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

United States of America, Complainant v. James Arnold, Individually and d/b/a Fiesta/Bonanza Motors, Respondent; 8 USC 1324a Proceeding; Case No. 88100172.

SUMMARY DECISION AND ORDER WITH ADDITIONAL CIVIL SANCTIONS IMPOSED ON RESPONDENT AND HIS ATTORNEY UNDER RULES 11 AND 37 FRCP

Issued: December 29, 1989. Atlanta, Georgia.

RICHARD J. LINTON
Administrative Law Judge

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Appearances: WILLIAM L. SIMS, Esq. El Paso, Texas, for the Complainant, the Immigration and Naturalization Service.

DAVID W. CHEW, Esq. (Douglass & Chew), El Paso, Texas, for Respondent Arnold.

Before: RICHARD J. LINTON, Administrative Law Judge

SUMMARY DECISION AND ORDER WITH ADDITIONAL CIVIL SANCTIONS IMPOSED ON RESPONDENT AND HIS ATTORNEY UNDER RULES 11 AND 37 FRCP

I. PREFACE

Complainant, the Immigration and Naturalization Service (INS), has moved for summary decision, under 28 CFR 68.36, and for sanctions of reasonable expenses, including attorney's fees, under Rules 11 and 37 of the Federal Rules of Civil Procedure (FRCP). To a substantial extent, I grant the requested relief.

II. THE STATUTORY SCHEME

Signed into law on November 6, 1986 by President Ronald Reagan at a White House ceremony in the Roosevelt Room,[1] the Immigration Reform and Control Act of 1986 (IRCA)[2] is a major change in our immigration law. Mester Manufacturing Co. v. INS,

[1]Foster, The Immigration Reform and Control Act of 1986: Its Impact and Implications, 24 The Houston Lawyer 11 (No. 4, Jan.-Feb. 1987) (Foster, herein); Remarks By The President At Signing Ceremony For the Immigration Reform And Control Act of 1986 (Office of the Press Secretary, The White House, November 6, 1986); see 6 Legislative History, 1986 U.S. Code Cong. & Admin. News 5856-1.

[2]Codified at 8 USC 1324a, as relevant here; Morales and Winterscheidt, Immigration Reform and Control Act of 1986--An Overview, 3 The Labor Lawyer 717 (No. 4, Fall 1987). (Morales, herein).

_____ F.2d _____, 4 IER Cases 761, 762 (9th Cir. 1989);[3] Schlei & Grossman, Employment Discrimination Law, 2d Edition 99 (5-year Cum. Supp. 1989, ABA). Section 101 of IRCA amended the Immigration and Nationality Act of 1952 (The Act) by adding a new section, 274A. Mester (JD of ALJ Morse, slip op. at 1.) As I have noted, Section 274A is codified at 8 USC 1324a.

Accompanying other dramatic changes, IRCA adopted the concept of controlling employment of undocumented aliens by providing a mechanism for imposing civil money penalties on employers who hire, recruit, refer for a fee, or continue to employ ``unauthorized'' aliens in the United States.[4] Mester, JD of ALJ Morse, slip opinion at 1. Employees hired before November 6, 1986 are grandfathered.[5] Foster at 12; Morales at 717-718. Perhaps the most succinct description of the purpose of this portion of IRCA appears in the headings. That for Title I is ``Control of Illegal Immigration.'' Section 101 (which falls under Part A--Employment, of Title I) reads ``Control of Unlawful Employment of Aliens.''

Grandfather, or preenactment, status relates only to the hiring, verification, and record keeping provisions of IRCA. Preenactment status does not affect an alien's immigration status, provide protection from deportation, or relate to legalization under IRCA. Thus, grandfathered status can be lost by such events as quitting, termination, exclusion, or deportation. Foster, Immigration Law & Employer Sanctions, 26 The Houston Lawyer 19 (No. 3, Nov.-Dec. 1988, HBA).

Section 101 of IRCA is known as the ``employer sanctions'' section.[6] Two forms of prohibitions, with penalties, are created. First, violations are defined for the ``knowing'' hire or knowing continued employment of an unauthorized alien. 8 USC 1324a(a). Second, Section 101 of IRCA establishes a system under which employers are required to verify that a person hired is not an unauthorized alien. 8 USC 1324a(b). Unauthorized aliens are defined at 8 USC 1324a(h)(3) as:

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[3]In its decision of June 23, 1989 in Mester, the Ninth Circuit affirmed the June 17, 1988 ``extraordinarily detailed and thorough'' decision (JD) of OCAHO's first permanent administrative law judge, Judge Marvin H. Morse.

[4]Criminal penalties are provided for those who engage in a ``pattern or practice'' of violations. 8 USC 1324a(f).

[5]For some reason the grandfather provisions is buried, without benefit of a heading, in a group of notes in the codified version following 8 USC 1324a(n)(4)(D). It receives a prominent heading in Pub. Law No. 99-603, 100 Stat. 3359, 3372, Section 101(a)(3), ``Grandfather For Current Employees.''

[6]Foster, Immigration Law & Employer Sanctions, 26 The Houston Lawyer 19 (No. 3, Nov.-Dec. 1988, HBA).

> As used in this section, the term ``unauthorized alien'' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General.

Civil money penalties are to be imposed for violations of the ``knowing'' or ``verification'' provisions. Aside from cease and desist orders which are to issue for knowledge violations, the statutory civil money penalties for knowledge violations range from a minimum of $250 to a maximum of $10,000 per unauthorized alien. Within that spread are three classes of penalties ($250 to $2,000, $2,000 to $5,000, and $3,000 to $10,000) which are based on whether the empoyer has any outstanding orders against it for violating IRCA. 8 1324a(e)(4). As previously mentioned, the statute provides criminal penalties for ``pattern or practice'' violations. 8 USC 1324a(f).

Labeling verification violations as ``paperwork'' infractions, Congress provided for a civil money penalty only, with a range of $100 to $1,000. In setting the amount of the penalty, the ALJ is to consider five statutory factors. 8 1324a(e)(5). The only violations alleged in our case are those of verification, or paperwork.

Not involved in this case, but worthy of mention, is the fact that Section 102 of IRCA, 8 USC 1324b (Section 274B of the Act), prohibits unfair immigration-related employment practices which are based on national origin or citizenship status.[7] We are not concerned here with those Section 102 cases.

The Attorney General is the head of the Department of Justice (DOJ). 8 USC 503. Once of the several separate offices, divisions, bureaus, and units within the DOJ is the Immigration and Naturalization Services (INS). 8 USC 1551; 28 CFR 0.1, 0.105.[8] To achieve compliance with IRCA's Section 101 requirements, Congress provided for investigation and enforcement by the Attorney General. 8 USC 1324a(e). The Attorney General assigned that duty to the Commissioner of the INS.[9] 8 CFR 100.2. Investigation and

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[7]See Kobdish, The Frank Amendment To The Immigration Reform And Control Act Of 1986--A Labyrinth For Labor Law Litigators, 4 SwLJ 667 (No. 2, June 1987).

