

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between A. Olivarez Harvesting, LLC (“Respondent”) and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively “Parties”).

I. BACKGROUND

WHEREAS, on September 11, 2018, [REDACTED] and [REDACTED] (“Charging Parties”) filed charges against Respondent, DJ nos. 197-76-1175 and 197-76-1176 (collectively “Charges”), respectively, alleging violations of the antidiscrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b(a)(1)(B).

WHEREAS, on December 7, 2018, IER accepted the Charges as complete, and on December 17, 2018, IER notified Respondent and Charging Parties it had initiated investigations based on the Charges (“Investigations”).

WHEREAS, IER concluded based upon the Investigations that reasonable cause exists to believe that, on March 15, 2018, Respondent discriminated against the Charging Parties based on their citizenship status as U.S. citizens in violation of 8 U.S.C. § 1324b(a)(1)(B) by failing or refusing to hire them for available field harvesting jobs, which Respondent filled with temporary visa workers it obtained through the Department of Labor’s H-2A visa program, even though the Charging Parties were available, qualified, and willing to perform those jobs.

WHEREAS, Respondent denies any violation of the law.

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

NOW, THEREFORE, in consideration of the below mutual promises and to fully and finally resolve the Investigations, as of the date of this Agreement, the Parties agree as follows:

II. TERMS OF AGREEMENT

- (1) This Agreement shall become effective as of the date the last party signs the Agreement (“Effective Date”). The term of this Agreement is 36 months following the Effective Date.
- (2) Respondent shall pay a total civil penalty to the United States Treasury in the amount of \$4,250.00, via the FedWire electronic fund transfer system, within 30 days of the Effective Date or Respondent’s receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Respondent shall confirm this payment via email to William Hanrahan at william.hanrahan@usdoj.gov and Jenna Grambort at jenna.grambort@usdoj.gov, or any other personnel IER designates in writing. The email confirming payment and all other emails from Respondent to IER under this Agreement shall have Respondent’s name and the reference numbers (DJ 197-76-1175 and DJ 197-67-1176) in the subject line.
- (3) Respondent shall pay the Charging Parties back pay and interest totaling \$4,005.51 for [REDACTED] and \$10,159.59 for [REDACTED].

- (a) Respondent shall, within 15 days of the Effective Date, send each Charging Party by email and either trackable mail or courier service a letter (“Back Pay Letter”) (Attachment A for [REDACTED] and Attachment B for [REDACTED]) indicating the amount of back pay he will receive along with all necessary tax forms and an envelope with sufficient postage, addressed to Respondent’s mailing address. On the same day Respondent mails the Back Pay Letters, Respondent shall send by email to William Hanrahan at william.hanrahan@usdoj.gov and Jenna Grambort at jenna.grambort@usdoj.gov, or any other personnel IER designates in writing: (1) a copy in .PDF format of the letters and self-addressed stamped envelopes and envelopes addressed to each of the Charging Parties, and (2) a copy of the emails sent to each of the Charging Parties (which may be achieved by copying William Hanrahan and Jenna Grambort on the emails to the Charging Parties).
- (b) Within 15 days after Respondent’s receipt of completed applicable tax form(s) from each Charging Party, Respondent shall pay each Charging Party the back pay amount owed to him as determined by IER, less any tax deductions and withholdings required by law, by check via reliable courier service to his mailing address. On the same day that Respondent mails the check for each Charging Party, Respondent shall send a copy of the check or payment transmittal notice, as the case may be, to William Hanrahan at william.hanrahan@usdoj.gov and Jenna Grambort at jenna.grambort@usdoj.gov or any other personnel IER designates in writing.
- (c) Respondent is responsible for paying any employer-side taxes or contributions due to the federal, state, or local government based on the payments made to the Charging Parties pursuant to this Settlement Agreement. Respondent shall follow the applicable instructions contained in IRS Publication 957 and credit the Charging Parties’ back pay awards to calendar quarters of the year when the back wages would have been earned.
- (d) Within 45 days after remitting the Charging Parties’ W-2 forms for calendar year 2022 to the Social Security Administration (but not before doing so), Respondent shall file special reports to the Social Security Administration for the Charging Parties allocating the payments made to them pursuant to this Agreement to the appropriate periods. On the day Respondent submits the documentation, Respondent shall confirm via email to William Hanrahan at william.hanrahan@usdoj.gov or jennagrambort@usdoj.gov or any other personnel IER designates that such documentation was submitted to the Social Security Administration and the date on which it was submitted.
- (e) All communications from Respondent to the Charging Parties relating to this Agreement shall be submitted to IER for prior review and approval. Respondent shall not require Charging Parties to accept or otherwise agree to any additional terms as a condition of receiving the back pay under the process outlined in this Settlement Agreement, except for a release of any claims under 8 U.S.C. § 1324b that were the subject of the investigation and arose prior to the Effective Date.

