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

December 10, 2018

UNITED STATES OF AMERICA, Complainant, v. TECHNICAL MARINE MAINTENANCE and GULF COAST WORKFORCE, Respondents.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 17B00089

ORDER ON REQUEST FOR REMEDIES

This case arises under the anti-discrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b (2012). Pending before the Court is Complainant's Request for Remedies, which is unopposed.

I. BACKGROUND

On June 28, 2018, the Court granted Complainant's Motion to Compel and for Sanctions. In the Order, the undersigned assessed liability against both Technical Marine Maintenance (TMM-TX) and Gulf Coast Workforce (GCW) (collectively "Respondents") for violations of 8 U.S.C. § 1324b(a)(6) and drew adverse inferences against Respondents "to establish a factual record to be used during the remedy phase of this case." *U.S. v. Technical Marine Maintenance Texas, LLC, & Gulf Coast Workforce, LLC*, 13 OCAHO no. 1312, at 11 (2018).[1]

[1] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the OCAHO website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm# PubDecOrders.

Complainant alleged that "GCW shares corporate leadership with TMM-TX, including its Chief Executive Officer and Chief Operating Officer" and "[t]he Chief Operating Officer of GCW, identified in that capacity, signed several Forms I-9 relating to employees of TMM-TX." Compl. at 2, 4. Further, Complainant alleged that "GCW is responsible for this pattern and practice of unfair documentary practices as the employer or joint employer of TMM-TX's employees, including the staff members who conducted the [employment eligibility verification process." *Id.* at 5. In discovery, Complainant requested from TMM-TX, "[a]ll documents that reflect or relate to Respondent's organizational, managerial, reporting or corporate structure, as well as Respondent's relationship to any other corporate entities, including but not limited to Gulf Coast Workforce, LLC." Renewed Mot. to Compel, Ex. C at 25. Complainant also requested, "[a]ll documents that reflect or establish a fee-for-service agreement, management agreement, or any other relationship (legal, contractual, or otherwise) between Respondent and any other corporate entity, including but not limited to Gulf Coast Workforce, LLC." *Id.* Complainant requested the same documentation from GCW relating to its relationship with TMM-TX. Renewed Mot. to Compel, Ex. D at 15. Complainant also asked each Respondent to identify "any corporate entities that presently or previously were, related to Respondent . . . [and] [d]escribe the present relationship since its formation, including the date[s] of the change[s]; and [i]dentify any personnel, facilities, departments and/or bank accounts that respondent shares or previously shared with the entity." Renewed Mot. to Compel, Ex. A at 7, Ex. B at 6. Respondents refused to respond to the discovery requests. Thus, the undersigned drew adverse inferences against Respondents. 13 OCAHO no. 1312, at 1, 10. Accordingly, I find that Respondents are jointly and severally liable for the civil penalties imposed herein as alleged in the Complaint.

On June 28, 2018, the undersigned also ordered the parties, within thirty days, to brief issues regarding proposed remedies for Respondents' pattern and practice of discriminatory document requests and "identify if there is evidence that any of the violations involve non-protected individuals." *Id.* at 12. Given Respondents complete failure to cooperate in discovery, the Court put the onus on Respondents "to demonstrate that certain individuals should be excluded from the remedy." *Id.* The undersigned warned that if Respondents did not file a timely brief, "the issue of whether the violations involve non-protected individuals will be conceded and a fine will be assessed according to the available evidence." *Id.* The Court also conditionally granted Rusty Savoie's Motion to Withdraw as Counsel for Respondents on the condition that he provide the Court with Respondents' valid email address within five days of the Order. *Id.* Respondents' counsel provided a valid email address on August 13, 2018. The Court finds that Mr. Savoie's failure to provide Respondents' valid email address within five days of the Court's June 28, 2018 Order on Liability was harmless error.

On August 28, 2018, by email, the Court instructed Respondents to advise the Court, by August 31, 2018, whether Respondents intended to file a response to Complainant's briefing on proposed remedies. Respondents replied and asked which briefing the Court was referencing. The Court responded and clarified that it was referring to the Complainant's Request for Remedies and directed Respondents to update the Court on their plan to file a response. Respondents did not respond to the Court's email, and Respondents did not file a response or submit briefing on the issues regarding proposed remedies.