[8]In 1882 Congress vested administration of our first general immigration law in the Secretary of the Treasury. In 1895 Congress created the Bureau of Immigration (in the Treasury Department). Following other changes, the Bureau, in 1913, was transferred to the newly created Department of Labor. In 1933 it received its current title under a Commissioner. In 1940 the INS was transferred to the DOJ. See the Historical Note to 8 USCA 1551.

[9]The Commissioner is appointed by the President with the advice and consent of the Senate. 8 USC 1552. When the office was created in 1891, the statutory title was Superintendent of Immigration. See Historical Note, id.

enforcement procedures for IRCA's employer sanctions cases are described at 8 CFR 274a.9.

If an investigation determines that a violation has occurred, an INS district director, or his designee, serves on the employer a notice of intent to fine (NIF). 8 CFR 274.9(b), (c).[10] At that point the employer may comply, or settle with the district office of the INS. (Our case arises in the El Paso district of the INS's Southern Region. 8 CFR 100.4.)

If there is no settlement at the NIF stage, the employer must request a hearing before an administrative law judge (ALJ) to avoid the NIF's becoming final. 8 USC 1324a(e)(3)(A), (B); 8 CFR 274a.9(d). When a request for hearing has been made, a district director of the INS must initiate the steps which lead to a formal hearing before an ALJ. Congress provided that ALJs will conduct such hearings in accordance with the Administrative Procedure Act (APA). 8 USC 1324a(e)(3); Mester at 763. The adjudicatory process is initiated when the INS files a complaint, a formal document, with the Office of the Chief Administrative Hearing Officer (OCAHO). 28 CFR 68.1 and 68.2(e). Although filing of the complaint initiates a formal proceeding, 28 CFR 68.2(e), (g), the formal stage of a case actually does not begin (the time deadlines do not start) until the OCAHO serves the original complaint on the respondent employer. 28 CFR 68.3(b), (d). The regulations governing the formal proceeding before an ALJ have been issued by the Attorney General as 28 CFR Part 68.

Section 101(a)(2) of IRCA directed the Attorney General to issue interim regulations governing proceedings. The Attorney General issued an interim Part 68 on November 24, 1987, 52 Federal Register 44971 (No. 226, Nov. 24, 1987). The final version of Part 68, effective November 24, 1989, appears at 54 Federal Register 48593 (No. 225, Nov. 24, 1989). The final version renumbered some of the sections of Part 68 and modified the provisions of some sections. Unless otherwise indicated, the Part 68 sections cited in this decision are those contained in the November 1989 final rule.

As I have described, the INS is the Attorney General's enforcement and prosecuting arm for employer sanctions cases. As to these cases, the Attorney General's adjudicatory arm consists of the ALJs, 8 USC 1324a(e)(3), and the Attorney General's reviewing official, 8 USC 1324a(e)(6). By the Attorney General's delegation, that reviewing official is the Chief Administrative Hearing Officer

[10]The NIF procedure was not activated until there first was a 6-month public information period followed by a citation, or warning, period of June 1, 1987 through May 31, 1988. Mester at 763; 8 CFR 274.a9(c).

(CAHO). 8 CFR 0.118; 28 CFR 68.51(a). The Office of the Chief Administrative Hearing Officer (OCAHO) is part of the Executive Office for Immigration Review (EOIR), an umbrella agency which houses, in addition to the OCAHO, two other units: (1) the Board of Immigration Appeals and (2) the Office of the Chief Immigration Judge. 8 CFR 3.0; 28 CFR 0.115. By statutory command, appeals from the CAHO do not go to EOIR, but to a circuit court. 8 USC 1324a(e)(6); 28 CFR 68.51(a)(2).

Thus, the enforcement-prosecuting function resides with the INS, whereas the adjudicatory function operates in a separate office of the DOJ. Moreover, the functions in these employer sanctions cases do not overlap and are situated in separate arms, so to speak, of the Attorney General.[11]

Not only are the functions of INS and OCAHO separated, as just described, but also the ALJs are themselves independent triers of fact by virtue of the APA, as Congress mandated at 8 USC 1324a(e)(3)(B). Aside from the three permanent ALJs now employed by OCAHO, other agencies, principally the National Labor Relations Board (NLRB), temporarily loan ALJs to OCAHO to preside over IRCA cases. The loans are arranged through the Government's Office of Personnel Management (OPM). 8 USC 3344; 5 CFR 930.213. I am one of the several NLRB judges currently loaned on a temporary or intermittent basis to the OCAHO.

III. STATEMENT OF THE CASE

On November 2, 1988 Complainant, the Immigration and Naturalization Service (INS), filed a complaint (8 USC 1324a Proceeding) with the Office of the Chief Administrative Hearing Officer (OCAHO) against James Arnold, Individually and d/b/a Fiesta/Bonanza Motors (Respondent or Arnold). OCAHO docketed the complaint as Case No. 88100172 and served it, with a notice of hearing dated November 16, 1988, on Respondent. On November

[11]The foregoing description applies only to IRCA's section 101 cases (``employer sanctions'') codified at 8 USC 1324a. IRCA's Section 102 cases (the antidiscrimination section, codified at 8 USC 13234b) provides for a substantially different arrangement. Section 102 creates the position of Special Counsel within the DOJ. Appointed by the President, by and with the advice and consent of the Senate, 8 USC 1324b(c)(1), it is the Special Counsel, and not the INS, who investigates and prosecutes complaints of discrimination. 8 USC 1324b(c)(2). If the Special Counsel declines to prosecute on a charge by a person, the charging party may file a complaint on his own behalf as a private action. 8 USC 1324b(d)(2). In either case, Section 102 complaints are litigated before ALJs. Contrary to the procedure in employer sanctions cases with the OCAHO being the first step in the process of an appeal, in Section 102 cases appeals from an ALJ's decision go straight to a circuit court. 8 USC 1324b(i).

25, 1988 Respondent, by counsel, filed his answer (service dated November 22, 1988) to the Complaint.

On December 8, 1988 Complainant INS served on Respondent Arnold (by mailing to Respondent's counsel) a set of written interrogatories (pursuant to interim 28 CFR 68.15) and a request for admissions (pursuant to interim 28 CFR 68.17). The interrogatories are 47 in number, with some containing subsets. The request for admissions sought 23 numbered admissions. On January 4, 1989 Arnold objected and moved for a protective order. Complainant countered on January 18, 1989. By order dated January 19, 1989 I postponed indefinitely the hearing date in this case.

On February 6, 1989 I denied Arnold's motion in its entirety. In so doing, I granted Arnold 10 days in which to mail an appeal to the CAHO. If Arnold failed to file an appeal, I ordered that he serve his responses to Complainant's December 8, 1988 discovery requests within 21 days from the date of that order. Arnold did appeal, but by letter ruling dated March 8, 1989 the CAHO declined to grant Arnold's appeal on determining that ``a review of this interlocutory order is not called for in this instance.''

