

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between New York City Health and Hospitals Corporation ("Respondent" or "NYCHH") and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER") as to Part II, and between NYCHH, IER, and Charging Party [REDACTED] ("Charging Party") (together, "the Parties") as to Part III, and between NYCHH and Charging Party as to Part IV.

I. BACKGROUND

WHEREAS, on March 21, 2022, IER accepted as complete a charge (the "IER Charge") filed by Charging Party, DJ# 197-51-754, alleging violations of the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b;

WHEREAS, on March 22, 2022, IER notified Respondent that it had initiated an investigation ("Investigation") based on Charging Party's allegations to determine whether Respondent had engaged in any conduct in violation of 8 U.S.C. § 1324b(a)(6);

WHEREAS, based upon the Investigation, IER concluded that there is reasonable cause to believe that on December 13, 2021, Respondent violated 8 U.S.C. § 1324b(a)(6) by (1) rejecting Charging Party's valid employment authorization document, which had been automatically extended pursuant to a notice in the Federal Register applicable to those with Temporary Protected Status (TPS), and (2) requiring that she provide additional and unnecessary employment eligibility verification documentation for the Form I-9, based on her national origin. Specifically, IER determined that Respondent rejected Charging Party's valid TPS-based employment authorization document because the country of birth listed on that card differed from the Charging Party's TPS-designated country, despite the fact that TPS beneficiaries need not have a country of birth that matches the country of TPS designation to qualify for an automatic extension. After rejecting Charging Party's valid documentation, Respondent required additional employment eligibility verification documentation for the Form I-9;

WHEREAS, on October 6, 2022, Charging Party filed a complaint *pro se* with the Office of the Chief Administrative Hearing Officer (OCAHO), [REDACTED] v. *New York City Health and Hospitals Corporation D/B/A NYC Health + Hospitals*, OCAHO Case No. 2023B00001 (the "OCAHO Litigation"), alleging that Respondent discriminated against her on account of her national origin and citizenship status in violation of 8 U.S.C. § 1324b(a)(1) and engaged in an unfair documentary practice in violation of 8 U.S.C. § 1324b(a)(6);

WHEREAS, Respondent denies any and all liability, that it violated federal, state, or local law or otherwise engaged in unlawful conduct with respect to Charging Party, including, but not limited to, the allegations made by Charging Party in the IER Charge and OCAHO Litigation;

WHEREAS, the Parties wish to resolve the OCAHO Litigation and IER's reasonable cause finding without further delay or expense, and to avoid the uncertainty and costs of litigation, and hereby acknowledge that they are voluntarily and freely entering into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained below, and to fully and finally resolve the Investigation and the OCAHO Litigation as of the date of the latest signature below, the Parties agree as follows:

II. TERMS OF SETTLEMENT BETWEEN THE UNITED STATES AND NYCHH

1. This Agreement becomes effective as of the date of the latest signature below, which date is referenced hereafter as the "Effective Date," and shall have a term of three years beginning from the Effective Date.
2. NYCHH shall pay a civil penalty to the United States Treasury in the amount of \$2,232.
3. NYCHH shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalty no later than seven calendar days from the Effective Date. NYCHH shall pay the monies in Paragraph 2 via the FedWire electronic fund transfer system within 14 calendar days of receiving fund transfer instructions from IER. NYCHH shall send confirmation of the payment to Lisa Sandoval at Lisa.Sandoval@usdoj.gov and Laura Varela-Addeo at Laura.Varela-Addeo@usdoj.gov (or any other individual IER designates in writing) on the day the payment is made. The email confirming payment shall have NYCHH's name and the investigation number, DJ# 197-51-754, in the subject line.
4. Within 21 calendar days of receiving Charging Party's direct deposit information and applicable tax forms from IER, NYCHH shall pay Charging Party \$2,164, less any tax withholdings required by law. The sum, which comprises back pay, includes a calculation of lost wages that Charging Party would have received but for the discrimination, minus the wages Charging Party earned through alternate, part-time, employment. Respondent shall effectuate payment by direct deposit into Charging Party's bank account using the account information provided by IER. On the day of payment, Respondent shall notify IER at Lisa.Sandoval@usdoj.gov and Laura.Varela-Addeo@usdoj.gov that payment was made and attach a copy of the confirmation of deposit.
5. Regarding the payments in Paragraph 4, Respondent shall withhold applicable taxes based on the rates of the current year and shall provide Charging Party with any applicable income tax reporting form. Respondent is separately responsible for paying any employer-side taxes or Social Security contributions or other payments due under applicable federal or state law based on the back pay

payment.