II. DISCUSSION

A. The Court imposes a civil penalty of $825 for each individual discriminated against on or before November 2, 2015 and $1,386 for each individual discriminated against after that date.

Complainant seeks to impose a penalty of $825 for each violation occurring before November 2, 2015, and $1,836 for each violation after November 2, 2015. Complainant argues for a penalty on the higher end of the penalty ranges because of Respondents' flagrant bad-faith and callous disregard for their obligations in this matter and the "egregiousness of their widespread discriminatory practices[.]" Complainant's Request for Remedies at 2, citing 13 OCAHO no. 1312, at 2. In support of its request for high civil penalties, Complainant cites Respondents' recalcitrant behavior throughout this litigation, the pervasive and continuing nature of Respondents' discriminatory practices against a large number of citizens and non-citizens, and TMM-TX's knowledge of Form I-9 documentary requirements and § 1324b's prohibition on discriminatory documentary practices based on TMM-TX's execution of a Memorandum of Understanding (MOU) with the Department of Homeland Security's E-Verify program. *Id.* at 3–7. However, in an effort to be fair and objective, Complainant does not seek the maximum penalty amounts. Rather, Complainant seeks a 25% reduction of the maximum penalty amounts based on Respondents' inability to pay. *Id.* at 7–9. The Court notes that Complainant seeks such equitable reduction, despite the fact that Respondents did not cooperate in discovery or comply with the Court's January 4, 2018 telephonic directive to provide audited financial statements to support an inability-to-pay defense.

Complainant seeks penalties for Respondents' unfair documentary practices occurring between January 1, 2014 and July 21, 2017. *Id.* at 9. When an employer violates 8 U.S.C. § 1324b(a)(6), the penalty range for violations that occur on or before November 2, 2015 is $110–$1,100 per individual. 28 C.F.R. § 68.52(d)(1)(xii). If the violations occur after November 2, 2015, the penalty range is $185–$1,848 per individual. § 68.52(d)(2); 28 C.F.R. § 85.5.

1. Respondents' conduct warrants a high civil penalty

Complainant asserts that Respondents' conduct during the investigation and this litigation warrants high, if not the maximum, civil penalties. *See U.S. v. Technical Marine Maintenance & Gulf Coast Workforce*, 13 OCAHO no. 1312 (2017) (discussing Respondents' failure to comply with discovery and the Court's orders).

Section 1324b does not provide precise criteria for determining the exact penalty amounts to impose for violations of the statute. 8 U.S.C. § 1324b. Under OCAHO precedent, the Court must consider the totality of the circumstances when determining whether to impose the maximum penalties. *U.S. v. Estopy Farms*, 11 OCAHO no. 1256, 3 (2015). Specifically, the Court must consider the nature of the violations, the circumstances surrounding the violations, and Respondents' conduct during the course of the proceedings. *Id.* In *Estopy Farms*, the Administrative Law Judge (ALJ) found that the respondent's non-responsive and evasive

conduct during discovery, including failure to comply with basic discovery obligations and two orders compelling responses, warranted high civil penalties. *Id.* at 4; *see also U.S. v. The Beverly Center*, 5 OCAHO no. 762, 352 (1995) (finding the employer's failure to file an answer or respond to a motion for summary judgment despite the ALJ's warning was "not conducive to finding a low civil money penalty.").

My June 28, 2018 Order in this case described Respondents' conduct in the course of this proceeding and the previous investigation, 13 OCAHO no. 1312, 2–4, and the detailed particulars do not need to be repeated here. The Court finds Respondents' flagrant bad-faith and callous disregard of responsibility, *see* 13 OCAHO no. 1312, at 8, including their refusal to comply with basic discovery obligations and failure to respond to Complainant's motions to compel, warrants high civil penalties.

2. The knowing, pervasive and, continuing nature of Respondents' discriminatory practices against a large number of citizens and non-citizens.