When the CAHO declined to consider Arnold's appeal, the 21-day response time was triggered. Thus, Arnold had until Monday April 3, 1989 to serve his response--21 days plus the 5-day grace period granted by then 28 CFR 68.5(d)(2). Arnold failed to file any responses. On April 7, 1989 the Complainant again moved that its requested admissions be deemed as admitted and that Arnold be compelled to answer the (47) interrogatories.

Arnold having failed to comply with my order of February 6, 1989, on May 9, 1989 I deemed as admitted each of Complainant's December 8, 1988 requested admissions (23 in number). I also ordered Respondent Arnold to answer Complainant's December 8, 1988 interrogatories within 14 days. 28 CFR 68.19(a) (now 28 CFR 68.21(a)). Respondent's deadline for mailing his responses was Tuesday, May 30, 1988 (14 days plus 5-day grace granted for mailing.

By motion dated June 28, 1989 the Complainant requested that I infer and conclude that Arnold's (potential) answers to the Complainant's 47 interrogatories of December 8, 1988 would have been adverse to the Arnold if the answers had been filed. Under the interim rules, 28 CFR 68.7(b) and 68.5(d)(2), Arnold had 15 days (10 days plus a 5-day grace period) in which to answer the Complainant's motion. Respondent Arnold failed to file an answer to the motion, and failed to comply with my May 9, 1989 order compelling him to answer the Complainant's December 8, 1988 interrogatories. Accordingly, by order dated July 31, 1989 I granted Complainant's motion and I inferred and concluded that Arnold's answers to Com

plainant's December 8, 1988 interrogatories (47 in number), if such answers had been filed, would have been adverse to Respondent. 28 CFR 68.19(c)(1), now 28 CFR 21(c)(1).

On September 8, 1989 the INS served on Arnold ``Complainant's Motion For Summary Decision And Reasonable Expenses'' (MSD) pursuant to 28 CFR 68.36. As part of the reasonable expenses it seeks to recover, the INS requests that it be awarded a reasonable attorney's fee. Although Arnold had until Monday, September 25, 1989, in which to serve an opposition, he did not do so and has not filed one.

By order dated October 4, 1989 I directed Arnold to show cause on or before October 23, 1989:

> 1. Why I should not impose sanctions in this case on him, or on his attorney, David W. Chew, or on both, under:
>
> (a) Rule 11, FRCP;
>
> (b) Rule 37(b), FRCP; and
>
> 2. Why I should not direct a hearing under Rule 37(a), FRCP.

In my October 4 show cause order I also directed the INS to supplement, by October 23, 1989, its motion with affidavits listing the indirect costs to the Government. (Complainant's original motion submitted affidavits covering only its direct costs for the hourly rates, apparently per the Government's General Schedule, of its attorney and legal clerk.) I further directed the INS to supplement its motion by proposing what it contends a reasonable sanction (in addition to reasonable expenses) would be under Rule 11, RFCP. The date of October 23, 1989 was extended 5 days by operation of law by interim 28 CFR 68.5(d)(2), to Saturday, October 28 and by operation of law again, interim 28 CFR 68.5(a), to yield a service due date of Monday, October 30, 1989. By service date of October 19, 1989, the INS filed a supplemental affidavit detailing its indirect expenses, and a cover letter proposing that sanctions be in an amount double the Complainant's costs. As with its affidavits attached to its MSD, the supplemental affidavit actually is an unsworn declaration under penalty of perjury as authorized by 28 USC 1746.

By service date of October 23, 1989, Respondent's counsel filed a 2-paragraph ``Attorney's Response To Order To Show Cause.'' The two paragraphs read:

> 1. Since Respondent has refused, ignored or neglected to respond to the Ordered Discovery, the Respondent's attorney has no basis to oppose the Complainant's Motion for Summary Decision and Reasonable Expenses.
> 2. While not opposing the fees of Mr. Sims it does appear that inordinate hours are attributed to this case. For example, the interrogatories and admissions proposed are basically boiler plate from which the service routinely propounds.

Although the INS affidavits report actual costs, the question of reasonable attorney's fees as sanctions is more akin to a market-based concept, plus other factors. See, for example, the ABA's Standards and Guidelines for Practice Under Rule 11 of the Federal Rules of Civil Procedure, reprinted at 121 F.R.D. 101, 126 (Oct. 1988). A reasonable attorney's fee may be more, or less, than the actual cost. Thomas v. Capital Sec. Services, 836 F.2d 866, 879 (5th Cir. 1988). Rather than delaying my decision in order to direct the attorneys to submit affidavits respecting the customary charges by attorneys in El Paso for work of this nature, I shall proceed on the basis of the record before me. I note that the customary fee rate would likely be at least $100 an hour.

An ALJ may enter summary decision for a party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. 28 CFR 68.36(c).

IV. FINDINGS OF FACT

A. The Violations

1. Incorporating a notice of intent to fine (NIF) personally served on Arnold by an INS special agent on August 30, 1988, the November 2, 1988 complaint alleges that Respondent Arnold committed 10 violations of the VERIFICATION provisions of the Immigration and Nationality Act (the Act), Section 274A(a)(1)(B) [8 USC 1324a(a)(1)(B)].

Section 274A(a)(1)(B) [8 USC 1324a(a)(1)(B)] makes it unlawful to hire an individual for employment in the United States without complying with the VERIFICATION requirements (on Form I-9) of 8 USC 1324a(b), as implemented by the regulations of the Attorney General at 8 CFR 274a.2. Section 274A(b)(3) [8 USC 1324(b)(3)] of the Act requires the employer or referring entity to retain, for a specified period, the verification form (Form I-9) and make it available for inspection by officers of the INS or the Department of Labor. The regulation covering retention by the employer and inspections by the INS appears at 8 CFR 274a.2(b)(2).

2. In its complaint the INS asserts that it seeks the relief specified in the NIF. The NIF warns that the INS will seek an order requiring Respondent Arnold to pay a civil money penalty totaling $5,250 for the 10 alleged VERIFICATION violations. The requested penalty consists of 9 alleged untimely completions of I-9 forms at $500 each and 1 alleged no I-9 form or non production of I-9 form, pertaining to Jesus Loya Fabela, for $750.

3. To establish the alleged violations, Complainant's September 8, 1989 motion of summary decision (MSD) attaches copies of, and relies on, Complainant's December 8, 1988 interrogatories (47 in number), December 8, 1988 requested admissions (23 in number), and my orders of May 9, 1989 (deeming as admitted the 23 requested admissions) and July 31, 1989 (inferring and concluding that Arnold's answers to the interrogatories would have been adverse to Arnold). The deemed admissions establish that agents of the U.S. Border Patrol conducted an education visit at Respondent's premises on June 20, 1988 and, 10 days later on June 30, 1988, an inspection of Respondent's I-9 forms.

