

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Southwest Key Programs (“Respondent”), [REDACTED] (“Charging Party”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively “Parties”).

I. BACKGROUND

WHEREAS, on June 7, 2019, IER accepted as complete the Charging Party’s charge against Respondent, DJ no. 197-74-639 (“Charge”), alleging violations of the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b.

WHEREAS, after investigation of the Charge (“the Investigation”), IER determined that there is reasonable cause to believe that Respondent retaliated against the Charging Party in violation of 8 U.S.C. § 1324b(a)(5) by not considering his employment applications or rehiring the Charging Party because he had challenged what he believed to be unfair documentary practices under 8 U.S.C. § 1324b.

WHEREAS, the Respondent does not hereby admit any liability, but does wish to resolve the Investigation without further delay or expense, and all Parties hereby acknowledge that they are voluntarily entering into this Agreement;

WHEREAS, on January 3, 2020, the Charging Party filed a lawsuit against Respondent before the Office of the Chief Admirative Hearing Officer (OCAHO) alleging a violation of 8 U.S.C. § 1324b;

NOW, THEREFORE, in consideration of the below mutual promises and to fully and finally resolve IER’s claims based on the Investigation, as of the date of this Agreement, the Parties agree as follows:

II. TERMS OF AGREEMENT BETWEEN IER AND RESPONDENT

1. This Agreement shall become effective as of the date the last party signs the Agreement (“Effective Date”). The term of this Agreement is 20 months following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$2,956 via the FedWire electronic fund transfer system within 15 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 Liza Zamd at Liza.Zamd@usdoj.gov (or any other individual IER designates).
3. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate against individuals based on citizenship, immigration status, or national origin, during the recruitment, hiring, firing, and employment eligibility verification and reverification processes (together, the “EEV” process), or intimidate, threaten, coerce, or retaliate against any person for participating in the Investigation or exercising any right or privilege secured by 8 U.S.C. § 1324b.
4. Within 90 days of the Effective Date, Respondent shall review any existing employment policies, training materials, or guidelines that relate to nondiscrimination. To the extent necessary,

Respondent shall revise or create policies to ensure that they:

- a. Prohibit requesting more or different documents, specifying documents, or rejecting valid documents, because of an individual's citizenship, immigration status or national origin in the hiring and firing process, and during the Form I-9/E-Verify employment eligibility verification and reverification processes;
 - b. Include citizenship, immigration status, and national origin as prohibited bases of discrimination, and ensure inclusion of these bases in any similar Equal Employment Opportunity statements that Respondent includes in printed or electronic materials available to the public or employees;
 - c. Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or employment eligibility verification and reverification processes immediately to the Immigrant and Employee Rights Section by directing the affected individual to the IER Poster and IER's worker hotline (800-255-7688) and website (www.justice.gov/ier), and advise the affected individual of his or her right to file a charge of discrimination with the Immigrant and Employee Rights Section; and
 - d. Provide that Respondent shall not take any adverse action against an employee for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in a lawful manner in any investigation or action arising under 8 U.S.C. § 1324b.
5. Respondent shall remove all negative notations or negative statements pertaining to the Charging Party from its employment databases, application databases, and the Charging Party's personnel file, including any mention of ineligibility for rehire arising from or relating to any alleged conduct that occurred before the Effective Date. In addition, absent IER's advance written approval, Respondent shall not make any future reference to the Investigation, this Agreement, or the Charge in any of Respondent's files regarding the Charging Party or the employment databases it uses to store information about workers' qualification or eligibility for employment opportunities, except as required to comply with this Agreement or applicable local, state or federal law; shall retain any required copy of this Agreement in a separate electronic or physical file; and shall only give individuals in Respondent's legal department access to that file.
 6. Respondent shall not, directly or indirectly, disclose to any individual, employer, or prospective employer, any information or documentation related to the Investigation, this Agreement, or the Charge, unless required by law. Respondent shall direct all staff members who receive requests for employment references from prospective employers regarding the Charging Party to confirm only the Charging Party's dates of employment and salary history, and to forward any requests for additional information from prospective employers to Respondent's legal department.
 7. Respondent shall provide the Charging Party with a signed copy of Attachment B.
 8. Respondent shall, within 10 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. Within 120 days of the Effective Date, each Respondent employee who participated in or is otherwise aware of the IER Investigation and knows the Charging Party's identity either as the individual who filed the Charge or who engaged in the alleged conduct underlying the charge, shall participate in training on 8 U.S.C. § 1324b.
 - a. In its discretion, IER will conduct the training in-person or remotely. Respondent employees who live more than 50 miles away from the location of the training may participate remotely, as can any Respondent employee whose travel is restricted because of COVID-19 concerns.
 - b. The training will occur during normal business hours, and Respondent shall pay its employees their normal rate of pay for the training, and Respondent will bear all employee costs, if any, associated with the training. IER will provide at least two training sessions on the same day. All of the individuals identified in Attachment A must attend one of the training sessions outlined in Paragraph 9(a). If any other individual requiring training pursuant to Paragraph 9 is unable to participate, based on good cause and at IER's discretion, that individual must watch an IER HR/Employer webinar within sixty days of the in-person training sessions.
 - c. Within 15 days of the training, Respondent shall compile and send via email to Liza Zamd at Liza.Zamd@usdoj.gov (or any other individual IER designates) attendance records listing the full name, job title, and signature of all individuals who participated in the training.
10. 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 responses from Respondent concerning its compliance; inspecting Respondent's premises; interviewing Respondent's employees, officials, or other persons; and reviewing copies of Respondent's records.
11. 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, if possible. Respondent shall have 30 days from the date IER notifies it of a purported violation to cure the violation to IER's satisfaction.
12. Subject to Paragraphs 13 and 20, and the resolution of claims in this Agreement through the Effective Date, 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.
13. This Agreement resolves any and all differences under 8 U.S.C. § 1324b between the Parties relating to the Charge through the Effective Date. The provisions of paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for retaliation in violation of 8 U.S.C. 1324b that is the subject of the Charge or Investigation, through the Effective Date.
14. For the purposes of an action to enforce this Agreement, the Parties agree that the obligations set forth in each and every provision of Parts II-IV of this Agreement are material.