Complainant also contends that high civil penalties are warranted based on the large number of individuals against whom Respondents discriminated and continued to discriminate against, even after the complaint was filed in this matter, and Respondents' knowledge of Form I-9 documentary requirements and § 1324b's prohibition on discriminatory documentary practices primarily based on Respondent TMM-TX's execution of a Memorandum of Understanding (MOU) with the Department of Homeland Security's E-Verify program. *Id.* at 3–7.

An employer's pattern of conduct may justify the imposition of the maximum civil penalty allowable when the employer engages in a pattern or practice of discrimination due to "a firm policy or attitude based upon less proper motives." *U.S. v. Louis Padnos Iron & Metal Co.*, 3 OCAHO no. 414, 193 (1992). OCAHO has distinguished between "a pattern of conduct on [the] respondent's part which would justify the imposition of the maximum civil penalty allowable" and a violation due to the respondent's "unfamiliarity with the IRCA provisions at issue . . . ." *Id.* The undersigned previously found Respondents liable for a pattern or practice of discriminating against job applicants and newly hired employees on the basis of citizenship by requesting more or different documents than were required to prove work eligibility in violation of 8 U.S.C. § 1324b(a)(6). 13 OCAHO no. 1312 at 11–12. The undersigned found that Respondents obtained List A documents for 279 out of 281 (99.29 percent) non-U.S. citizens and List B and C documents for 675 out of 678 (99.56 percent) U.S. citizens that it hired. *Id.* at 10. Further, the undersigned found, "[f]rom January 1, 2014 to at least July 21, 2017, it was TMM-TX's standard practice in the [employment eligibility verification] process to request Lists B and C documentation from all individuals identified as U.S. citizens." *Id.* at 11. The undersigned also found, "[f]rom January 1, 2014 to at least July 21, 2017, it was TMM-TX's standard practice in the employment eligibility verification [] process to request List A documentation from all individuals identified as non-U.S. citizens." *Id.* Thus, Respondents' widespread pattern or practice of discrimination against both U.S. citizens and non-U.S. citizens warrants high civil penalties.

Additionally, Complainant argues that based on TMM-TX's E-Verify data from January 1, 2014 through February 28, 2018, "Respondents subjected nearly 100 workers to their discriminatory practices *after* the United States[] filed its July 2017 Complaint." Complainant's Request for Remedies at 6, citing Ex. A (emphasis in original). Complainant also argues that "TMM-TX's E-Verify data from January 1, 2014 through February 28, 2018 shows that TMM-TX obtained List A documentation from at least 299 of the 301 non-U.S. citizens, and List B and C documentation from at least 751 of the 754 U.S. citizens it hired during that period." *Id.* at 5, citing Complainant's Request for Remedies, Exs. A & B. Having reviewed Complainant's documentation, the Court finds that Respondents' continuation of its discriminatory practices, even after Complainant filed the Complaint in this matter, warrants high civil penalties.

Complainant also contends that TMM-TX knew about the Form I-9 document requirements and knew that discriminatory documentary practices were prohibited. Complainant argues that as an E-Verify employer, TMM-TX entered into a MOU with the Department of Homeland Security's E-Verify program. Complainant argues that through the MOU, TMM-TX agreed not to commit discriminatory documentary practices and the MOU explained that employers must accept List A, or List B and List C documents when completing the Form I-9.

The MOU explains that employers must comply with current Form I-9 procedures and that employees may "present any List A, or List B and List C, documentation to complete the Form I-9." Complainant's Request for Remedies, Ex. E at 3.[2] The MOU reiterates the prohibition on discrimination based on citizenship status under 1324b. *Id.* at 5. OCAHO has previously found that when an employer's conduct is based on its unfamiliarity with the IRCA, rather than a firm policy or attitude with less proper motives, the maximum penalty amount may not be appropriate. *Louis Padnos*, 3 OCAHO, 414 at 193. By contrast, in this matter, TMM-TX executed the MOU, which explained the documentary requirements for completing Forms I-9 and explained the prohibition on discriminatory documentary practices. Thus, the Court agrees with Complainant that TMM-TX knew or should have known of their legal obligation to utilize non-discriminatory documentary practices, and their failure to do so further warrants high civil penalties.