4. Based on my orders of May 9, 1989 and July 31, 1989, deeming and inferring as described in finding of fact 3, I find that Respondent Arnold committed the 10 VERIFICATION violations as alleged in the complaint. Summarizing by category, Respondent Arnold had obtained untimely completions of I-9 forms respecting nine employees and failed to produce, on request, a completed I-9 form for one employee, as follows:

Untimely completion of I-9	I--9 not produced
Angel Alvarez	Jesus Loya Fabela
Armando Astorga	
Nora Isela Barquin	
Nicolas Guiterrez Escalante	
Roberto Ricardo Flores	
Alfonso Gomez	
Jesus Lira	
Ricardo Almengor Mejia	
Mario A. Ortega	

5. There is some question respecting the names of two individuals. Angel Alvarez is shown as Angel Alarez in the top information section of the I-9 form (Exhibit K to deemed admission A.11), but as Angel Alvarez in the certification section at the bottom of the I-9. His signature is illegible. Elsewhere the name is listed as Angel Alvarez on a 2-page INS form (obviously completed during the special agent's June 30, 1988 inspection) listing the names of employees, their dates of hire and/or termination dates (Exhibit B to deemed admission A.2) verified by Mario Ortega, Respondent's accountant. In the interrogatories (2.e) the name of Angel Alvarez is listed. Although the names are probably that of one person, Angel Alvarez, I need not decide, for the evidence establishes that at least one of the workers is Angel Alvarez.

6. The second name in question is that of Jesus Loya Fabela. Although the NIF uses that name (NIF at 7), as does interrogatory 2(j), no underlying document does. The only underlying record which perhaps names him is Respondent's June 30, 1988 employee

list naming employee Jesus Loya (third name), showing no date of hire and a termination date of June 20, 1988. I note that the June 20, 1988 termination date coincides with the educational visit conducted by U.S. Border Patrol agents on the same date. Apparently that coincidence is the unstated basis for the INS's contention (MSD at unnumbered page 4) that there is ``strong evidence that Jesus Loya Fabela'' was an unauthorized alien. That inference seems reasonable given the nature of the educational visit and the employee's departure that same day.

In any event, the only documents giving the name of Jesus Loya Fabela are those of the INS, beginning with the NIF and carrying over to the December 8, 1988 interrogatories (number 2.j) and requested (now deemed) admissions (number 3.23). As with Angel Alvarez, I need not pause to consider whether Jesus Loya Fabela is the same person as Jesus Loya, for the inferred interrogatories and deemed admissions establish the relevant facts as to Jesus Loya Fabela.

7. The inferred answers and deemed admissions establish that each of the 10 employees listed in the NIF and in finding of fact 4 was hired after November 6, 1986. Although exemptions are an affirmative defense, I further find that the inferred answers and deemed admissions establish that none of the 10 employees was exempt from the provisions of the Act.

8. Based on the preceding findings, I further find that there is no genuine issue as to any material fact.

B. The Civil Money Penalty

1. The five statutory factors

Turning now to the issue of the civil money penalty of $5250 sought by the INS, I must consider the five factors set forth in the statute, 8 USC 1324a(e)(5):

1. size of the business
2. good faith of the employer
3. seriousness of the violation
4. whether the individual was an unauthorized alien, and
5. history of previous violations.

a. Size. Arnold employs about 10 employees at any one time. The evidence fails to show the dollar value of Arnold's sales or profits generated by his business which, it appears, pertains to motors or motor vehicles. I find Arnold's business to be relatively small in size.

b. Good faith. The I-9 forms for the 10 employees working for Arnold on June 30, 1988, the date of the investigative inspection by

U.S. Border Patrol Agents, had been prepared or executed on either June 27 or 30, 1988 (deemed admissions B.18 and 19). It was on June 27, 1988 that a notice of inspection (for June 30) was hand delivered to Arnold (deemed admissions A.1 and B.19). Of those 10 current employees, 5 were hired in April 1988, one in May 1988, one (Jesus Lira) on June 24, 1988 (with his I-9 form, Exhibit L to deemed admission A.12, not completed until June 30, 1988), and 2 several years earlier. Arnold's failure to complete the I-9 forms before the June 20, 1988 educational visit may not show bad faith, in light of the newness of the statutory requirements. But his failure to do so immediately after the educational visit, and not until the June 27 notice of inspection was served, establishes a presumption that he was indifferent to the will of Congress until faced with the notice of an investigation. I find Arnold failed to make a good faith effort to comply with the Act before June 27, 1988.

c. Seriousness. The fact that an employer fails to complete a Form I-9 increases the possibility that an unauthorized worker may have been hired, and thereby retained. When an employer fails to present on request a Form I-9 for inspection, a presumption is raised that no I-9 was prepared. That failure to prepare an I-9 clearly increases the possibility that an unauthorized worker might be hired. The result is that the intent of the law is undermined. In this case I have found, based on a reasonable inference, that Jesus Loya Fabela was an unauthorized worker on Arnold's payroll for an undetermined period ending with the June 20, 1988 visit to Arnold's business by U.S. Boarder Patrol agents. In light of these facts, I find that Respondent's violations were serious.

d. Whether unauthorized aliens. As just noted, I have found that Jesus Loya Fabela was an unauthorized alien.

e. History of previous violations. Arnold has no history of previous violations of the Act.

Under the statute, 8 USC 1324a(e)(5), the range of civil money penalties for paperwork violations is from not less than $100 to not more than $1,000 respecting each worker as to whom a violation occurred.

2. Civil money penalty of $5250 appropriate

After considering the five statutory factors, I find that the $5,250 civil money penalty the INS seeks ($500 for each of nine violations and $750 for the tenth violation pertaining to Jesus Loya Fabela) is well within the range of an appropriate penalty.

V. SANCTIONS OF REASONABLE EXPENSES, ATTORNEY'S FEES

A. General Authority

Complainant's motion that I impose sanctions of reasonable expenses, including attorney's fees, under Rules 11 and 37, FRCP, must now be considered. The first question is whether an ALJ has authority to impose sanctions under those rules.

Under the Administrative Procedure Act (APA), a federal agency's authority to impose sanctions depends on the agency's enabling legislation. 5 USC 558(b); Stein, Mitchell, and Mezines, 5 Administrative Law 42-3 (Matthew Bender, 1988). As already discussed, IRCA provides for a range of civil money penalties for Section 101 violations, and criminal penalties for pattern or practice violations. The sanctions I discuss in this section, however, are different from the civil money penalties Congress prescribed at 8 USC 1324a(e) (4) and (5). The sanctions I consider here flow from regulation of the litigation initiated under IRCA.

