Dated: 1/14/21

Jodi Danis
Special Litigation Counsel

Silvia Dominguez-Reese
William Hanrahan
Trial Attorneys

Katelyn Davis
Paralegal Specialist