

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

United States of America, Complainant v. Rudy Rodriguez, d/b/a Rocket Pest Control, Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100622.

**DECISION AND ORDER GRANTING DEFAULT JUDGMENT**

Statement of the Case

The Complaint in this matter was filed on December 27, 1990, with the Office of the Chief Administrative Hearing Officer, and was received by Respondent on January 12, 1990. Under the applicable rules, Respondent was required to file an answer to the Complaint within thirty (30) days after the receipt of the Complaint. 28 CFR 68.8(a). Respondent failed to file an answer within the specified time period.

On March 2, 1990, Complainant filed a motion for default judgment on the ground that Respondent had failed to file the required answer to the Complaint. Under the applicable rules, the failure of a respondent to file an answer within the time provided ``shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint.'' 28 CFR 68.8(b).

On March 5, 1990, the Administrative Law Judge issued an Order to Show Cause why Complainant's motion for default judgment should not be granted. On March 21, 1990, a telephone conference was held; the Administrative Law Judge requested that Respondent submit an answer to the complaint, as well as an argument as to why a late answer should be accepted, and specifically instructed him on how to file an answer. Respondent stated that the delay had been due, in part, to emotional trauma on account of the death of his father; the Administrative Law Judge requested that Respondent submit a copy of the death certificate along with the answer.

On April 6, 1990, Respondent submitted a three-page letter, addressed to the Administrative Law Judge, accompanied by a copy of Respondent's father's death certificate. Although the letter

raised several constitutional issues, it did not address the allegations of the complaint.

#### Findings of Fact

##### A. Applicable Rules and Precedent:

Under the applicable rules, the failure of a respondent to file an answer within the time provided ``shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint.'' Where no timely answer is filed, the assigned judge ``may enter a judgment by default.'' 28 CFR 68.8(b). Moreover, 28 CFR 68.8(c)(1) provides, in part, that ``any allegation [in the Complaint] not expressly denied shall be deemed admitted.''

The Administrative Law Judge has discretion under 28 CFR 68.8(b) to grant a motion for default when filed or to issue an order to show cause. See U.S. v. Shine Auto, OCAHO Case. No. 89100180 (July 14, 1989); and see generally U.S. v. Koamerican Trading Corp., OCAHO Case No. 89100092 (June 19, 1989). Where, as here, the latter course is chosen, the burden is on the respondent to provide good cause for the filing of a late answer. Failure of respondent to meet the burden and provide a late answer obliges the Administrative Law Judge to grant the motion for default judgment. U.S. v. Shine Auto, id.

##### B. Facts:

The document filed by Respondent on April 6, 1990 raises several constitutional issues. Respondent alleges that 8 U.S.C. 1324a violates the Fourth, Seventh, Thirteenth, Fourteenth, and Fifteenth amendments to the U.S. Constitution. The statute violates the Seventh Amendment, Respondent states, because it deprives him of his right to a jury trial; Respondent states that an administrative hearing does not provide due process. Respondent also contends that the work required of employers, namely examining employees' work authorization and completing I-9 forms, is involuntary servitude prohibited by the Thirteenth Amendment. The employer's work and time is also property, of which the employer is being deprived without due process of law, in violation of the Fourteenth Amendment. Respondent also asserts that the statute violates the privileges and immunities clause and the equal protection clause of the Fourteenth Amendment. The statute violates the privileges and immunities clause and the equal protection clause of the Fourteenth Amendment. The statute denies employers equal protection, Respondent states, because employers are singled out for punishment by the statute. Others who have dealings with illegal aliens, such as landlords, government officials, medical professionals, and

owners and employees of grocery stores and restaurants, are not penalized for interacting with illegal aliens in the course of their business.

Respondent argues that the government, by attempting to enforce 8 U.S.C. 1324a, is violating his constitutionally protected right to privacy.

Respondent's Fifteenth Amendment argument is a bit unclear. The argument in its entirety, as it appears in Respondent's letter, reads ``Your honor it is also a Federal Crime to willfully conspire to injure, deprive, or enforce a law between any combination of functions between departments under the color of law, under the 15th amendment.'' Respondent's letter, April 6, 1990, at 3.

Respondent argues that 8 U.S.C. 1324a is unconstitutional. He cites Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), as establishing that no law may be enforced which conflicts with the constitution. He then states ``Section 115 of Public Law 99-603 of Nov. 1986 #2 states that due and deliberate actions necessary to safeguard constitutional rights be taken by the attorney general. . .'' Finally, he calls upon the Administrative Law Judge to ``close this case'' rather than apply an unconstitutional statute.