The search therefore moves to a consideration of the authority conferred for regulations. At Section 101(a)(2) of IRCA, Congress provided that the Attorney General shall issue ``such regulations as may be necessary in order to implement this section.''[12] Respecting empowering provisions that a federal agency may make such rules and regulations ``as may be necessary to carry out the provisions of this Act,'' the Supreme Court has held that the validity of a regulation promulgated thereunder will be sustained so long as it is reasonably related to the purposes of the enabling legislation. Mourning v. Family Publications Service, 411 U.S. 356, 93 S. Ct. 1652, 1660, 36 L. Ed. 2d 318 (1973). I now turn to the Attorney General's regulations.

The regulation governing IRCA proceedings is 28 CFR Part 68. Section 68.1 states that the FRCP shall be used as a general guideline in any situation not provided for or controlled by Part 68 (or by any statute, executive order, or regulation). Part 68 does not contain express counterparts to either Rule 11 (sanctions portion) or to final provision of Rule 37(b)(2), FRCP. In relevant part, Rule 11, FRCP, provides:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not inter-

[12]As with the grandfather provision, the codification relegates this provision to a note following 8 USC 1324a(n)(4)(d).

> posed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

After enumerating examples of sanctions which a court may impose for a party's failure to obey an order providing for or permitting discovery, Rule 37(b)(2) concludes with the following provision:

> In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Certain sanctions are expressly authorized at 28 CFR 68.21. The title of that section reads:

> Sec. 68.21. Motion to compel response to discovery; sanctions

The first half of the title, and generally the entire section, focuses on discovery. Nevertheless, subsection 68.21(c) contains language referring to ``any other order'' as follows (emphasis added):

> (c) If a party or an officer or agent of a party fails to comply with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories, or responding to [a] request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge, for the purposes of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, make take such action in regard thereto as is just, including but not limited to the following . . . .

The examples thereafter listed in subsection 68.21(c) include orders by which the ALJ may draw adverse inferences, deem matters in question adverse to the non-complying party, bar offers of evidence, or render a decision in the case against the non-complying party. Imposition of a reasonable expense sanction is not specifically included, nor is a Rule 11 penalty-type sanction expressly listed. As just quoted, the preamble states that the ALJ's options are not limited to the examples listed.

The preamble language granting the ALJ such other options as are ``just'' states that the options are ``for the purposes of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite'' the noncomplying party's conduct. The questions here are whether the reasonable expense options of Rules 11 or 37, FRCP, are calculated to serve the quoted purpose language and, if so, whether those optional sanctions are

``reasonably related to the purposes of the enabling legislation.'' I find the answer to be yes to both questions.

The concept embodied in the sanctions provisions of the Federal Rules of Civil Procedure is that the possibility of monetary sanctions adds a strong incentive, even a compelling one, to persuade parties, and their attorneys, to comply with the regulations, with their discovery responsibilities, and with the judge's orders. See Thomas v. Capital Sec. Services, 836 F.2d 866 (5th Cir. 1988). Indeed, the Supreme Court holds that Rule 37 sanctions must be applied diligently both to penalize those whose conduct so warrants, and to deter those who might be tempted to such conduct in the absence of such a deterrent. Roadway Express v. Piper, 447 U.S.C. 752, 100 S. Ct. 2455, 2463, 65 L.Ed.2d 488 (1980), quoting from National Hockey League v. Metropolitan Hockey Club, 427 U.S.C. 639, 96 S.Ct. 2778, 2781, 49 L.Ed.2d 747 (1976). Authorizing ALJs to order civil money sanctions as under Rules 11 and 37, FRCP, necessarily advances the Attorney General's stated goals of resolving relevant issues and disposing of cases without undue delay.

As IRCA proceedings employ essentially the same discovery rules as apply in cases litigated before United States District Judges, IRCA litigation produces some of the same abuses as those which occur in federal district court cases. Because of its growing concern over the misuse and abuse of the litigation process in the federal court system, Congress, in 1983, amended FRCP 11 to reduce the reluctance of courts to impose sanctions. Thomas, id. Setting the circuit's standards under FRCP 11 for preventing abuse and deterring future abuse was the Fifth Circuit's goal in Thomas.

As with judges in federal district court cases, ALJs in IRCA cases are confronted with discovery disputes and questions of abuse of the litigation process. Authority to impose sanctions of reasonable expenses, including attorney's fees, plus Rule 11-type civil money sanctions, is particularly calculated to achieve the Attorney General's goals as expressed in subsection 68.21(c). Such authority assists federal district judges in controlling the cases before them. It likewise will assist ALJs in IRCA cases. As the Supreme Court itself has asserted, the role of the ALJ is ``functionally comparable'' to that of an Article III judge. Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2894, 2914, 57L.Ed.2d 895 (1978).

Moreover, such sanctions authority for ALJs, when rationally related to IRCA's scheme of civil money penalties, not only advances the goals of the Attorney General, as described in subsection 68.21(c), but also is ``reasonably related to the purposes of the ena-

bling legislation'' by being calculated to assist in disposing of IRCA cases.

If ALJs did not have authority to impose such sanctions, that lack would severely hamper the ability of ALJs to enforce compliance with IRCA. Thus, even when, as a sanction under 28 CFR 68.21(c)(5), the ALJ renders a decision against a non-complying party, the civil money penalty would not exceed the greater of (1) that sought by the INS or (2) the statutory maximum if the ALJ determined the statutory maximum to be the appropriate penalty. Thus, none of the listed examples of sanctions would operate as an additional monetary incentive or restore even a measure of recovery to the moving party for its reasonable expenses, including attorney's fees. (When the Government is successful as the moving party, it is the taxpayers who will receive a measure of reimbursement.) Recognition of an ALJ's authority to impose such sanctions increases an ALJ's ability to control abuse of the litigation process and to dispose of cases quickly.[13]

Furthermore, sanctions other than or in addition to reasonable expenses, including attorney's fees, may well be appropriate--and persuasive. Sanctions may include, for example, compulsory legal education ``or other measures appropriate to the circumstances.'' Thomas, 836 F.2d 866 at 878. Numerous options come to mind, including, for example, requiring an offending attorney to publish, in his local and state bar journals and city newspapers, a public apology for abusing the litigation process and promising not to do it again. Innovative sanctions such as that would deter future violations. Indeed, in many cases circumstances may indicate that sanctions should be imposed on the attorney rather than his client. Unless Part 68 is read to authorize the imposition of sanctions on an offending attorney, such as is available under Rules 11, 16, 26, 30, and 37, FRCP, then ALJs will be unable to control litigation abuse. Such as unfavorable result is inconsistent with the goals of Congress and the Attorney General.

