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

August 15, 2016

UNITED STATES OF AMERICA, Complainant, v. JULA888, LLC D/B/A PARA TACOS LA CHILANGA, Respondent.	)))))))))	8 U.S.C. § 1324a Proceeding OCAHO Case No. 15A00061

FINAL DECISION AND ORDER

Appearances:

Delia I. Gonzalez
For the Complainant

Ricardo Perez
For the Respondent

I. PROCEDURAL HISTORY

This is an action pursuant to the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2012). Complainant United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government), filed a one-count complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Jula888, LLC d/b/a Para Tacos La Chilanga (Jula888, Respondent, or the company). Respondent filed an answer, and the parties completed prehearing procedures.

Presently pending is the government's Motion for Summary Decision, to which Respondent filed a Response. As discussed in detail below, the government's Motion for Summary Decision is **GRANTED, IN PART**, because the government established that there is no genuine issue of material fact with respect to Jula888's liability for all charged violations, however, the

government's proposed penalty has been adjusted pursuant to a *de novo* review of the totality of the evidence.

II. BACKGROUND INFORMATION AND POSITIONS OF THE PARTIES

Jula888 is incorporated in the State of Texas. Since March 2014, the company has owned and operated a restaurant named Para Tacos La Chilanga. The restaurant has two locations, both located in Pharr, Texas; one is located at 1305 S. Cage Boulevard (Cage location), and the other is located at 6903 S. Jackson Road (Jackson location). The owners of the company are Laura and Juan Terrazas.[1]

On August 4, 2014, the government served Respondent with a Notice of Inspection (NOI), which required the production of business information and employment records, including Employment Eligibility Verification Forms (Forms I-9), no later than August 7, 2014. That same day, ICE also served Jula888 with an Immigration Enforcement Subpoena, which required Respondent to appear on August 7, 2014, before Special Agent Alfredo Vidales, with the required records.

On August 13, 2014, Ricardo Perez, counsel for Respondent, notified ICE that Respondent did not have any of the records requested by the NOI and Immigration Enforcement Subpoena. On December 15, 2014, the government served Jula888 with a Notice of Intent to Fine (NIF). The NIF contained one count, alleging thirty two violations of 8 U.S.C. § 1324a(a)(1)(B). The government alleges that Respondent failed to prepare and/or present Forms I-9 for the following thirty two employees: (1) Rogelio Salinas Colunga; (2) Jose Luis Martinez Mendoza; (3) Genaro Castellano Nochebuena;[2] (4) Jose Antonio Licea Sanchez; (5) Luis Enrique Rojano Terrazas; (6) Filomeno Cruz Martinez; (7) Juan Cruz Martinez; (8) Juan Pena Morales; (9) Gorge Cantu;[3] (10) Andres; (11) Sonia; (12) Kevin; (13) Cassandra;[4] (14) Dania;[5] (15) Nayla;[6]

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[1] Juan Terrazas and Juan Terrazas-Lopez are used interchangeably throughout the evidence of record.

[2] He is also referred to as Genero Castelan Nochebuena.

[3] He is also referred to as Jorge Cantu.

[4] The record indicates that Cassandra's last name is Ceballos. *See* Gov't Submission, Ex. G-3 at 71.

[5] The record indicates that Dania's last name is Vela. *See* Gov't Submission, Ex. G-16 at 185.

[6] The record indicates that Nayla's last name is Hernandez. *See* Gov't Submission, Ex. G-1 at 40; G-6 at 121.

(16) Iris; (17) Ladey; (18) Glenda; (19) Audrea;[7] (20) Cris; (21) Jessica;[8] (22) Isa; (23) Lupita; (24) Yahaira;[9] (25) Mary;[10] (26) Dulce; (27) Karina; (28) Mayra; (29) Marissa;[11] (30) Vanessa;[12] (31) Ocanaz Tomasa; and (32) Nava Garcia Anastacio.

As a result of these thirty two violations, ICE proposed a fine of $34,408.00. Respondent timely requested a hearing before an Administrative Law Judge. On June 15, 2015, ICE filed a complaint against Jula888, which fully incorporated the violations contained in the NIF, including the proposed civil money penalty of $34,408.00.

Jula888 filed an Answer to the Complaint on July 20, 2015. The company denied the government's allegations and stated that it did not have enough information to respond.[13]

On August 21, 2015, ICE filed its prehearing statement, proposing seven factual stipulations. The first proposed factual stipulation provides that Jula888 was incorporated in Texas. Proposed factual stipulations two through six relate to the procedural history of the case. The seventh proposed factual stipulation states that the individuals listed in the complaint were employees of Jula888 during some or all of the period for which Respondent was required to produce Forms I-9. On September 21, 2015, Jula888 filed its prehearing statement, agreeing to the first six proposed stipulations, but not the seventh stipulation concerning whether the individuals were employees of the company.

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[7] It appears that she is also referred to as "Andrea." *See* Gov't Submission, Ex. G-17 at 195.

[8] It appears that she is also referred to as "Yessica." *See* Gov't Submission, Ex. G-17 at 200-06.

[9] It appears that she is also referred to as "Yajaira." *See* Gov't Submission, Ex. G-17 at 200.

[10] It appears that she is also referred to as "Mari." *See* Gov't Submission, Ex. G-17 at 210.

[11] It appears that she is also referred to as "Morissa." *See* Gov't Submission, Ex. G-17 at 206.

[12] The record indicates that Vanessa's last name is Quintero. *See* Gov't Submission, Ex. G-3 at 53.

[13] Notably, Respondent did not plead that it was unable to obtain sufficient information to deny the allegations. *See* 28 C.F.R. § 68.9(c)(1) (noting that a statement that the respondent "does not have and is unable to obtain sufficient information to admit or deny . . . shall have the effect of a denial).

