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

October 27, 1995

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. 1324c Proceeding
	)	OCAHO Case No. 95C00009
ALBERTO NORIEGA-PEREZ, Respondent.	)	

ORDER DENYING RESPONDENT'S MOTION FOR EXTENSION OF TIME, DENYING RESPONDENT'S MOTION FOR RECONSIDERATION OF ORDER, GRANTING COMPLAINANT'S MOTION FOR SANCTIONS, GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION, AND DENYING RESPONDENT'S CROSS-MOTION FOR SUMMARY DECISION

Procedural Background

On August 24, 1994, complainant, acting by and through the Immigration and Naturalization Service (INS), issued and served by certified mail Notice of Intent to Fine (NIF), CAL 274C-93-0001, upon Alberto Noriega-Perez (respondent). That citation contained two (2) counts alleging 328 violations of the document fraud provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1324c(a)(1)-(a)(2), for which civil money penalties totaling $176,000 were assessed.

In Count I, complainant alleged that respondent knowingly forged, counterfeit, altered, and falsely made eight (8) temporary immigration documents and did so after November 29, 1990, in order to satisfy a requirement of the INA, 8 U.S.C. § 1324(a)(1). Complainant assessed

a civil money penalty of $2,000 for each of those eight (8) alleged violations, or assessments totaling $16,000.

In Count II, complainant alleged that respondent knowingly possessed the forged, counterfeit, altered and falsely made documents described therein, namely 298 U.S. Immigration and Naturalization Forms I-94, 21 U.S. Social Security cards, and one (1) U.S. Immigration and Naturalization Form I-151 and further that respondent did so after November 29, 1990, for the purpose of satisfying a requirement of the INA, in violation of the provisions of 8 U.S.C. § 1324(a)(2). Complainant levied civil money penalties totaling $160,000, or $500 for each of those 320 alleged violations.

Respondent was advised in the NIF of his right to request a hearing before an administrative law judge assigned to this Office if he notified INS accordingly within 60 days of his receipt of that notice. Respondent timely filed a request for hearing.

On January 23, 1995, complainant filed the two (2)-count Complaint at issue.

In Count I, complainant realleged that respondent had knowingly forged, counterfeited, altered and falsely made eight (8) temporary immigration documents and did so after November 29, 1990 for the purpose of satisfying a requirement of the INA, in violation of Section 274C(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1324c(a)(1), and again requested civil money penalties in the amount of $2,000 for each of the eight (8) alleged violations, or a total of $16,000 on that count.

In Count II, complainant again charged that respondent had violated the provisions of § 274C(a)(2) of the INA, 8 U.S.C. § 1324c(a)(2), by having knowingly possessed forged, counterfeited, altered and falsely made the 320 documents described therein, which included 298 Immigration and Naturalization Forms I-94, 21 Social Security cards and one (1) Form I-151. Complainant further alleged that respondent had been in possession of those documents after November 29, 1990, for the purpose of satisfying a provision of the INA. Complainant assessed amended civil money penalty sums of $250 for each of those alleged 320 violations, or civil money penalty sums totaling $80,000 in Count II.

Copies of the Complaint and Notice of Hearing were served upon respondent via certified mail, return receipt requested.

On February 28, 1995, respondent filed a Response to the Complaint, denying generally and specifically each and every allegation in both Counts I and II. Respondent further raised two (2) "affirmative defenses", namely: (1) that he had previously been assessed a criminal penalty upon his having entered a plea of guilty on May 10, 1993, arising out of the same facts, and thus any additional penalty would constitute a "double penalty"; and (2) that his health was very poor, that he was the victim of an illegal search and seizure of evidence in the aforementioned criminal charge, and that it was "unfair and unjust" to have been subjected to two (2) penalties for the same alleged violations. Respondent's Answer further requested that the Complaint be dismissed.

On May 19, 1995, complainant filed an unopposed Motion to Compel Discovery, in which it advised that it had forwarded discovery requests, specifically a Request for Admissions, a First Set of Interrogatories and a Request to Produce to respondent on April 7, 1995, and that respondent had not responded within the 30-day time period specified in the pertinent procedural rule, 28 C.F.R. § 68.19-21.

Those rules further provide that upon service of such documents by ordinary mail, as here, the responding party is granted an additional five (5) days, or 35 days from the date upon which the document is mailed, in which to respond. 28 C.F.R. § 68.8(a)-(c). Accordingly, respondent's discovery replies were to have been filed no later than May 12, 1995. In its May 19, 1995 motion, complainant stated that respondent had not done so by that date. The procedural rules provide that a party's failure to timely respond to discovery requests may result in the imposition of those sanctions enumerated at 28 C.F.R. 68.23.