Successful management of cases depends largely on ALJs having authority to control abuse of the litigation process. That abuse fre-

[13]In specified circumstances under the Equal Access To Justice Act (EAJA), 5 USC 504, civil defendants of limited net worth may recover their costs and attorney's fees (up to $75 an hour) from the Government. See, for example, 28 CFR Part 24. EAJA's purpose is to encourage and assist citizens of limited means to resist unreasonable governmental actions. EAJA relates to penalizing the Government for wrongly deciding to proceed or to continue with litigation against the civil defendant. In contrast, Rule 11 and 37 pertain to abuse of the litigation process, and sanctions can be imposed on both parties and their attorneys for their misconduct. The two concepts (EAJA and FRCP sanctions) address different problems.

quently occurs before there is an order directing or precluding specific actions. (And creative abusers, after complying with one order, can simply shift the focus of their misconduct to matters not clearly covered by the order, leaving the IRCA ALJ fuming, frustrated, and impotent.) If Rambo litigators are to be contained and controlled in IRCA proceedings, ALJs must have authority to impose sanctions under Rules 11 and 37(a)(4) for abuse which precedes an order. Any interpretation of Part 68 denying ALJs that authority simply will allow the ``gunslingers'' to control IRCA cases to the point that trials are postponed indefinitely while impotent ALJs fire order after order at nimble Rambos who, dodging the blanks, blast their opponents with abuse from ever new positions.[14] Rather than have employer sanctions cases reduced to such a wild west circus (and an expensive one for the taxpayers), the taxpayers would be better served by eliminating formal pretrial discovery altogether. The National Labor Relations Board has no formal pretrial discovery,[15] and the NLRB is able to operate efficiently and economically largely because it does not have formal pretrial discovery. As ALJs in IRCA cases must preside over full-discovery litigation, it follows that Congress and the Attorney General must have intended that ALJs have the full sanctions authority necessary to control that litigation.

Because the role of ALJs is ``functionally comparable'' to that of Article III judges, because sanctions authority will advance the goals of the Attorney General as set forth in subsection 68.21(c), and because Rule 11 and Rule 37 sanctions authority is ``reasonably related to the purposes of the enabling legislation'' by being calculated to assist in efficiently disposing of IRCA cases, I conclude that the language of 28 CFR 68.21(c) permits an ALJ to impose the sanction of reasonable expenses, including attorney's fees, to the extent the ALJ's order is ``just.''

I also conclude, for the same reasons, that the language of 28 CFR 68.21(c), in light of 28 CFR 68.1 and an ALJ's general powers, authorizes an ALJ to impose the sanctions of reasonable expenses (including attorney's fees), plus an additional civil monetary sanction, for conduct proscribed by Rule 11, FRCP.

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[14]I do not classify the conduct of Respondent's counsel here as ``Rambo'' or ``gunslinger'' tactics. Attorney Chew's conduct, and that of Arnold, in failing to comply with discovery orders, and in filing a general denial, was simply improper.

[15]December 12, 282 NLRB 475 fn. 1 (1986); Flite Chief, 258 NLRB 1124, 1125 (1981), affd. mem. 696 F.2d 1003 (9th Cir. 1982); Morris, 2 The Developing Labor Law 1625 (2d ed. 1983); McGuiness & Norris, How To Take A Case Before The NLRB, 359, 386 (5th ed., BNA, 1986).

An additional question arises respecting FRCP 11, however. This is so because it can be argued that the sanctions authority of 28 CFR 68.21(c) applies only to discovery abuse and not to other abuses of the litigation process. As I have mentioned, section 68.21 generally focuses on discovery orders. Nevertheless, subsection 68.21(c) refers to ``any other order . . .,'' as I have discussed, and it appears that such language is not limited to discovery.

But even if the ``any other order'' phrase must be viewed as applying only to discovery orders, I nevertheless would conclude that an ALJ has the option available of a civil money sanction under FRCP 11. ALJs are given broad general powers under 28 CFR 68.26. The Attorney General provides there as follows:

> (a) General powers. In any proceeding under this part, the Administrative Law Judge shall have all powers necessary to the conduct of fair and impartial hearings, including, but not limited to, the following:
>
> (8) Where applicable, take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts . . . .

Although 28 CFR 68.26(b) provides for court enforcement when remedies are requested for certain misconduct, I understand that provision to pertain to request for court orders sought to provide the basis for possible contempt action, as for failure to honor subpenas. Thus, an ALJ may exclude disorderly parties and attorneys from a hearing, 28 CFR 68.33(b), but punishment for contempt, as I read Part 68, would have to be by court order after application per 28 CFR 68.26(b). No doubt the regulation seeks to implement 8 USC 1324a(e)(2) respecting contumacy or refusal to obey a subpena.

Based on this analysis, I conclude that part 68 authorizes ALJs to apply sanctions under FRCP 11 in appropriate circumstances.

B. Rule 11 and Arnold's General Denial Answer

1. Preliminary facts

As the INS observes in its MSD (fifth page), Respondent Arnold (by the law firm of Douglass & Chew, by David W. Chew) answered the complaint with a general denial. (Arnold actually addressed his denial to the allegations of the NIF.) The interim regulation, 28 CFR 68.6 (c)(1), specified that an answer, if denying the complaint's allegations, shall deny each allegation, and any allegation not expressly denied shall be deemed to be admitted. The final rule, renumbered as section 68.8(c)(1), reads the same.

By filing only a general denial, Respondent Arnold thereby denied: (1) complaint paragraph 1 alleging jurisdiction under 8 USC 1324a; (2) complaint paragraph 2 alleging that the NIF (attached as an exhibit to the complaint) was served on Arnold on August 30, 1988; and (3) complaint paragraph 2 (second sentence)

alleging that Respondent had timely requested a hearing (before an ALJ). The truth of the first allegation was self evident and Arnold had personal knowledge of the second (because of personal service of the NIF) and third (because the request for hearing was by the firm of Douglass & Chew, by David W. Chew) allegations.

David W. Chew, for Douglass & Chew, signed Arnold's answer. Earlier I quoted at length from FRCP 11. The portion relevant here bears repeating. It provides that the signature of an attorney:

> ``constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowleged, information and belief formed after reasonable inquiry it is well grounded in fact. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.''

2. Rule 11 violated

I find that Arnold's November 22, 1988 answer was signed by attorney David W. Chew in violation of Rule 11, FRCP, because both Arnold and attorney Chew obviously knew that a general denial of complaint paragraphs 1 and 2 was not well grounded in fact.

Although Arnold's general denial answer was improper, at no point did the INS move to have Arnold's answer stricken. The items denied were easily proved. Any additional expense incurred by the INS respecting the general denial does not appear to rise above de minimus, for the INS reasonable-expense affidavit of Complainant's attorney does not contain a line item for any such additional expense. Nor does it appear the general denial prolonged the litigation. For example, none of the Complainant's requested admissions asked Arnold to verify that the NIF had been served on him or that the September 12, 1988 request for hearing, copy attached to the complaint, is authentic.

In Thomas v. Capital Sec. Services, 836 F.2d 866, 879 (5th Cir. 1988), the court observed that a party should take prompt action respecting obvious violations of Rule 11 rather than waiting until the end of the case. Moreover, any sanction imposed is to be the least severe which is adequate to accomplish the purpose of Rule 11. Thomas at 878. I do not overlook the fact that Respondent and his counsel failed to respond in the discovery process. They simply ignored my discovery orders. A party is not at liberty to ignore orders. Nevertheless, while a minimum monetary sanction of $100 each as to attorney Chew and Arnold might well be appropriate, I am inclined to think that this public reminder to attorney Chew and to Arnold is a sufficient sanction under Rule 11. I find the

sanction to be ``just.'' The public reminder is that they are to file specific answers, in accordance with 28 CFR 68.8(c), and not general denials.