On December 18, 2015, the government filed a Motion for Summary Decision (Motion), pursuant to 28 C.F.R. § 68.38.[14] In its motion, ICE contends that it has met its burden of demonstrating the absence of a genuine issue of material fact as to Respondent's liability for the thirty two violations charged in the complaint. The motion contains seven proposed exhibits: (G-1) Notice of Inspection (pp. 1-3); (G-2) Subpoena served on August 4, 2014 (pp. 4-6); (G-3) Certificate of Formation (pp. 7-9); (G-4) Assumed Name Certificate (pp. 10-13); (G-5) DHS Determination of Civil Money Penalty (pp. 14-16); (G-6) DHS Reports of Investigation (pp. 17-54); and (G-7) Notice of Intent to Fine (pp. 55-59).

With regard to the civil money penalty, ICE argues that there is no genuine issue of material fact concerning its fine assessment. The motion provides analysis of the five statutory factors set forth at 8 U.S.C. § 1324a(e)(5): (1) size of the business; (2) good faith of the employer; (3) seriousness of the violations; (4) whether the individual was an unauthorized alien; and (5) history of prior violations.

At the outset, ICE set the baseline fine at a high rate for first-time paperwork violations because Respondent failed to prepare and present 100% of the required Forms I-9. Motion at 4-5. ICE assessed a baseline fine rate of $935 for each violation, and the total baseline fine was $29,920.00 for all thirty two violations. *Id.* Then, ICE considered the statutory factors to determine whether the factors would have an aggravating, mitigating, or neutral impact on the baseline fine. Motion at 5; Ex. G-5 at 15-16. ICE noted that Respondent is a small business with no history of previous violations. *Id.* Therefore, ICE treated the statutory factors of small business size and history of prior violations as neutral in its fine analysis. *Id.*

ICE found that aggravation of the fine was warranted based on the three remaining statutory factors—lack of good faith, seriousness of the violations, and involvement of unauthorized aliens—thus, it enhanced the proposed baseline fine by a total of $4488. Motion, Ex. G-7, at 59. ICE found that Respondent lacked good faith because Jula888 provided no records or documentation. Motion, Ex. G-5 at 15-16. Further, ICE determined that fine aggravation was appropriate because ten of the employees admitted to being unauthorized aliens, and it was unknown whether all of the individuals were unauthorized because Respondent did not provide any information. *Id.* Additionally, ICE aggravated the penalty because all of the violations were serious in nature. *Id.* After considering the statutory factors, ICE proposed a total penalty of $34,408.00. Motion, Ex. G-7, at 59.

Jula888 filed a Response to the government's Motion for Summary Decision on January 20, 2016 (Response). Respondent "does not deny that they did not properly complete employment

[14] *See* Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2016).

eligibility verification forms," but asserts that summary judgment is not warranted because genuine issues of material fact exist. Response at 3. Specifically, Respondent contends that "[t]he Government has no evidence to support the number of violations it is alleging," because it has not provided any evidence demonstrating how many people [R]espondent employed. *Id.* Rather, "[t]hey have merely relied on hearsay provided by a couple of individuals." *Id.* Further, Respondent contends that the proposed penalties are arbitrary and unreasonable and do not accurately reflect the statutory factors.

On June 9, 2016, Administrative Law Judge Stacy Paddack, who previously presided over this matter, ordered the parties to submit additional documentation and information. Specifically, the government was ordered to submit all evidence referenced in its filings to demonstrate that the thirty two individuals named in the Complaint were employees of Jula888, including: notebooks, calendars, and identification cards seized by the Department of Homeland Security, Homeland Security Investigations (HSI) special agents. Respondent was ordered to submit, among other things, "[f]inancial records and/or affidavits regarding the payment of employees, the names of employees, the wages paid to employees, the duties of employees, the hours of employment of the employees, the citizenship status of employees, and any other employment records" related to its business. Order for Additional Documentation and Information at 3.

On June 23, 2016, each party filed a response to Judge Paddack's order. The government's response included the submission of 17 proposed exhibits (hereinafter "Gov't Submission"): (G-1) Reports of Investigation from HSI – Harlingen (pp. 1-46); (G-2) Arrest Reports from HSI – Harlingen (pp. 47-52); (G-3) Reports of Investigation from HSI – McAllen (pp. 53-90); (G-4) Arrest Reports from HSI – McAllen (pp. 91-117); (G-5) Employee Badges Seized on August 1, 2014 (pp. 118-19); (G-6) Food Handler Badges (pp. 120-21); (G-7) Food Handler Applications (pp. 122-25); (G-8) City of Pharr Police Reports (pp. 126-33); (G-9) Sworn Statement of Genero Castelan Nochebuena (pp. 134-39); (G-10) HSI Agent Notes of Genero C. Nochebuena Interview (pp. 140-46); (G-11) Sworn Statement of Anastacio Nava Garcia (pp. 147-51); (G-12) Sworn Statement of Juan Pena Morales (pp. 152-58); (G-13) Lineup Identification by Juan Pena Morales (with translations) (pp. 159-69); (G-14) HSI Agent Notes of Juan Pena Morales Interview (pp. 170-75); (G-15) Translator's Certification (p. 176); (G-16) Notebook 1 (with translations) (pp. 177-89); and (G-17) Notebook 2 (with translations) (pp. 190-225).

Jula888's response stated that "there are no additional [d]ocuments or further, additional information, than what was previously stated and provided" in the company's response to ICE's Motion for Summary Decision.

III. DISCUSSION AND ANALYSIS

A. Applicable Legal Standards

1. Summary Decision

OCAHO rule 28 C.F.R. § 68.38(c) establishes that an Administrative Law Judge "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." Relying on United States Supreme Court precedent, OCAHO case law has held, "[a]n issue of material fact is genuine only if it has a real basis in the record. A genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).[15]

"Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution." *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)); *see generally* FED. R. CIV. P. 56(e). OCAHO rule 28 C.F.R. § 68.38(b) provides that the party opposing the motion for summary decision "may not rest upon the mere allegations or denials" of its pleadings, but must "set forth specific facts showing that there is a genuine issue of fact for the hearing." Moreover, "all facts and reasonable inferences to be derived therefrom are to be viewed in the light most favorable to the non-moving party." *United States v. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994).