6. Respondent warrants that it does not have a personnel file pertaining to Charging Party and does not have any applicant records relating to Charging Party with any reference to the IER Charge, Investigation, or this Agreement. Respondent shall not disclose or refer to the IER Charge, Investigation, or this Agreement, including to any employer or prospective employer of Charging Party, unless required by law.
7. NYCHH shall not retaliate against Charging Party or any other individuals who participated in the Investigation. NYCHH shall not disclose any information or documentation related to the IER Charge or Investigation to any employer or prospective employer of any individuals who participated in the Investigation.
8. Within 90 calendar days of the Effective Date, NYCHH shall submit to IER for review and approval any employment policies, training materials, and guidance that relate to hiring and/or the employment eligibility verification (“EEV”) process, to the extent it has not already done so, to ensure they comply with the requirements of Paragraph 8(a)-(f), after which Respondent shall implement such policies, training materials, and guidance. IER’s review and approval will focus on whether such documents comply with 8 U.S.C. § 1324b and this Agreement. Respondent will, as needed, revise or create such documents to ensure they:
 - a. Prohibit discrimination on the basis of citizenship status, immigration status, and national origin in violation of 8 U.S.C. § 1324b;
 - b. Prohibit requesting more or different documents than required by law to establish permission to work in the United States, requesting specific EEV documents, or rejecting valid EEV documents, because of an individual’s citizenship, immigration status, or national origin, regardless of whether such actions occur in the hiring, onboarding, or EEV processes;
 - c. Clarify that (1) regardless of the worker’s country of birth, a beneficiary granted Temporary Protected Status under the designation for a particular country may show her Employment Authorization Document that has been automatically extended, (2) the foreign country displayed on a worker’s Employment Authorization Document does not have to match the country for which the worker has Temporary Protected Status, and (3) rejecting an otherwise valid document on that basis violates § 1324b.
 - d. Include citizenship status and immigration status as prohibited bases of discrimination—unless required to comply with a law, regulation, executive order, government contract, or Attorney General directive pursuant to 8 U.S.C. § 1324b(a)—as well as national origin. Such prohibitions shall also be included in any Equal Employment Opportunity statements NYCHH provides

in printed or electronic materials available to the public or employees;

- e. Advise applicants and employees who make a complaint of discrimination based on national origin, citizenship or immigration status in connection with hiring, firing, recruiting or referring for a fee, or Form I-9 employment eligibility verification and/or reverification that they have a right to file a charge of discrimination with IER and shall (1) direct the affected individual to the IER Poster with IER's worker hotline (800-255-7688), and IER's website (www.justice.gov/ier), and (2) provide the affected individual(s) with Respondent's Operating Procedure 20-32, which includes contact information for IER; and
 - f. Provide that NYCHH shall not intimidate or take any retaliatory action against any individual for opposing any employment practice made unlawful by 8 U.S.C. § 1324b or which the individual reasonably believes to be unlawful under 8 U.S.C. § 1324b, for filing a charge, or for participating in any investigation or action under 8 U.S.C. § 1324b.
9. NYCHH shall within 14 calendar days of the Effective Date, (1) post an English version and Spanish version of the IER "If You Have The Right to Work" poster ("IER Poster") in color measuring no smaller than 8.5" x 11" (available at <https://www.justice.gov/crt/worker-information#poster>) in all places where NYCHH normally posts notices to employees and shall keep them posted for at least the term of this Agreement, and (2) sign up for Temporary Protection Status updates on the United States Citizenship and Immigration Services website at <https://www.uscis.gov/humanitarian/temporary-protected-status>.
10. Within 90 calendar days of the Effective Date, NYCHH shall ensure that every individual, including any agents or contractors acting on NYCHH's behalf, who are responsible for formulating, providing training on, or implementing NYCHH's hiring, firing, equal employment, or employment eligibility verification policies, and individuals with any role in the employment eligibility verification process, such as collecting, reviewing, or copying Form I-9 documents, completing Sections 2 or 3 of the Form I-9, or using the E-Verify program (hereinafter "Covered Human Resources Personnel"), receive training on their obligations under 8 U.S.C. § 1324b, as follows:
- a. The training will consist of either (i) viewing a free IER webinar presentation; or (ii) participating in a live, IER-provided free webinar presentation on one or more mutually agreed upon dates;
 - b. All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. NYCHH shall be responsible for all payroll costs and employee wages associated with these training sessions;