In short, high civil penalties, if not the maximum civil penalties, are warranted in this matter based on Respondents' widespread pattern or practice of discriminatory documentary practices, the large number of individuals that Respondents' subjected to discriminatory documentary practices, the continuation of such discriminatory documentary practices after issuance of the complaint, and the fact that TMM-TX knew or should have known of its legal obligation to utilize non-discriminatory documentary practices under § 1324b(a) during employment eligibility verification based on the MOU executed with the Department of Homeland Security.

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[2] TMM-TX did not respond to Complainant's May 1, 2018 requests for admissions which asked if the attached MOU reflected the MOU that TMM-TX entered into with E-Verify. Since TMM-TX did not respond to the Requests for Admissions, they are deemed admitted. 28 C.F.R. § 68.21(b). As such, I find that the MOU that Complainant presents reflects the MOU that TMM-TX entered into with the Department of Homeland Security.

3. Respondents' inability to pay warrants a 25% reduction of the maximum penalty amount

Despite Complainant's justified request for high civil penalties, Complainant proposes a 25% reduction from the maximum penalty amounts based on Respondents' inability to pay. When determining the appropriate penalty amounts in both § 1324b and § 1324a cases, OCAHO has considered an employer's inability to pay the proposed penalties. *U.S. v. Robinson Fruit Ranch, Inc.*, 6 OCAHO no. 855, 334–35 (1996) (considering that "all civil money penalty sums . . . diminish an employer's net profits and when there are a large number of Forms I-9, the maximum civil penalty for each violation could lead to an inappropriate civil penalty . . . ."); *U.S. v. Integrity Concrete, Inc.*, 13 OCAHO no. 1307, 18 (2017) (finding that "penalties are not meant to force employers out of business or result in the loss of employment for workers.").

Generally, the employer bears the burden to establish that the penalty amounts should be reduced based on the employer's inability to pay. *Integrity Concrete, Inc.*, 13 OCAHO no. 1307 at 18. In this case, Respondents did not file a brief or a response brief and did not provide any evidence or argument regarding inability to pay. Although Complainant requested Respondents' financial information in discovery, Respondents failed to produce any financial information during discovery. Complainant further alleges that although it "received only a small fraction of the financial information it requested during the investigation, the very limited financial documentation in the investigatory and litigation record suggests that Respondents may have an inability to pay the maximum civil penalty." Complainant's Request for Remedies at 8. In these circumstances, Complainant asks the Court to limit any penalty reduction to the proposed 25% because there is no factual or evidentiary basis for a further reduction.

The Court finds that Complainant's proposed penalty reduction of 25% is fair and reasonable and that Complainant has not abused its discretionary assessment responsibilities by requesting the maximum civil penalties with a 25% reduction. *U.S. v. Townsend Culinary, Inc.*, 8 OCAHO no. 1032, 511 (1999); *U.S. v. Acosta, Inc.*, 7 OCAHO 961, 29 (1997) (finding the proposed penalty amount was agreeable"[i]n the absence of any evidence that [the United States] acted unreasonably in having decided upon [the] recommended civil penalty sum, or that [the United States] has in some manner abused its assessment discretion in having done so . . . ."). Therefore, the Court imposes the maximum civil penalty amounts, with a 25% reduction, as requested by Complainant.

Accordingly, the Court imposes a civil penalty of $825 ($1,100 x .75) for all violations that occurred between January 1, 2014 and November 2, 2015, and $1,386 ($1,848 x .75) for all violations that occurred between November 3, 2015 and July 21, 2017.

B. The Court imposes civil penalties for all workers encompassed within the Court's liability findings

Complainant seeks civil penalties based on the number of Respondents' employees encompassed in the Court's liability findings under § 1324b(a)(6) and who are protected individuals under § 1324b(a)(3). Additionally, Complainant seeks penalties for employees encompassed by the liability findings, but for whom the evidence is inconclusive regarding their protected status.