2. Burdens of Proof and Production

In cases arising under 8 U.S.C. § 1324a, the government has the burden of proving by a preponderance of the evidence that respondent is liable for committing a violation of the employment eligibility verification requirements. *See United States v. Nebeker, Inc.*, 10 OCAHO no. 1165, 4 (2013) (citing *United States v. Am. Terrazzo Corp.*, 6 OCAHO no. 877, 577, 581 (1996)). However, after the government has introduced evidence to meet its burden of proof, "the burden of *production* shifts to the respondent to introduce evidence . . . to controvert

[15] 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 website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

the government's evidence. If the respondent fails to introduce any such evidence, the unrebutted evidence introduced by the government may be sufficient to satisfy its burden . . . ." *United States v. Durable, Inc.*, 11 OCAHO no. 1231, 5 (2014) (referencing *United States v. Alvand, Inc.*, 2 OCAHO no. 352, 378, 382 (1991) (modification by the Chief Administrative Hearing Officer (CAHO)); *United States v. Kumar*, 6 OCAHO no. 833, 112, 120-21 (1996); *Breda v. Kindred Braintree Hosp., LLC*, 10 OCAHO no. 1202, 8 (2013).

B. Respondent's Liability

The term "employee" means a person who provides services or labor for an employer for wages or other remuneration. 8 C.F.R. § 274a.1(f). Employers must prepare and retain Forms I-9 for employees hired after November 6, 1986, and are required to produce the Forms I-9 for inspection by the government upon three days' notice. 8 C.F.R. § 274a.2(b)(2)(ii); *United States v. Keegan Variety, LLC*, 11 OCAHO no. 1238, 2 (2014). An employer is required to retain the I-9 of a former employee for a period of three years after that employee's hire date, or one year after that employee's termination date, whichever is later. 8 U.S.C. § 1324a(b)(3); 8 C.F.R. § 274a.2(b)(2)(i); *United States v. Ojeil*, 7 OCAHO no. 984, 982, 992 (1998). Here, Respondent owned and operated Para Tacos La Chilanga since March 2014, and the Notice of Inspection was served in August 2014. Accordingly, any employee of the restaurant since its inception would fall under the retention period and Respondent was required to have prepared, retained, and presented a Form I-9 for every employee, regardless of whether they were current or former employees at the time of inspection.

Given that Jula888 did not provide ICE with any Forms I-9, and that Jula888 acknowledged that it "does not deny that [it] did not properly complete employment eligibility verification forms," Response at 3, the only issue in this case with regard to liability is whether Jula888 employed the thirty two individuals named in the complaint, thus requiring the company to have prepared and presented Forms I-9 to the government for inspection.

The government, as the moving party, has the burden of demonstrating the company's liability by a preponderance of the evidence. In support of its argument, the government has submitted several documents that provide a timeline of the government's investigation and evidence concerning liability. As noted, Respondent has provided no documents.

Based on the evidence of record, it appears that on July 25, 2014, HSI met with one of Respondent's former employees to discuss the employment of undocumented workers at the two Para Tacos La Chilanga locations. The former employee notified HSI that there were nine employees working at the Cage location, all without documentation, and that they were being paid in cash and had money taken out of their wages to pay for their smuggling fees. *See* Gov't Submission, Ex. G-1 at 1-3.

That same day, HSI interviewed Rogelio Salinas-Colunga, one of the undocumented workers employed at that time at Respondent's Cage location. Mr. Salinas-Colunga reported to investigators that he had been smuggled into the United States and that Respondent was withholding money from his paycheck so that he could pay back the smuggling fees, which Respondent paid on his behalf. He further stated that there were eight other undocumented employees at Respondent's Cage location. *See id.*, Ex. G-1 at 6.

On August 1, 2014, HSI conducted a series of consent searches, including a search at the Cage location. During the course of these searches, eight individuals were arrested, and all admitted to being employees at Para Tacos La Chilanga, as well as being unauthorized to work in the United States.[16] *See id.*, Ex. G-8 132-33; *see also id.*, Ex. G-3 at 75, 80, 82, 85; Exs. G-9, G-11, G-12.

Also on August 1, 2014, HSI served a search warrant on Respondent's Jackson location. During the search, two employees were arrested and several items were seized, including two notebooks that list various employee names, hours, and positions. *See id.*, Ex. G-1 at 15; Ex. G-16 at 177-89. One of the notebooks contains the names of eleven individuals and their telephone numbers, and is titled, "Meseros y Meseras," which translates from Spanish to English as "Waiters and Waitresses." *Id.*, Ex. G-16 at 184-185.[17] The other notebook contains the names of an additional eleven employees. *See id.*, Ex. G-1 at 26, 32; Ex. G-17.[18] This notebook is a manual calendar that lists start and stop times, days employees were absent, and dates they were paid. *See id.* On the manual calendar, most cells next to the individuals names and under the days of the week are left blank, with the exception of several cells that indicate "Rest," "Missed," and "Paid." *See id.*, Ex. G-17 at 195, 197-98, 200, 202, 204, 206, 208, 210. In light of the evidence throughout the record indicating how frequently employees were required to work, and without any evidence to the contrary from Respondent, the preponderance of the evidence establishes that the blank cells represent days that the employees actually worked for Respondent. *See id.*, Ex. G-3 at 56 ("Salinas-Colunga stated he and the other [Undocumented Alien] employees work 7 days a week."); Ex. G-9 at 135 (noting from the sworn declaration of an employee that he

[16] The eight individuals that were arrested on August 1, 2014, and admitted to being undocumented and working for Respondent are: (1) Rogelio Salinas Colunga; (2) Jose Luis Martinez Mendoza; (3) Genaro Castellano Nochebuena; (4) Jose Antonio Licea Sanchez; (5) Luis Enrique Rojano Terrazas; (6) Filomeno Cruz Martinez; (7) Juan Cruz Martinez; and (8) Juan Pena Morales. It appears that a ninth individual, Josefina Frias-Fuentes, was also arrested at this time; however, she is not named in the NIF or the complaint. *See infra*, III.B.