(4) In accordance with 8 U.S.C. § 1324b:

- (a) Respondent shall not discriminate on the basis of citizenship status (which includes immigration status) in its hiring, recruitment, or discharge, except to the extent such discrimination is required in order for Respondent to comply with a law, regulation, executive order, government contract, or Attorney General determination.
 - (b) Respondent shall not discriminate on the basis of national origin in its hiring, recruitment, or discharge processes.
 - (c) Respondent shall not discriminate on the basis of citizenship status or national origin during the employment eligibility verification (EEV) process.
 - (d) Respondent shall (i) honor all EEV documentation that satisfies the requirements of 8 U.S.C. § 1324a(b) and reasonably appears to be genuine on its face and to relate to the person presenting it; (ii) not request more or different documentation than required by law for EEV; (iii) not request specific documentation for EEV; and (iv) permit all employees to present their choice of valid document(s) for EEV, including for reverification when reverification is required by law.
 - (e) Respondent shall not intimidate, threaten, coerce, or retaliate against any person for the purpose of interfering with a right or privilege secured by 8 U.S.C. § 1324b or because of the person's participation in any IER investigation, intention to file a charge with IER, or exercise of any other right or privilege secured by 8 U.S.C. § 1324b, including, but not limited to, complaining formally or informally about or opposing conduct that the person believes violates 8 U.S.C. § 1324b.
- (5) Respondent shall refer all applicants and employees who complain, formally or informally, of discrimination or errors in Respondent's hiring, firing, or EEV processes to IER's worker hotline (800-255-7688) and website (<http://www.justice.gov/ier>) and advise the affected individual of his or her right to file a charge of discrimination with IER if he or she believes Respondent may have discriminated against him or her in violation of the antidiscrimination provision of the INA. This provision will be regarded as fulfilled by Respondent directing the affected individual to the IER poster referenced in paragraph 8 infra.
- (6) Respondent shall remove, and refrain from creating, any reference to the Investigation, this Agreement, or the Charges from any employment-related records it retains concerning the Charging Parties and shall not in the future include any reference thereto, except as required to comply with this Agreement or applicable state or federal law.
- (7) Respondent shall not, directly or indirectly, disclose to any employer or prospective employer of the Charging Parties any information or documentation related to the Investigation, this Agreement, or the Charges.
- (8) Respondent shall, within 15 days of the Effective Date, post an English version and Spanish version of the IER "If You Have The Right to Work" poster ("IER Poster") in color measuring no smaller than 8.5" x 11" (available at <https://www.justice.gov/crt/worker-information#poster>) in all places where Respondent normally posts notices to employees and job applicants and shall keep them posted for at least the term of this Agreement.

- (9) Respondent shall, within 60 days of the Effective Date, create or revise employment policies and training materials to reflect the requirements of paragraphs (4)(a)-(e) and (5) above.

Respondent shall send to IER via email any and all such revised materials within 15 days of completing the revisions. Within 45 days thereafter, IER may provide edits regarding such revisions, and the parties shall work in good faith to resolve any differences regarding such revisions.