Given Respondents' adamant and repeated refusals to comply with the judicial process and its discovery obligations, the Court's June 28, 2018 Order found that "[t]he onus to demonstrate that certain individuals should be excluded from the remedy is on the Respondents." 13 OCAHO 1312, at 9 and 12. Thus, Respondents have the burden of producing documentation to support the unprotected status of any employees during the remedies phase. *Id.*; *Iron Workers Local 455, et al. v. Lake Constr. & Dev. Corp.*, 7 OCAHO no. 964, 675–76 (1997) (finding that when a party has the burden of proof and production, but cannot meet its burden due to the opposing party's failure to comply with legitimate discovery orders, "it is appropriate to shift that burden to the noncomplying party."). This result is fair and equitable because Respondents possess, or should be in possession of, the requested documentation required to resolve the protected status of any disputed individuals, Respondents failed to place the protected status of any individuals for whom Complainant seeks a remedy in dispute, and Respondents contumaciously failed to comply with my orders and its discovery obligations.

1. Penalties for discrimination against all U.S. citizens encompassed by the Complaint

Complainant seeks penalties for 675 U.S. citizens whom Respondents subjected to unfair documentary practices. United States citizens are protected individuals. § 1324b(a)(3)(A). The undersigned previously found that "[f]rom January 1, 2014 to July 21, 2017, TMM-TX obtained List B and C documents for purposes of verifying employment eligibility from at least 675 of 678 (99.56 percent) of the U.S. citizens it hired." 13 OCAHO no. 1312 at 10. The undersigned found that "it was TMM-TX's standard practice in the [employment eligibility verification] process to request Lists B and C documentation from all individuals identified as U.S. citizens." *Id.* at 11. Additionally, the undersigned determined that Respondents are "liable for the violations alleged in the complaint pursuant to 28 C.F.R. § 68.23(c)(5)." *Id.* at 10. Thus, the undersigned found Respondents liable for discriminating against 675 U.S. citizens.

Out of the 675 U.S. citizens that Respondents subjected to unfair documentary practices between January 1, 2014 and July 21, 2017, Respondent discriminated against 554 of those individuals on or before November 2, 2015. *See* Complainant's Request for Remedies, Ex. F at 3. Respondents discriminated against 121 of those individuals between November 3, 2015 and July 21, 2017. *Id.* Thus, the Court imposes a penalty of $624,756 ((554 x $825) + (121 x $1,386)) for Respondents' unfair documentary practices against U.S. citizens.

2. Penalties for discrimination against non-U.S. citizens for whom: (1) evidence from the investigatory record demonstrates protected individual status, or (2) the evidence is inconclusive

Complainant also seeks penalties "based on TMM-TX's (1) non-U.S. citizen employees for whom the investigatory record contains evidence of the employee's protected individual status, and (2) non-U.S. citizen employees for whom the investigatory record is inconclusive . . . ." Complainant's Request for Remedies at 11. In my June 28, 2018 Order, I directed the parties to "identify if there is evidence that any violations involve non-protected individuals." 13 OCAHO 1312 at 12. Additionally, as explained above, since Respondents refused to participate in

discovery, the undersigned instructed Respondents that they had the "onus to demonstrate that certain individuals should be excluded from the remedy." *Id.*; *see also Iron Workers Local 455*, 7 OCAHO no. 694 at 675–76.

Respondents did not file a brief or respond to Complainant's Request for Remedies. Consistent with my June 28, 2018 Order, Complainant attempted to identify protected individuals based on documents it received during the investigatory process, prior to filing the Complaint. Based on these documents, Complainant seeks penalties for unfair documentary practices against nine individuals who were refugees or asylees, and 245 lawful permanent residents (LPRs) for whom (1) the record demonstrates that they are protected individuals or (2) the record is inconclusive regarding whether they are protected individuals.

a. Civil penalties are imposed for discriminating against nine aliens authorized to work, but civil penalties are not imposed for 25 aliens authorized to work whose documentation reflects non-refugee or non-asylee status.

Complainant seeks penalties for nine aliens authorized to work (AAWs) whom Complainant identifies as protected individuals because they were refugees or asylees at the time of the discrimination, and "for AAWs as to whom the investigatory record is inconclusive." Complainant's Request for Remedies at 12.