[17] (1) Jorge Cantu; (2) Andres; (3) Sonia; (4) Kevin; (5) Cassandra; (6) Dania; (7) Nayla; (8) Iris; (9) Ladey; (10) Glenda; and (11) Audrea.

[18] (1) Cris; (2) Jessica; (3) Isa; (4) Lupita; (5) Yahaira; (6) Mary; (7) Dulce; (8) Karina; (9) Mayra; (10) Marissa; and (11) Vanessa.

works approximately 15 hours a day, with only one day off per week, and at times zero days off per week); Ex. G-1 at 16 ("Pena stated that he works every day of the week.").

On August 4, 2014, HSI investigators went back to the Cage location to serve Respondent with the NOI. The restaurant was closed, but two individuals, Tomasa Ocanaz and Anastacio Nava Garcia, were cleaning the restaurant in preparation for an upcoming inspection. Both employees told HSI investigators that they did not have documentation to work in the United States. *See id.*, Ex. G-1 at 22. Later that day, HSI met with Respondent's counsel, Ricardo Perez, and served the NOI and Subpoena. *See id.*, Ex. G-1 at 23.

The government presented sworn statements from Genero Castelan Nochebuena, Anastacio Nava Garcia, and Juan Pena Morales, three of the individuals named in the Complaint. In all three sworn statements, the individuals state that they were employees at Para Tacos La Chilanga, unauthorized to work in the United States, and paid in cash. In sworn statements, Mr. Castelan-Nochebuena and Mr. Pena-Morales assert that Juan Terrazas—one of the owners of Jula888—assisted with smuggling them into the country, knew that they were unauthorized, and garnished their wages to pay for the smuggling fees.[19]

In consideration of all of the evidence of record presented by the government, including but not limited to, the sworn statements by employees of Respondent, the HSI Reports of Investigation, and the documents seized from Respondent's restaurants, the government has met its burden of demonstrating by a preponderance of the evidence that the thirty two individuals named in the complaint provided Respondent "services or labor" in exchange for "wages or other remuneration." 8 C.F.R. § 274a.1(f). Accordingly, the thirty two individuals named in the complaint were employees of Respondent for whom Forms I-9 should have been prepared and presented.

Notwithstanding blanket denials in its pleadings, Jula888 has offered no evidence to support its denial of liability for the alleged violations. OCAHO rules expressly provide that a party opposing a motion for summary decision may not rest on mere allegations or denials in a pleading, but must set forth specific facts showing that there is a genuine issue for trial. 28 C.F.R. § 68.38(b); *see United States v. Curran Eng'g Co.*, 7 OCAHO no. 975, 874, 878 (1997); *see also United States v. Senox Corporation*, 11 OCAHO no. 1219, 7 (2014). Such denials, moreover, cannot operate to create a genuine issue of material fact where one does not otherwise exist. *See Goel v. Indotronix Int'l Corp*., 9 OCAHO no. 1102, 14 (2003). ICE's investigatory reports, in contrast, are reports of the findings of an investigative agency made pursuant to the

[19] On August 1, 2014, HSI Special Agent Tomas Mora requested and received approval from Assistant United States Attorney (AUSA) Kim Leo to obtain an arrest warrant for Juan Terrazas-Lopez for violations of 8 U.S.C. § 1324 related to alien smuggling. To date, no criminal prosecution has been instituted.

authority granted by law and completed by agents who conducted the investigation. The reports have been prepared in accordance with normal recordkeeping requirements and demonstrate substantial indicia of reliability. While portions of these reports do constitute hearsay, as Jula888 points out, it is well established that hearsay is admissible in administrative proceedings so long as it is probative and reliable. *See* Administrative Procedure Act, 5 U.S.C. § 556(d); *United States v. China Wok Rest., Inc*., 4 OCAHO no. 608, 176, 189 (1994); *see also United States v. Carter*, 7 OCAHO no. 931, 121, 139 n.27 (1997). Jula888's "mere allegations or denials" in its Answer fail to challenge the probative value and reliability of the government's evidence. 28 C.F.R. § 68.38(b).

As noted, Respondent has provided no evidence or explanation to rebut any of the evidence of record. Accordingly, Respondent has failed to satisfy its burden of production or raise any genuine issue of material fact. In these circumstances, the government has met its burden of proving by a preponderance of the evidence that Respondent is liable for the violations alleged in the complaint. Accordingly, as there is no genuine issue of material fact, the government's Motion for Summary Decision with respect to liability for all thirty two violations of 8 U.S.C. § 1324a(a)(1)(B) is **GRANTED**.

Having resolved the issue of liability with regard to the thirty two employees named in the complaint, it must be noted that the record indicates that Respondent had several additional employees not named in the NIF or complaint, but for whom it failed to prepare and present Forms I-9.

The sworn declaration from Genero Castelan-Nochebuena identifies an individual named "Mario" who lived with six of the individuals named in the complaint, and was also an employee at Respondent's restaurant. *See* Gov't Submission, Ex. G-9 at 136-37 ("Mario left. He left because the work was too heavy and treatment was bad. . . . He just left and didn't return."). Josefina Frias-Fuentes was among the employees arrested on August 1, 2014, who admitted to being undocumented and working for Respondent. *See id.*, Ex. G-3 at 77; G-4 at 110. Cynthia Flores Benavides signed an affidavit testifying to the fact that she was an employee of Respondent. *See id.*, Ex. G-8 at 127 ("I am currently employed at [Para Tacos] La Chilanga Taqueria as a waitress."). Further, the manual calendar seized from one of Respondent's restaurants that contained the names of eleven employees named in the complaint contained the name of at least one additional employee named "Mama." *See id.*, Ex. G-17 at 204 (noting that Mama was scheduled to work every day of the week except for Tuesday).