C. Rule 37(a)(4) and Arnold's Motion for a Protective Order

The INS also contends (MSD, fifth page) that sanctions are appropriate (after an opportunity for a hearing on the matter) under Rules 26(c) and 37(a)(4), FRCP, because Arnold's January 4, 1989 motion for a protective order, which I denied, was frivolous and designed to delay the proceeding. I shall not dwell on this point. Arnold submitted a reasoned and substantial argument, on an issue of first impression under Part 68, in support of his motion for a protective order. An award of expenses would be unjust. I deny the INS's motion as to this ground.

D. Rule 37(b)(2) and Arnold's Failure to Comply With Discovery Orders

1. Sanctions are just

Complainant's third and final ground for sanctions pertains to Respondent Arnold's failure to comply with the discovery orders. All such orders flow from my order of February 6, 1989 which denied Arnold's motion for a protective order and which directed Arnold to answer the Complainant's December 8, 1988 discovery requests.

After his unsuccessful effort to appeal my order of February 6, Arnold thereafter failed to file discovery answers as I directed by my orders of February 6 and May 9, 1989. By his failure to respond as ordered, Arnold has forced the INS to take every formal step in the discovery process. The result has been delay. At no point has Respondent's law firm, or David W. Chew, sought to withdraw as Arnold's attorney of record in accordance with 28 CFR 68.30(a)(1) (now section 68.31(c)). The INS seeks (motion, fifth page) the recovery of its reasonable expenses, including attorney's fees, under FRCP 37(b)(2), which the INS incurred because of Arnold's failure to comply with my orders compelling discovery. I find that imposition of such an order would be ``just'' under 28 CFR 68.21(c).

2. Amount of reasonable expenses, including attorney's fees

Complainant sets forth its direct expenses in its initial affidavits (of its attorney and its legal clerk), and, in its supplemental affidavit (from its attorney). The attorney's time is charged at the hourly rate of $19.77, the equivalent of the Government's General Schedule (GS) classification for an attorney at the GS-13 level. The time worked, such as 1.5 hours on February 8, 1989 to prepare the Complainant's motion to compel discovery, appears reasonable. From

that point up to his preparation of the MSD, and including the reasonable expenses affidavit, Complainant's counsel worked approximately 16.0 hours (8.5 hours from February 8, 1989 through July 17, 1989, plus some 7.5 hours on expense affidavits) for a direct cost of $316.32. Over the same period the legal clerk worked approximately 9.0 hours (7.5 hours from February 8, 1989 through June 26, 1989, plus some 1.5 hours typing expense affidavits) at an hourly rate of $7.80 for a direct cost of $70.20, bringing the total of all direct costs to $386.52. I find the hours spent to be reasonable. I reject the October 23, 1989 show cause contention of Arnold's attorney that the INS is charging for ``inordinate hours.'' In any event, the only items attorney Chew specifically mentions, preparation of the interrogatories and requested admissions, were done in late 1988--well before the 1.5 hours of attorney's time on February 8, 1989 preparing Complainant's motion to compel discovery, which is the point where I begin counting the time spent. As indicated, I conclude the time at the point of the MSD because the INS would have prepared and filed an MSD even if Respondent Arnold had filed answers to the discovery requests. I also include the approximate time spent preparing the expense affidavits.

As shown by the Complainant's supplemental submission, the Government's indirect costs (pro rata sums for items such as space rental, pensions, insurance, annual leave) are given for the total hours each worked on the case (attorney at 50 hours and legal clerk at 21 hours) and allocated to each item. Because the items are not listed over the time frame of the case, I must divide the $374.32 indirect costs of the attorney by 50 hours and multiply the resulting hourly figure of $7.4864 by 16.0 hours to obtain his applicable indirect costs of $119.78. (Note that the submission for indirect costs does not include a factor for certain ``hidden'' expenses to the INS such as a pro rata share of management overhead in El Paso and Washington, D.C., or for a pro rata share of all the indirect expenses in Washington, D.C.)

Similarly, the legal clerk's indirect costs of $105.62 divided by 21 hours equals $5.03 per hour multiplied by 9.0 hours equals $45.27. The supplemental affidavit gives an overall photocopying charge of $30.52. I estimate the pro rata charge applicable here as 30 percent, or $9.16. The total for all indirect costs, therefore, is $165.05. Adding that figure to the direct costs of $386.52 brings the total figure of Complainant's direct and indirect actual costs to $551.57. Add to this the $9.16 photocopying expenses brings the total of all actual expenses to $560.73.

A different approach is used when approximating the manner in which attorneys in the private sector bill their clients. A private

sector attorney's hourly billing of $100 an hour (to pick one rate), for example, must cover the lawyer's overhead, including such items as normal clerical expense, rent, pension, and insurance. Expense items billed as separate line items are those such as out-of-pocket expenses for long distance telephone calls, photocopying, depositions, transcripts from hearings, or other payments to third parties. See 28 CFR 24.107 and Judge Morse's EAJA decision in Mester Manufacturing Co., Case No. 87100001, slip op. at 32-33 (January 25, 1989, award vacated February 23, 1989 by order of the CAHO on the ground Mester was not a prevailing party and therefore not entitled to recover any fees or expenses under the Equal Access to Justice Act). Converted to an overall hourly rate for comparison purposes, the $551.57 would represent an attorney's hourly billing rate, on 16.0 hours, of $34.47, rounded down to $34.

As the Fifth Circuit observed in Thomas, 836 F.2d 866 at 879, ``reasonable'' does not necessarily mean actual. Reasonable expenses and fees might be less, and they might be more. In this case it is clear that a reasonable attorney's fee would be substantially more than the $34 actual-cost hourly rate I have just calculated. Under the Equal Access to Justice Act (EAJA),[16] for example, the normal statutory maximum allowed for an attorney's fee is $75 per hour. Even at that rate private sector attorneys petition federal agencies to raise the hourly rate because it is too low. See, for example, Van Der Vaart, 296 NLRB No. 99 (Sept. 29, 1989). Nevertheless, the INS claims only its actual costs, and, as I noted earlier, I shall proceed on that basis.

Finding the INS claim of $560.73 to be well within the realm of ``reasonable,'' I find that sum to be the amount of reasonable expenses, including attorney's fees, which Complainant incurred as a result of Respondent Arnold's misconduct in disregarding my discovery orders.

In its supplemental submission, the INS asserts that this case is appropriate for doubling the amount of sanctions under 28 USC 1912 and 1927. Even assuming that to be so, it is not clear that those statutory provisions are available to an ALJ, and I decline to address that question in this decision.