- c. During the term of the Agreement, all Covered Human Resources Personnel who assume or resume their duties after the initial training period described in this paragraph has been conducted, shall view an online IER Employer/HR webinar within 60 calendar days of assuming or resuming their duties; and
 - d. Every three months, NYCHH shall send via email to Lisa.Sandoval@usdoj.gov and Laura.Varela-Addeo@usdoj.gov (or any other individual IER designates in writing) an Attestation (Attachment A) for each person who attended the training(s) described in this paragraph within the preceding three-month period. The emails transmitting the Attestations shall have NYCHH's name and the reference number DJ# 197-51-754 in the subject line.
- 11. During the term of this Agreement, IER reserves the right to make reasonable inquiries of NYCHH to determine compliance with this Agreement. As part of such review, IER may require written reports concerning compliance, examine witnesses, and examine and copy NYCHH's documents that IER reasonably determines are relevant to compliance.
 - 12. Nothing in this Agreement limits IER's right to inspect NYCHH's Forms I-9 and attachments within three business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii) and 28 C.F.R. § 44.302(b).
 - 13. This Agreement does not affect the right of any individual to file an IER charge alleging an unfair immigration-related employment practice against NYCHH, IER's authority to investigate such charge or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of NYCHH's employment practices occurring after the Effective Date or outside the scope of the Investigation.
 - 14. If IER has reason to believe that NYCHH has violated or is violating any provision of this Agreement, IER may exercise its discretion to notify NYCHH in writing of the purported violation rather than initiate a new investigation or seek immediate judicial enforcement of the Agreement. NYCHH will then be given 30 calendar days from the date IER notifies it in which to cure the violation(s) to IER's satisfaction before IER deems NYCHH to be in violation of this Agreement and proceeds to take enforcement actions.
 - 15. This Agreement resolves any and all differences under 8 U.S.C. § 1324b between IER and Respondent relating to the Investigation through the Effective Date. The provisions of Paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for the violations of 8 U.S.C. § 1324b, or any other allegations encompassed in the Investigation, designated as DJ# 197-51-754, through the Effective Date.

III. ADDITIONAL TERMS OF SETTLEMENT BETWEEN NYCHH, THE UNITED STATES, AND CHARGING PARTY

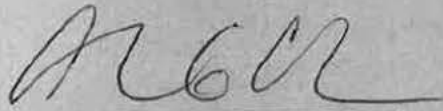
16. This Agreement sets forth the entire agreement between NYCHH and IER as to Part II; and NYCHH, IER, and Charging Party as to Part III; and NYCHH and Charging Party as to Part IV, and fully supersedes any and all prior agreements or understandings between any or all of the parties pertaining to the subject matter herein. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by the relevant parties to each Part and shall not be construed against those parties in the event of a subsequent dispute concerning the terms of the Agreement. The Parties agree that the paragraphs set forth in Parts II and IV of this Agreement are material terms of the Agreement between the parties bound to those parts, without waiver of any party's right to argue that other terms in the Agreement are material.
 17. As of the date that the OCAHO Litigation is dismissed pursuant to 28 C.F.R. § 68.14, the Parties will no longer be required to maintain litigation holds to preserve documents, electronically stored information, or things related to the Investigation and the OCAHO Litigation. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.
 18. Should any court declare or determine that any provision(s) of this Agreement is/are illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected, and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The Parties shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
 19. The Parties shall each bear their own costs, attorneys' fees, and other expenses incurred in this action.
 20. The United States District Court for the Southern District of New York shall be the preferred venue for enforcement of any claims over which that court has subject matter jurisdiction. Otherwise, a party must bring any claim or counterclaim to enforce the Agreement in a court of competent jurisdiction. This provision does not constitute a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement or counterclaims asserted against it.
 21. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The Parties agree to be bound by facsimile or electronic signatures.
- IV. TERMS OF AGREEMENT BETWEEN CHARGING PARTY AND RESPONDENT**
22. Within 21 days of receiving Charging Party's direct deposit information and applicable tax forms from IER, Respondent shall provide Charging Party back

pay as set forth in Paragraph 4, and an additional \$2,000 as consideration for the waiver of claims in paragraph 23. Within seven calendar days of Respondent's compliance with this paragraph, Charging Party and Respondent shall notify the Administrative Law Judge in OCAHO Case No. 2023B00001 that the parties have reached a full settlement and have agreed to dismissal of the action in accordance with 28 C.F.R. § 68.14(a)(2).

23. In consideration for the payment to Charging Party as specified in Paragraphs 4 and 22 of this Agreement, Charging Party knowingly releases, absolves and discharges Respondent from any claims or causes of action concerning national origin, citizenship status, and/or immigration status against Respondent in connection with her application for employment at NYC Health + Hospitals/Lincoln in 2021, including all 8 U.S.C. § 1324b claims that were the subject of the Investigation and the OCAHO Litigation through the Effective Date.
24. Charging Party acknowledges that she has read and understands Paragraph 4 and Part IV of this Agreement, which constitutes a release and waiver of claims, and she is executing this Agreement knowingly, voluntarily and without coercion. Charging Party has been informed of the benefit of seeking counsel, had the opportunity to seek the advice of counsel, and either has done so or expressly waives that right.

New York City Health and Hospitals Corporation d/b/a NYC Health + Hospitals

By:



Andrea G. Cohen
General Counsel

Dated: 11/13/2023

Charging Party

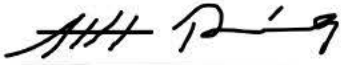
By:



Dated: 11/09/2023

Immigrant and Employee Rights Section

By:



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Dated: 11-16-2023

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