Moreover, the record contains Food Handler Certificate Applications and employee badges from an additional eleven individuals not named in the complaint. Those employees are: (1) Pamela Terrazas, *see id.*, Ex. G-5 at 118-19; (2) Alan Gonzalez, *see id.*, Ex. G-6 at 120; Ex. G-7 at 122; (3) Gladys Perez, *see id.*, Ex. G-6 at 120; (4) Carlos Merla, *see id.*, Ex. G-6 at 120; Ex. G-7 at 122; (5) Ramona Cruz, *see id.*, Ex. G-6 at 120; (6) Carlos Guzman, *see id.*, Ex. G-6 at 120; Ex. G-7 at 125; (7) Gabriel Roel Jr., *see id.*, Ex. G-6 at 121; Ex. G-7 at 124; (8) Alma Escobedo, *see*

id., Ex. G-6 at 121; Ex. G-7 at 125; (9) Camilo E. Guadalupe, *see id.*, Ex. G-6 at 121; Ex. G-7 at 123; (10) Sergio J. Guadalupe, *see id.*, Ex. G-6 at 121; Ex. G-7 at 123; and (11) Antonio Galindo, *see id.*, Ex. G-6 at 121; Ex. G-7 at 123.[20]

Despite the record containing at least fifteen individuals that appear to have been employees of Respondent for whom the company failed to prepare and/or produce Forms I-9, because ICE did not include their names on the NIF and the complaint, Respondent cannot be found liable for the additional potential violations given the present posture of this case.[21] Accordingly, I will proceed to address the penalty assessment solely for the thirty two violations named in the complaint for which Respondent has been found liable.

C. Penalty Assessment

When an employer fails to properly prepare, retain, or produce Forms I-9 upon request, civil money penalties are assessed according to the following parameters established at 8 C.F.R. § 274a.10(b)(2): the minimum penalty is $110 and the maximum penalty is $1100 for each individual with respect to whom a paperwork violation occurred after September 29, 1999. For the thirty two violations in this case, potential penalties range from $3520 to $35,200. Penalties assessed in the upper range of penalty amounts should be reserved for the most serious and egregious violations. *See United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013).

As set forth at 8 U.S.C. § 1324a(e)(5), the following factors must be considered when assessing civil money penalties for paperwork violations: (1) the size of the employer's business; (2) the employer's good faith; (3) the seriousness of the violations; (4) whether the employee is an

[20] The record also contains several references to Victor Maldonado. *See* Gov't Submission, Ex. G-3 at 65, 81, 85; G-8 at 131. It appears that Mr. Maldonado may be "responsible for recruiting the illegal aliens who are working at [Respondent's] restaurants." *Id.*, Ex. G-3 at 65 (stating that Mr. Maldonado "is associated to the cartels in Mexico and is responsible for assaulting the employees who return to Mexico"). While the record indicates that Mr. Maldonado owns a construction business, *see id.*, at 81, and does not work at Para Tacos La Chilanga, he may have been housing several of the undocumented employees, *see id.* at 84, and his actions may have potentially aided Respondent. However, as noted, because ICE did not include his name on the NIF and the complaint, Respondent cannot be found liable for the additional potential violation.

[21] Pursuant to 28 C.F.R. § 68.9(e), if it is found to be "necessary to avoid prejudicing the public interest and the rights of the parties," an Administrative Law Judge (ALJ) may "allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the [ALJ]'s final order based on the complaint." Further, an ALJ's order "becomes the final agency order sixty (60) days after the date of the [ALJ]'s order, unless the Chief Administrative Hearing Officer modifies, vacates, or remands the [ALJ]'s final order pursuant to § 68.55, or unless the order is referred to the Attorney General pursuant to §68.55." 28 C.F.R. § 68.52(g).

unauthorized alien; and (5) the employer's history of previous violations. "The statute does not require that equal weight necessarily be given to each factor, nor does it rule out consideration of other factors." *United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

The government has the burden of proving both liability and an appropriate penalty. In addition, the government must prove the existence of aggravating factors by a preponderance of the evidence. *See United States v. Platinum Builders of Cent. Fla., Inc.*, 10 OCAHO no. 1199, 8 (2013) (citing *Nebeker*, 10 OCAHO no. 1165). ICE has discretion in assessing and setting the penalties; however, the Administrative Law Judge is not bound by ICE's penalty methodology and may conduct a *de novo* review of the penalty assessment. *United States v. Holtsville 811 Inc.*, 11 OCAHO no. 1258, 10 (2015) (citing *United States v. Aid Maint. Co., 8* OCAHO no. 1023, 321, 343 (1999); *United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011)).

1. Size of Employer's Business

In its Motion for Summary Decision, the government stated that Jula888 appeared to be a small business, however, because the company did not provide any documentation or records, their payroll is unknown. *See* Motion, Ex. G-5, at 15. Accordingly, ICE treated this factor as neutral.

Although leniency toward small businesses is a statutory and non-statutory factor that is appropriate for consideration in calculating fine assessments, due to the lack of evidence in the record provided by Respondent, the record is insufficient to determine exactly how many employees Respondent had during the time period for which Forms I-9 were required to be prepared and presented. In the absence of such production, the government has proven Respondent liable for violations related to thirty two employees. In addition, the evidence of record demonstrates that these were not Respondent's only employees. In fact, as noted, it appears that there were likely numerous other individuals employed by Respondent during the relevant time period. *See supra* at III.B. In these circumstances, because the exact size of Respondent's business and number of employees working since the inception of its business is unknown, and because this information is within Respondent's knowledge and control, Respondent is not entitled to mitigation based on the small size of its business. Nor does Respondent argue to the contrary. Accordingly, the government appropriately determined that neither enhancement nor mitigation is proper, and the size of employer's business will be treated as a neutral factor.