Under § 1324b(a)(3)(B), refuges and asylees are "protected individuals." Complainant identifies one individual who provided a List A document confirming his asylee status after November 2, 2015. Complainant's Request for Remedies, Ex. F at 4. Thus, the Court imposes a penalty of $1,386 for discrimination against this individual.

Complainant also identifies eight AAWs for whom the investigatory record lacks information regarding their status as a refugee or an asylee at the time of discrimination. Complainant alleges that it cannot determine the protected status for these individuals at the time of Respondents' discrimination. Specifically, Complainant alleges that it examined Respondents' E-Verify Report and identified eight AAWs who presented Employment Authorization Documents (I-766), but the category codes indicating their status as a refugee or asylee did not appear on the report and Complainant did not have copies of the individuals' supporting documentation or I-766. Complainant's Request for Remedies at 13, Ex. F. at 3–4. Complainant identifies five AAWs with incomplete documentation in the record, who were hired before November 2, 2015, and three AAWs with incomplete documentation, who were hired after November 2, 2015. *Id.* at 4. Complainant further alleges that it has limited the proposed penalties to AAWs whose documentation indicates refugee or asylee status or for whom the documentation is inconclusive.[3] Respondents did not file a response brief or present any evidence suggesting that the eight AAWs that Complainant identified were not protected individuals. Therefore, the Court imposes an $8,283 penalty for discrimination against these individuals (($825 x 5) + ($1,386 x 3)).

[3] Complainant identifies twenty-five additional AAWs whose documentation reflects non-refugee or non-asylee status. Complainant does not seek penalties for these individuals.

b. Civil penalties are imposed for discriminating against 245 lawful permanent residents (LPRs).

Complainant also seeks penalties for 245 lawful permanent resident employees whom Respondents subjected to discrimination. Complainant argues that because of the limited investigatory record and Respondents' failure to comply with discovery requests, Complainant lacks "any information regarding the 245 LPR employees' eligibility for, application for, or persistence in pursuing naturalization." Complainant's Request for Remedies at 16.

Section 1324b provides that LPRs are protected individuals, unless the individual fails to apply for naturalization within six months of becoming eligible or the individual has timely applied for naturalization, but has not been naturalized within two years after the application. *See* § 1324b(a)(3)(B). Generally, an LPR must reside in the United States for five years prior to becoming eligible for naturalization. 8 U.S.C. § 1427(a); 8 C.F.R. § 316.2(a)(3). Certain factors, however, can extend the period before an LPR is eligible for naturalization, or extend the length of time an LPR retains protected status after applying for naturalization. Therefore, in determining whether an LPR has protected status under § 1324b, there are several factors to consider, including the length of time it has taken to process the LPR's naturalization application, whether the LPR is actively pursuing naturalization, and whether the LPR has had continuous physical presence in the United States. 8 C.F.R. § 316.2(a); 8 U.S.C. § 1324b(a)(3)(B)(ii); *Verdesi v. Ark Rustic Inn, LLC*, 13 OCAHO no. 1311, 7 (2018). Complainant argues that due to Respondents' failure to comply with Complainant's discovery requests, Complainant lacks all of the information necessary to determine the protected status of each LPR whom Respondent subjected to unfair documentary practices.

Based on its pre-litigation investigation, Complainant alleges that Respondents hired fifteen LPRs with "illegible documentation in the investigatory record," sixty-seven LPRs for whom the investigatory record did not contain a List A document, and 163 LPRs who presented a List A document as set forth in the investigatory record. Complainant's Request for Remedies, Ex. F at 5. Thus, Complainant seeks penalties for Respondents' unfair documentary practices against 245 LPRs. Respondent failed to provide any briefing, argument, or evidence that any of the 245 LPRs were not protected individuals at the time of the discrimination.

Thus, the Court finds that Respondents discriminated against 207 LPR employees on or before November 2, 2015, and 38 LPR employees after November 2, 2015. *Id.* The Court imposes a penalty of $223,443 ((207 x $825) + (38 x $1,386)) for discrimination against these 245 LPR employees.

In total, the Court imposes $857,868 in civil money penalties for Respondents' violations against its employees. Respondents are jointly and severally liable for $857,868 in civil money penalties as set forth in the table below.