- (10) Within 90 days of the Effective Date, each Respondent employee who has any job responsibilities that involve reviewing applications, communicating with applicants or individuals interested in employment, hiring, conducting job interviews, or verifying employment eligibility shall participate in training on 8 U.S.C. § 1324b. At the time of this Agreement, such employees include, but are not limited to, A. Augustin Olivarez and Brenda Encinia.
- (a) The training will consist of viewing a free internet-based IER Employer/HR Representative webinar (registration available at <https://www.justice.gov/crt/webinars#ier%20webinars>).
 - (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) Within 15 days of the training, Respondent shall compile and send via email to William Hanrahan at william.hanrahan@usdoj.gov and Jenna Grambort at jenna.grambort@usdoj.gov, or any other personnel IER designates in writing, attendance records listing all individuals who attended the training, including each attendee's full name, job title, and signature certifying attendance at the training.
 - (d) Each Respondent employee hired or transferred by Respondent into a position with one or more of the job duties listed in this Paragraph after the Effective Date of this Agreement but during the term of this Agreement who has not already participated in such training shall participate in a free IER Employer/HR Representative webinar (registration available at <https://www.justice.gov/crt/webinars#ier%20webinars>) within 30 days of the date of his or her hire or transfer to such position.
- (11) Before hiring H-2A visa workers for any positions, Respondent shall, in addition to complying with all legal requirements for obtaining and employing H-2A visa workers, engage in recruitment efforts for U.S. workers that are no less comprehensive than Respondent's recruitment efforts for positions for which it does not intend to seek H-2A visa workers, including with respect to the location, nature, and duration of job advertisements.
- (12) Respondent shall keep a log of all persons who inquire about or express interest in employment in any position Respondent intends to seek or has sought H-2A visa workers for. Such logs shall include, at minimum, the full name of the prospective worker, their contact information, and the date and time of each contact with them, as well as whether they were hired or not and, if not, the basis for the non-hire. Respondent shall also save all voicemails and written communications (including emails and text messages) received from

such individuals. Respondent shall provide such information to IER within 15 days of IER's request for it.

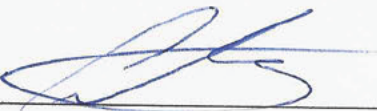
- (13) During the term of this Agreement, IER reserves the right to make such reasonable inquiries as it, in its discretion, believes necessary or appropriate to assess Respondent's compliance with this Agreement, including, but not limited to, requiring written reports from Respondent concerning its compliance; inspecting Respondent's premises; interviewing Respondent's employees, officials, or other persons; and reviewing copies of Respondent's records. IER agrees to provide reasonable notice of any such inquiries, requests, inspections, or interviews and the parties shall work in good faith with one another with regard to any such inquiries, requests, inspections, or interviews.
- (14) Nothing in this Agreement limits IER's right to inspect Respondent's Forms I-9 within three business days pursuant to 8 C.F.R. § 274a.2. Respondent shall provide copies of its Forms I-9 and supporting documentation and, if available or exportable, its Form I-9 data in spreadsheet format via email within 15 days of IER's request.
- (15) Other than the provisions included in this Agreement, IER shall not seek on behalf of the United States or any individuals any additional funds, injunctive, or other relief from Respondent for any violation of 8 U.S.C. § 1324b that is or was the subject of the IER Investigation through the Effective Date.
- (16) 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 of the purported violation before initiating a new discrimination investigation or seeking to judicially enforce the Agreement. Respondent shall have 30 days from the date IER notifies it of a purported violation to cure the violation to IER's satisfaction.
- (17) This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent, IER's authority to investigate such a charge, or IER's authority to conduct an independent investigation of Respondent's employment practices.
- (18) This Agreement resolves any and all differences under 8 U.S.C. § 1324b between the Parties relating to the Investigations or the Charges.

III. Other Terms

- (19) For the purposes of an action to enforce this Agreement, the Parties agree that the obligations set forth in each and every provision of Part II of this Agreement above are material.
- (20) Where any date by which a party is required to perform any obligation under this Agreement falls on a day the federal government is closed, the deadline is extended to the next day the federal government is open.
- (21) The United States District Court for the Western 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.


- (22) Nothing in this Agreement constitutes a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement or counterclaims asserted against it.
- (23) If a court declares any provision of this Agreement to be illegal or invalid, the validity of the remaining provisions shall not be affected. The Parties agree that they will not, individually or with or through another, seek to have any court declare or determine that any provision of this Agreement is invalid. For purposes of interpreting this agreement, both Parties shall be deemed to have drafted it.
- (24) The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER 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 obligations imposed by this Agreement.
- (25) The Parties agree to bear their own costs, attorneys' fees, and other expenses incurred in the Investigations.
- (26) This Agreement sets forth the entire agreement between the Parties concerning resolution of this Investigations and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter herein.
- (27) The Parties may execute this Agreement in multiple counterparts, each of which together shall be considered an original, but all of which shall constitute one agreement. The Parties shall be bound by electronic or scanned signatures.

A. Olivarez Harvesting, LLC:

By:  _____

Date: 8-22-2022

Immigrant and Employee Rights Section:

By:  _____

Date: 8-24-2022

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