2. Good Faith

The government asserts that the penalty should be enhanced based on Respondent's lack of good faith. Specifically, ICE's motion notes that Jula888 provided none of the information requested in the August 4, 2014 NOI and Immigration Enforcement Subpoena. Motion, Ex. G-5 at 15-16.

"[T]he primary focus of a good faith analysis is on the respondent's compliance *before* the investigation." *United States v. New China Buffet Rest.*, 10 OCAHO no. 1133, 5 (2010) (citing *Great Bend Packing Co.*, 6 OCAHO no. 835 at 136; *United States v. Chef Rayko, Inc.*, 5 OCAHO no. 794, 582, 592 (1995) (modification by the CAHO)). In determining good faith, the government cannot merely point to a company's poor rate of compliance in order to demonstrate a lack of good faith; rather, the government must present some evidence of "culpable behavior beyond mere failure of compliance." *United States v. Karnival Fashion, Inc.*, 5 OCAHO no. 783, 477, 480 (1995) (modification by the CAHO)).

Here, prior to the investigation, it is evident that Jula888 made no attempt at verifying employment eligibility. Additionally, Respondent did not provide ICE with *any* documentation, despite being ordered to do so. The company has *still* not submitted any information related to its employees or payroll, nor has it provided any explanation for not having the requested documentation. In fact, it appears from the evidence of record submitted by the government, and the lack of evidence submitted by Respondent, that Jula888 paid its employees in cash and avoided basic recordkeeping practices. These practices that Respondent has engaged in appear to be an intentional effort to subvert the purposes of the employment eligibility verification requirements. Respondent's behavior is strong evidence of bad faith and enhancement of the penalty is warranted. In light of this factor, a five percent enhancement will be added to the penalty for each violation.

3. Seriousness of the Violations

"Paperwork violations are always potentially serious." *United States v. Skydive Acad. of Haw. Corp.*, 6 OCAHO no. 848, 235, 245 (1996). "[T]he seriousness of the violations should be determined by examining the specific failure in each case." *Id*. at 246. Additionally, the seriousness of the violations is "evaluated on a continuum since not all violations are necessarily equally serious." *United States v. Siam Thai Sushi Rest*., 10 OCAHO no. 1174, 4 (2013). The complete failure to prepare a Form I-9 for an employee is among the most serious of paperwork violations, *United States v. MEMF LLC*, 10 OCAHO no. 1170, 5 (2013), and generally warrants a higher penalty than do errors or omissions in completing the form. *See United States v. Speedy Gonzalez Construction, Inc.*, 11 OCAHO no. 1243, 5-6 (2015) ("Failure to prepare or present an I-9 is one of the most serious violations because it completely subverts the purpose of the employment verification requirements.").

As discussed above, Respondent failed to prepare Forms I-9 for all thirty two individuals named in the complaint. This is the most serious of paperwork violations and ICE has met its burden of proving that fine aggravation is warranted due to the seriousness of the violations. Accordingly, a five percent enhancement will be added to the penalty for each violation.

4. Whether the Employee is Unauthorized

The government enhanced the proposed penalty for all violations based on its assertion that the eight employees arrested on August 1, 2014, admitted that they were unauthorized to work in the United States and that "[i]t is unknown how many total unauthorized employees Para Tacos La Chilanga employed because no employee information was provided." Motion, Ex. G-5, at 16. Penalties are not to be enhanced across the board even if there is a finding that *some* individuals were unauthorized; rather, an enhancement is only appropriate for the specific violations that involve an unauthorized employee. *See United States v. Romans Racing Stables*, 11 OCAHO no. 1230, 5 (2014); *Nebeker*, 10 OCAHO no. 1165 at 5.

The evidence of record includes Reports of Investigation from HSI stating that the eight employees arrested on August 1, 2014, admitted to being unauthorized to work in the United States. These employees are: (1) Rogelio Salinas Colunga; (2) Jose Luis Martinez Mendoza; (3) Genaro Castellano Nochebuena; (4) Jose Antonio Licea Sanchez; (5) Luis Enrique Rojano Terrazas; (6) Filomeno Cruz Martinez; (7) Juan Cruz Martinez; and (8) Juan Pena Morales. *See* Gov't Submission, Ex. G-3 at 75; *see also* Ex. G-1 at 22; Ex. G-3 at 80-85. Two other employees, Tomasa Ocanaz and Anastacio Nava Garcia also admitted to being unauthorized to work in the United States on August 4, 2014, when the government went to the Cage location to serve the NOI. *See id.,* Ex. G-1 at 22. Additionally, the government submitted sworn affidavits from three of these ten employees—Genero Castelan Nochebuena, Anastacio Nava Garcia, and Juan Pena Morales—testifying to the fact that they were unauthorized. *See id.,* Exs. G-9, G-11, G-12. Jula888 did not rebut any of the evidence provided by the government. Therefore, the government has met its burden with regard to the violations involving these ten individuals and the fines for their violations will be enhanced by five percent each.

With regard to the remaining employees named in the Complaint, the government has failed to meet its burden of demonstrating that they were unauthorized for employment. The government's frustration with the lack of documentation provided by Respondent is understandable, as it makes it difficult, if not impossible, to verify the work authorization status of many of the individuals named in the Complaint. However, absent more specific evidence that a particular individual involved in one of the remaining twenty two violations was unauthorized for employment in the United States, the penalties for those violations cannot be enhanced on this basis.

5. History of Previous Violations

The government appropriately determined the absence of a history of previous violations was a neutral factor. As OCAHO case law instructs, "never having violated the law before does not necessarily warrant additional leniency, and it is still appropriate to treat this factor as a neutral one." *United States v. New China Buffet Rest.*, 10 OCAHO no. 1133, 6 (2010).

IV. CONCLUSION

Before addressing mitigating, aggravating, or neutral statutory factors, ICE assessed a base fine amount of $935 per violation, which represents a fine in the upper range of assessments for first-time offenses. As noted above, OCAHO case law makes clear that penalties approaching the maximum permissible fine amount should be reserved for the most egregious violations. *See Fowler Equipment*, 10 OCAHO no. 1169 at 6. The violations in this case are undoubtedly some of the most serious and egregious violations and a fine in the upper range of assessments is entirely appropriate. Considering the record as a whole and the five statutory factors, the penalties in this case will be adjusted as a matter of discretion to an amount close to the maximum of permissible penalties.