Victims of Respondents' Unfair Documentary Practices	Civil Penalty Based on Individuals Discriminated Against on or before November 2, 2015	Civil Penalty Based on Individuals Discriminated Against After November 2, 2015 ($1,386 per individual)	Total of Combined Civil Penalties
United States citizens	554 x $825 = $457,050	121 x $1,386 = $167, 706	$624,756
AAWs with asylee status	N/A	1 x $1,386 = $1,386	$1,386
AAWs with incomplete documentation in the investigatory record	5 x $825 = $170,775	38 x $1,386 = $52,668	$223,443
Total	$631,950	$225,918	$857,868

C. Injunctive Relief

Complainant seeks injunctive relief to deter Respondents from implementing discriminatory practices in the future, and to reform Respondents' existing practices. Under § 1324b, when the Court finds that a person or entity has engaged an unfair immigration-related employment practices, the Court must issue an order requiring that the person or entity cease and desist from engaging in such discriminatory practices. 8 U.S.C. § 1324b(g)(2)(A); *U.S. v. Estopy Farms*, 11 OCAHO no. 1256, 4, 8 (2015). Additionally, to ensure that Respondents comply with the law and change their discriminatory employment practices, the Court orders that Respondents take certain affirmative remedial steps to ensure that similar violations do not occur again and that IER will be allowed to monitor Respondents to ensure compliance.

ORDER

Respondents are jointly and severally liable for a total of $857,868 in civil money penalties. The total amount includes $631,950 for violations that occurred on or before November 2, 2015, and $225,918 for violations that occurred after that date.

IT IS ORDERED that

1. Respondents shall cease and desist from engaging in unfair immigration-related employment practices, including requiring U.S. citizens to provide only List A documents and non-U.S. citizens to provide only List B and C documents;

2. Respondents' current employees or agents who are responsible for recruitment, hiring, or employment eligibility verification (including use of the E-Verify program) shall complete an Immigrant and Employee Rights (IER) Employer/Human Resources

training, provided free of charge, on the anti-discrimination provisions of the Immigration and Nationality Act (INA), within 60 days of this Order;[4]

3. For three years after the date of this Order, any of Respondents' employees or agents who acquire responsibility for recruitment, hiring, or employment eligibility verification, shall complete, within 60 days of hire or assumption of such responsibility, an IER Employer/Human Resources training on the anti-discrimination provisions of the INA;

4. Within 10 days of this Order, Respondents shall post the English and Spanish version of IER's "If You Have A Right to Work" poster, available in electronic format in English at https://www.justice.gov/crt/page/file/961651/download and in Spanish at https://www.justice.gov/crt/page/file/972291/download. The posters must be posted in all places where Respondents would normally post notices to employees and job applicants. The posters shall remain posted for the duration of Respondents' use of E-Verify or for a minimum of three years (whichever is longer), and Respondents shall ensure that the posters are not altered, defaced, or covered by other materials;

5. Within 60 days of this order, Respondents shall, as necessary, create or revise their written policies, manuals, and procedures to make clear that they do not discriminate on the basis of citizenship status in the employment eligibility verification process in violation of § 1324b, and submit such policies to IER for advance review of any provisions that directly relate to § 1324b; and

6. Every four months, for three years from the date of this Order, Respondents shall send IER copies of the Forms I-9 (and all attachments, including photocopies of documents and E-Verify case reports) so that IER may monitor whether Respondents have complied with the Court's remedial order and will remain in compliance with their obligations to cease unfair and discriminatory immigration-related documentary practices.

SO ORDERED.

Dated and entered on December 10, 2018.

Thomas P. McCarthy

Thomas P. McCarthy
Administrative Law Judge

[4] On a monthly basis, IER conducts a free webinar to educate employers on the anti-discrimination provisions of the INA. To comply with the injunctive relief regarding training, Respondents may elect to have their employees or agents register for and attend one of these free webinars.

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 files a timely petition for 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. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2018, I have served by electronic mail copies of the foregoing Order on Request for Remedies by Email on the following persons at the email addresses indicated:

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