Regardless of the merits of Respondent's constitutional arguments, and regardless of whether Respondent showed good cause for filing a later answer, the document filed by Respondent is not an answer. It does not admit or deny the allegations in the complaint.

Under Marbury v. Madison, relied on by Respondent, the constitutionality of a statute is a matter to be decided by the courts organized under Article III of the U.S. Constitution. This tribunal is not such a court; the Administrative Law Judge assumes the constitutionality of the statute being applied. This tribunal is not a proper forum for Respondent's constitutional arguments.

On the basis of the foregoing, I find that Respondent has had adequate notice of the progress of the proceeding generally and of the requirement to file an answer specifically. As Respondent has failed, after adequate notice, to file a timely answer, I further find that Respondent has waived his right to appear and contest the allegations of the complaint. Hence, the allegations of the complaint are deemed to be admitted. Accordingly, Complainant's motion for default judgment is granted.

#### Conclusions of Law

1. By hiring and/or continuing to employ Jaime Alberto del Toro-Mendez for employment in the United States after November 6, 1986, knowing that Jaime Alberto del Toro-Mendez was an alien

not lawfully admitted for permanent residence or was not authorized by the Immigration and Nationality Act or the Attorney General to accept employment in the United States, Respondent violated 8 U.S.C. 1324a(a)(1)(A) and/or 8 U.S.C. 1324a(a)(2).

2. By failing to properly prepare, retain, or present upon request Forms I-9 for the following employees, Respondent violated 8 U.S.C. 1324a(a)(1)(B):

- a. Jaime Alberto del Toro-Mendez
- b. Mario Alejandro Lemus
- c. Saul Puga Rodriguez

#### Remedial Action

Having concluded that Respondent violated 8 U.S.C. 1324a(a)(1)(A) and/or 1324a(a)(2), as well as 1324a(a)(1)(B) in connection with the employment of the above-named individuals after November 6, 1986, the Order entered below requires Respondent to cease and desist from such violations and to pay a civil money penalty prescribed by the Act.

In its motion for default judgment, Complainant seeks to compel Respondent to pay the fine provided in the Complaint. The Complaint sought a fine of \$800 for the violation of 8 U.S.C. 1324a(a)(1)(A) and/or 1324(a)(2), and a total of \$800 for the three violations of 8 U.S.C. 1324a(a)(1)(B), for a total civil money penalty of \$1,600. These amounts are within the statutory limits: 8 U.S.C. 1324a(e)(4)(A)(i) sets the penalty for first hiring violations at not less than \$250 and not more than \$2,000. 8 U.S.C. 1324a(e)(5) sets the penalties for paperwork violations at not less than \$200 and not more than \$1,000.

With respect to the paperwork violations, 1324a(e)(5) requires due consideration for the size of the employer's business, the employer's good faith, the seriousness of the violation, whether or not the employee involved was an unauthorized alien, and the history of previous violations.

Complainant stated in the complaint that ``due consideration was given to the factors specified'' in the statute. The parties have not submitted evidence regarding the size of Respondent's business or the presence or absence of good faith in Respondent's dealings with the INS. The violations involved only three employees, and it does not appear that there was any history of previous violations. However, in his letter requesting a hearing, filed on October 18, 1989, Respondent stated that Jaime Alberto del Toro-Mendez was an undocumented alien illegally in the United States.

The fine requested for the paperwork violations, if divided equally among the three violations, equals \$266.67 per violation. This

amount is not unreasonable. The fines sought by Complainant will be affirmed, and a cease and desist order will be entered.

**ORDER**

Respondent, including its officers, agents, successors, and assigns, are hereby ordered to:

1. Cease and desist from violating Section 274A(a)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1324a(a)(1)(A), by ceasing and desisting from knowingly hiring, recruiting, or referring for a fee, or continuing to employ, for employment in the United States, an alien knowing that the alien is not lawfully admitted for permanent residence or is not authorized by the Act or the Attorney General to accept employment.

2. Cease and desist from violating Section 274A(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1324a(a)(1)(B), by ceasing and desisting from employing any individual in the United States without timely completing a Form I-9 for that employee.

3. Pay a civil money penalty of \$1,600 for the violations found above.

4. IT IS FURTHER ORDERED that the hearing in this matter be, and the same hereby is, cancelled.

Dated: April 24, 1990.

WILLIAM L. SCHMIDT  
Administrative Law Judge