III. TERMS OF AGREEMENT BETWEEN IER, RESPONDENT, AND THE CHARGING PARTY

15. Within 15 days of the Charging Party's compliance with Paragraph 4 regarding dismissal with prejudice of the claim, Respondent shall pay the Charging Party the amount of: 1) \$26,196, plus interest calculated at the IRS underpayment rate set forth in 26 U.S.C. § 6621(a)(2), through the Effective Date, less any deductions and withholdings required by law. The sum is a calculation of base wages, bonuses, benefits, and other forms of compensation that the Charging Party would have received if he worked for Respondent beginning March 1, 2019 through the Effective Date, minus the amount the Charging Party earned with reasonable diligence during that period; and 2) \$41,500 in front pay in lieu of reinstatement. Respondent shall make the payments using the Charging Party's preferred method of payment. Within three days of making the payments, Respondent shall confirm the disbursement of funds via email to Liza Zamd at Liza.Zamd@usdoj.gov (or any other individual IER designates).
16. The United States District Court for the Southern 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.
17. 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.
18. The Parties agree that, as of the Effective Date, new or continued litigation concerning the violations of 8 U.S.C. § 1324b that the Charging Party alleged in his OCAHO Complaint, and that IER has reasonable cause to believe that Respondent committed, is no longer 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.
19. The Parties agree to bear their own costs, attorneys' fees, and all other expenses incurred in this investigation.
20. This Agreement sets forth the entire agreement between the Parties concerning resolution of this Investigation and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter herein.
21. 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 facsimile signatures.
22. **Acknowledgment.** Charging Party acknowledges that he has read and understands this Agreement and executes it knowingly, voluntarily and without coercion. He has had the opportunity to seek the

advice of counsel and has done so or expressly waives that right.

IV. TERMS OF AGREEMENT BETWEEN CHARGING PARTY AND RESPONDENT

23. **Promise Not to Sue and Waiver of Damages.** To the maximum extent permitted by law, Charging Party promises and agrees to move to dismiss his lawsuit before OCAHO with prejudice as soon as possible. IER will not oppose such dismissal.

24. **Release of Claims.** In consideration for the Payment to Charging Party in the amount of \$7,000, and those specified in Paragraph 15 of this Agreement, the adequacy of which are hereby expressly acknowledged, Charging Party on behalf of his heirs and assigns, releases, absolves and discharges the Respondent and any of its officers, agents, representatives or successors or assigns (“Released Parties”), in their individual and representative capacities, from all 8 U.S.C. § 1324b claims (including demands, liens, suits, causes of action, expenses, damages, and obligations) , as well as any claims of discrimination of any kind relating to the Respondent, through the Effective Date.

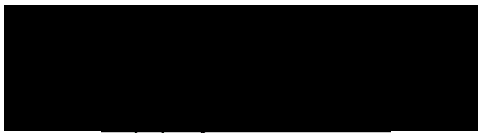
THIS IS A RELEASE AND WAIVER OF CLAIMS. THE CHARGING PARTY IS ADVISED TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth next to the signatures below.

Southwest Key Programs

DocuSigned by:
By: Lis Y. Gonzalez
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Date: 4/1/2020



Date: 4/2/2020

Immigrant and Employee Rights Section

By: [Signature]

Date: 4/3/20

Alberto J. Ruisanchez
Deputy Special Counsel

Jodi Danis
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Liza Zamd
Senior Trial Attorney