For the ten violations involving individuals unauthorized for employment in the United States, a fifteen percent enhancement is added and the penalty is assessed at $1075.25 per violation, for a total of $10,752.50. For the remaining twenty two violations, a ten percent enhancement is added and the penalty is assessed at $1028.50, for a total of $22,627. The total civil money penalty for all thirty two violations for which Jula888 is liable is assessed at $33,379.50.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Jula888, LLC d/b/a Para Tacos La Chilanga, is an entity incorporated in the State of Texas.

2. On August 4, 2014, the Department of Homeland Security, Immigration and Customs Enforcement, served Jula888, LLC d/b/a Para Tacos La Chilanga, with a Notice of Inspection.

3. On August 7, 2014, the Department of Homeland Security, Immigration and Customs Enforcement, served Jula888, LLC d/b/a Para Tacos La Chilanga, with an Immigration Enforcement Subpoena.

4. The Department of Homeland Security, Immigration and Customs Enforcement, served Jula888, LLC d/b/a Para Tacos La Chilanga, with a Notice of Intent to Fine on December 15, 2014.

5. Jula888, LLC d/b/a Para Tacos La Chilanga, timely filed a request for a hearing.

6. The Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer on June 15, 2015.

7. Jula888, LLC d/b/a Para Tacos La Chilanga, employed all thirty two individuals identified in the complaint after 1986 and employed the individuals during the period for which Forms I-9 were required to be retained.

8. Jula888, LLC d/b/a Para Tacos La Chilanga, failed to present Forms I-9 for the following thirty two individuals identified in the complaint: (1) Rogelio Salinas Colunga; (2) Jose Luis Martinez Mendoza; (3) Genaro Castellano Nochebuena; (4) Jose Antonio Licea Sanchez; (5) Luis Enrique Rojano Terrazas; (6) Filomeno Cruz Martinez; (7) Juan Cruz Martinez; (8) Juan Pena Morales; (9) Gorge Cantu; (10) Andres; (11) Sonia; (12) Kevin; (13) Cassandra; (14) Dania; (15) Nayla; (16) Iris; (17) Ladey; (18) Glenda; (19) Audrea; (20) Cris; (21) Jessica; (22) Isa; (23) Lupita; (24) Yahaira; (25) Mary; (26) Dulce; (27) Karina; (28) Mayra; (29) Marissa; (30) Vanessa; (31) Ocanaz Tomasa; and (32) Nava Garcia Anastacio.

9. Jula888, LLC d/b/a Para Tacos La Chilanga, generally denied all of ICE's allegations and presented no evidence in an effort to rebut the government's evidence.

10. Jula888, LLC d/b/a Para Tacos La Chilanga, is a business of unknown size with no history of previous Form I-9 violations.

11. Jula888, LLC d/b/a Para Tacos La Chilanga, was shown to have acted in bad faith.

12. Ten employees identified in the complaint were unauthorized to work in the United States. Those individuals are: (1) Rogelio Salinas Colunga; (2) Jose Luis Martinez Mendoza; (3) Genaro Castellano Nochebuena; (4) Jose Antonio Licea Sanchez; (5) Luis Enrique Rojano Terrazas; (6) Filomeno Cruz Martinez; (7) Juan Cruz Martinez; (8) Juan Pena Morales; (9) Tomasa Ocanaz and (10) Anastatcio Nava Garcia.

B. Conclusions of Law

1. Jula888, LLC d/b/a Para Tacos La Chilanga, is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2012).

2. All conditions precedent to the institution of this proceeding have been satisfied.

3. Jula888, LLC d/b/a Para Tacos La Chilanga, is liable for thirty two violations of 8 U.S.C. § 1324a(a)(1)(B).

4. OCAHO rule 28 C.F.R. § 68.38(c) establishes that an Administrative Law Judge "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision."

5. "An issue of material fact is genuine only if it has a real basis in the record. A genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986)).

6. "Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution." *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)); *see generally* FED. R. CIV. P. 56(e).

7. OCAHO rule 28 C.F.R. § 68.38(b) provides that the party opposing the motion for summary decision "may not rest upon the mere allegations or denials" of its pleadings, but must "set forth specific facts showing that there is a genuine issue of fact for the hearing."

8. "[A]ll facts and reasonable inferences to be derived therefrom are to be viewed in the light most favorable to the non-moving party." *United States v. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994).

9. In cases arising under 8 U.S.C. § 1324a, the government has the burden of proving by a preponderance of the evidence that respondent is liable for committing a violation of the employment eligibility verification requirements. *See United States v. Nebeker, Inc.*, 10 OCAHO no. 1165, 4 (2013) (citing *United States v. Am. Terrazzo Corp.*, 6 OCAHO no. 877, 577, 581 (1996)). However, after the government has introduced evidence to meet its burden of proof, "the burden of *production* shifts to the respondent to introduce evidence . . . to controvert the government's evidence. If the respondent fails to introduce any such evidence, the unrebutted evidence introduced by the government may be sufficient to satisfy its burden . . . ." *United States v. Durable, Inc.*, 11 OCAHO no. 1231, 5 (2014) (referencing *United States v. Alvand, Inc*., 2 OCAHO no. 352, 378, 382 (1991) (modification by the Chief Administrative Hearing Officer (CAHO)); *United States v. Kumar*, 6 OCAHO no. 833, 112, 120-21 (1996); *Breda v. Kindred Braintree Hosp., LLC*, 10 OCAHO no. 1202, 8 (2013).

10. The term "employee" means a person who provides services or labor for an employer for wages or other remuneration. 8 C.F.R. § 274a.1(f).