Under the final provision of FRCP 37(b)(2), sanctions for violations are to be imposed on ``the party failing to obey the order or the attorney advising that party or both to pay . . .'' unless it is found that the failure to obey was substantially justified or that other circumstances make an award of expenses unjust. I do not find that the failure to obey was substantially justified, and there

[16] 5 USC 504.

are no record circumstances indicating that an award of expenses would be unjust. Accordingly, I shall award the INS an order requiring both Arnold and his attorney, David W. Chew, jointly and severally, to pay to the INS reasonable expenses, including attorney's fees, of $560.73 which, in accordance with standard Internal Revenue Service and other federal agency procedure,[17] I round up to $561.

Recapitulating, Respondent Arnold and his attorney of record, David W. Chew, each is publically remanded under FRCP 11 of their obligation in employer sanctions cases to file specific answers. Additionally, further sanctions under FRCP 37 of $561, representing reasonable expenses, including attorney's fees, must be paid. Only one sum of $561 must be paid, and Arnold and his attorney share joint and several liability for its payment. An award of reasonable expenses, including attorney's fees of $561, and payable to the Government or federal agency is appropriate under both Rules 11[18] and 37.[19]

3. Other sanctions available

Other sanctions are available, as well, such as requiring Respondent's counsel to attend a legal education seminar[20] which includes instructions concerning a lawyer's obligations in upholding the ideals of the legal profession and in meeting his responsibilities in the litigation process. However, I simply shall suggest that he obtain and study a copy of Professionalism: A Lawyer's Mandate which the Houston Bar Association adopted in February of 1989 (89 Houston Bar Bulletin No. 4 at 1 (April 1989)). (HBA telephone number 713-222-1441.) Article IV of the HBA's Lawyer's Mandate covers the ``Administration of Justice & Discovery,'' and its preamble reads:

> A Lawyer owes to the administration of justice personal dignity, professional integrity, and independence. A lawyer should adhere to the highest principles of professionalism in all dealings with others, regardless of the desires of a client.

For a similar provision from The American College of Trial Lawyer's Code of Trial Conduct (rev. 1987), see Dondi Properties Corp. v. Commerce Sav. and Loan Ass'n, 121 FRD 284, 295 (ND Tex. July

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[17]See, for example, Arlington Hotel Company, 287 NLRB No. 87 at JD slip op. 21 fn. 13 (Dec. 16, 1987), enf. denied in part on other grounds, _____ F. 2d _____, 131 LRRM 2669 (8th Cir. 1989).

[18]EEOC v. Blue & White Service Corp., 8 Fed. Rules Serv. 3d 192 (D. Minn. 1987) (EEOC awarded attorney's fees against the company's attorney).

[19]Weisberg v. Webster, 749 F.2d 864 (D.C. Cir. 1984) (FBI entitled, by implication, to reasonable expenses, including attorney's fees, but remanded to trial court for apportionment).

[20]Thomas v. Capital Sec. Services, 836 F.2d 866, 878 (5th Cir. 1988).

14, 1988) (penultimate paragraph). See also ``The Texas Lawyer's Creed--A Mandate For Professionalism'' adopted by the Supreme Court of Texas and the Court of Criminal Appeals, 5 Texas Lawyer 4, 5 (No. 34, Nov. 13, 1989).

VI. CONCLUSIONS OF LAW

1. OCAHO has jurisdiction of this case under 8 USC 1324a.

2. There is no genuine issue as to any material fact.

3. The INS is entitled to a summary decision.

4. The Respondent, James Arnold, Individually and d/b/a Fiesta/Bonanza Motors, has violated the verification section of IRCA, 8 USC 1324a(a)(1)(B).

5. A civil money penalty in the sum of $500 for each of nine paperwork violations and $750 for one paperwork violation, for a total civil money penalty of $5250, is appropriate under 8 USC 1324a(e)(5).

6. Sanctions under IRCA Section 101(a)(2), 28 CFR Part 68, and Rules 11 and 37(b)(2), Federal Rules of Civil Procedure, are just and reasonable, as follows:

a. Against Respondent Arnold:

(1) Public reminder Rule 11, FRCP, and

(2) $561 under Rule 37(b)(2), FRCP, jointly and severally with Arnold's El Paso, Texas attorney, David W. Chew.

b. Against attorney David W. Chew:

(1) Public reminder Rule 11, FRCP, and

(2) $561 under Rule 37(b)(2), FRCP, jointly and severally with Respondent Arnold.

Based on these findings of fact, conclusions of law, and the record, I issue the following order:[21]

ORDER

I ORDER the Respondent, James Arnold, Individually and d/b/a Fiesta/Bonanza Motors to:

1. COMPLY WITH the employment verification requirements of the Act, Section 274A(b), 8 USC 1324a(b), respecting individuals

[21]Review of this Summary Decision and Order, the final action of the ALJ under 28 CFR 68.36, 68.50, and 68.51(a), may be obtained by filing a written request for review with the Chief Administrative Hearing Officer within 5 days of the date of this summary decision and order. 28 CFR 68.51(a). This summary decision and order shall become the final order of the Attorney General unless, within 30 days from the date of this order, the Chief Administrative Hearing Officer modifies it or vacates it. 8 USC 1324a(e)(6); 28 CFR 68.51(a)(1).

hired, recruited or referred for a fee, for employment in the United States, for a period of 3 years.

2. PAY A CIVIL MONEY PENALTY within 16 days from the date of this order in the amount of $5250 in the form of cash (personal delivery only for cash) or a valid certified bank check, cashiers check, or money order made payable to the ``Immigration and Naturalization Service,'' and deliver it to: District Director, INS, 700 E. San Antonio, Room C-201, El Paso, Texas 79901.

3. Be publicly reminded of the obligation under 28 CFR 68.8(c) to file specific answers to complaints.

4. PAY CIVIL MONEY SANCTIONS within 16 days from the date of this order, payable to the ``Immigration and Naturalization Service,'' in the form specified in 2, and delivered to the official and address shown in 2 above, as follows:

$561, jointly and severally with Respondent Arnold's attorney of record, David W. Chew.

I PUBLICLY REMIND David W. Chew, Respondent Arnold's attorney of record, that 28 CFR 68.8(c) calls for answers to complaints to be specific, and that general denials are not to be filed. ADDITIONALLY,

I ORDER David W. Chew, Respondent's attorney of record, to PAY CIVIL MONEY SANCTIONS within 16 days from the date of this order to the ``Immigration and Naturalization Service,'' in the form specified in 2, and delivered to the official and address shown in 2 above, as follows:

$561, jointly and severally with Respondent Arnold.

The hearing earlier scheduled to be held in El Paso, Texas, and postponed indefinitely by my order of January 19, 1989, is canceled.

SO ORDERED: At Atlanta, Georgia this December 29, 1989.

RICHARD J. LINTON
Administrative Law Judge