11. An employer is required to retain the I-9 of a former employee for a period of three years after that employee's hire date, or one year after that employee's termination date, whichever is later. 8 U.S.C. § 1324a(b)(3); 8 C.F.R. § 274a.2(b)(2)(i); *United States v. Ojeil*, 7 OCAHO no. 984, 982, 992 (1998).

12. Employers must prepare and retain Forms I-9 for employees hired after November 6, 1986, and are required to produce the Forms I-9 for inspection by the government upon three days' notice. 8 C.F.R. § 274a.2(b)(2)(ii); *United States v. Keegan Variety, LLC*, 11 OCAHO no. 1238, 2 (2014).

13. A party opposing a motion for summary decision may not rest on mere allegations or denials in a pleading, but must set forth specific facts showing that there is a genuine issue for trial. 28 C.F.R. § 68.38(b); *see United States v. Curran Eng'g Co.*, 7 OCAHO no. 975, 874, 878 (1997); *see also United States v. Senox Corporation*, 11 OCAHO no. 1219, 7 (2014).

14. An opposing party's mere allegations or denials in a pleading cannot operate to create a genuine issue of material fact where one does not otherwise exist. *See Goel v. Indotronix Int'l Corp.*, 9 OCAHO no. 1102, 14 (2003).

15. Hearsay is admissible in administrative proceedings so long as it is probative and reliable. *See* Administrative Procedure Act, 5 U.S.C. § 556(d); *United States v. China Wok Rest., Inc.*, 4 OCAHO no. 608, 176, 189 (1994); *see also United States v. Carter*, 7 OCAHO no. 931, 121, 139 n.27 (1997).

16. According to the parameters set forth at 8 C.F.R. § 274a.10(b)(2), civil money penalties are assessed for Form I-9 paperwork violations when an employer fails to properly prepare, retain, or produce the forms upon request.

17. Penalties assessed in the upper range of penalty amounts should be reserved for the most serious and egregious violations. *See United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013).

18. As set forth at 8 U.S.C. § 1324a(e)(5), the following factors must be considered when assessing civil money penalties for paperwork violations: (1) the size of the employer's business; (2) the employer's good faith; (3) the seriousness of the violations; (4) whether the employee is an unauthorized alien; and (5) the employer's history of previous violations.

19. "The statute does not require that equal weight necessarily be given to each factor, nor does it rule out consideration of other factors." *United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

20. The government has the burden of proving both liability and an appropriate penalty. In addition, the government must prove the existence of aggravating factors by a preponderance of the evidence. *See United States v. Platinum Builders of Cent. Fla., Inc.*, 10 OCAHO no. 1199, 8 (2013) (citing *United States v. Nebeker, Inc.*, 10 OCAHO no. 1165 (2013)).

21. ICE has discretion in assessing and setting the penalties; however, the Administrative Law Judge is not bound by ICE's penalty methodology and may conduct a *de novo* review of the penalty assessment. *United States v. Holtsville 811 Inc.*, 11 OCAHO no. 1258, 10 (2015) (citing *United States v. Aid Maint. Co.*, 8 OCAHO no. 1023, 321, 343 (1999); *United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011)).

22. "[T]he primary focus of a good faith analysis is on the respondent's compliance *before* the investigation." *United States v. New China Buffet Rest.*, 10 OCAHO no. 1133, 5 (2010) (citing *Great Bend Packing Co.*, 6 OCAHO no. 835 at 136; *United States v. Chef Rayko, Inc.*, 5 OCAHO no. 794, 582, 592 (1995) (modification by the CAHO)).

23. The government cannot merely point to a company's poor rate of compliance in order to demonstrate a lack of good faith. Rather, the government must present some evidence of "culpable behavior beyond mere failure [to comply]." *United States v. Karnival Fashion, Inc.*, 5 OCAHO no. 783, 477, 480 (1995) (modification by the CAHO).

24. "Paperwork violations are always potentially serious." *United States v. Skydive Acad. of Haw. Corp.*, 6 OCAHO no. 848, 235, 245 (1996).

25. "[T]he seriousness of the violations should be determined by examining the specific failure in each case." *United States v. Skydive Acad. of Haw. Corp.*, 6 OCAHO no. 848, 235, 246 (1996).

26. The seriousness of the violations is "evaluated on a continuum since not all violations are necessarily equally serious," *United States v. Siam Thai Sushi Rest*., 10 OCAHO no. 1174, 4 (2013).

27. The complete failure to prepare a Form I-9 for an employee is among the most serious of paperwork violations, *United States v. MEMF LLC*, 10 OCAHO no. 1170, 5 (2013), and generally warrants a higher penalty than do errors or omissions in completing the form. *See United States v. Speedy Gonzalez Construction, Inc.*, 11 OCAHO no. 1243, 5-6 (2015) ("Failure to prepare or present an I-9 is one of the most serious violations because it completely subverts the purpose of the employment verification requirements.").

28. Penalties are not to be enhanced across the board even if there is a finding that *some* individuals were unauthorized; rather, an enhancement is only appropriate for the specific violations that involve an unauthorized employee. *See Romans Racing Stables*, 11 OCAHO no. 1230 at 5; *United States v. Nebeker, Inc.*, 10 OCAHO no. 1165, 5 (2013).

29. "[N]ever having violated the law before does not necessarily warrant additional leniency, and it is still appropriate to treat this factor as a neutral one." *United States v. New China Buffet Rest.*, 10 OCAHO no. 1133, 6 (2010).

ORDER

ICE's Motion for Summary Decision is **GRANTED, IN PART**. The government met its burden of proving that Jula888, LLC d/b/a Para Tacos La Chilanga, is liable for thirty two violations of 8 U.S.C. § 1324a(a)(1)(B). Respondent is directed to pay civil money penalties in the total amount of $33,379.50. The parties are free to establish a payment schedule in order to minimize the impact of the penalty on the operations of the company.

SO ORDERED.

Dated and entered this 15th day of August, 2016.

_____

Thomas P. McCarthy
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1) (2012).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.