On May 30, 1995, complainant filed a Motion for Continuance of Hearing Date, in which it requested that the June 14, 1995 adjudicatory hearing in San Diego, California be cancelled because respondent's failure to have filed discovery replies had prevented complainant from properly preparing the matter for hearing.

On May 30, 1995, also, complainant filed a Motion for Summary Decision, urging that respondent's failure to have replied to complainant's requests for admissions had resulted in those requests having been deemed to have been admitted.

On May 31, 1995, the undersigned issued an Order Granting Complainant's Motions for Continuance and to Compel Discovery, cancelling the hearing scheduled for June 14, 1995, and further ordered

respondent to respond to complainant's discovery requests within 10 days of his receipt of that Order. Respondent was further advised that his failure to comply fully with the provisions of that Order would result in the imposition of sanctions.

On June 5, 1995, respondent filed a letter/pleading in which he asserted that he was unable to "prepare for a hearing, or to make my defense, or to complete interogatories [sic], due to my mental condition where I am suffering major mental illness." In support of that contention, respondent furnished a physician's letter which advised that respondent has been diagnosed with "major depression."

On June 12, 1995, respondent filed another letter/pleading, dated June 9, 1995, in which he stated, "[t]he respondents [sic] answer to each and everyone [sic] of the Government [sic] questions in its interlagatories [sic] and request to produce is the exercising [sic] of my 5th Amendment right against self incrimination."

On June 26, 1995, complainant filed a pleading captioned Complainant's Motion for Sanctions, in which it requested that the undersigned grant the following sanctions, in accordance with 28 C.F.R. Section 68.23(c):

> 1) Infer and conclude that the admissions, documents, or other evidence would have been adverse to the non-complying party; and
>
> 2) Rule that for the purposes of the proceedings the matters concerning which the order was issued be taken as established adversely to the non-complying party.

On June 28, 1995, the undersigned issued an Order Staying Complainant's Motion for Sanctions and Motion for Summary Decision, in which respondent was ordered to file responses to all of complainant's discovery requests and to have done so by July 18, 1995. In particular, respondent was ordered to address each discovery request to which he objected, specifically setting forth the reasons why a responsive answer to each request would have a tendency to incriminate him. Respondent was advised that in the event he failed to respond in a timely manner, complainant's Motion for Sanctions would be granted and sanctions would be ordered from among those listed at 28 C.F.R. § 68.23(c).

On July 18, 1995, respondent filed partial replies to complainant's discovery requests and clearly failed to comply with the undersigned's June 28, 1995 Order by reason of having failed to respond to any of complainant's Requests for Admissions.

On July 21, 1995, complainant filed a document entitled Complainant [sic] Response to Respondent's Compliance with Administrative Law Judge's Order Regarding Discovery and Demand for Discovery and Production of Evidence and Documents and Request to Produce. Complainant alleged that respondent's responses to its discovery requests were insufficient, and that his arguments concerning a new trial had been improperly asserted since they involved a collateral matter. Complainant further requested that sanctions be imposed against respondent for his failure to comply with the undersigned's June 28, 1995 Order, that its May 30, 1995 Motion for Summary Decision be granted, and that respondent's discovery requests be held in abeyance pending a ruling on complainant's July 21, 1995 filing.

On September 13, 1995, the undersigned issued an Order Granting Complainant's Motion for Sanctions owing to respondent's failure to have responded to any of complainant's Request for Admissions, as well as his failure to comply with the provisions of the undersigned's June 28, 1995 Order. In accordance with the provisions of 28 C.F.R. § 68.21(b), each matter of which an admission was requested in complainant's Request for Admissions was deemed to have been admitted by respondent.

In addition, the Order provided that respondent had failed to state with any particularity his precise objections to Complainant's First Set of Interrogatories and its Request to Produce. The Order further noted that respondent carried the burden of showing that the privilege against self-incrimination existed and that it was permissible to defer a ruling upon whether a privilege exists until the factual picture in which the privilege is claimed had been clearly developed. United States v. Maria Elizondo Garza, d/b/a Garza Farm Labor, 4 OCAHO 644, at 6 (1994) (citations omitted).

Finally, the September 13, 1995 Order required that respondent file his responses on or before September 29, 1995, and respondent was also ordered to address each discovery request to which he had objected, specifically setting forth the reasons why a response to each request would have a tendency to incriminate him. Respondent was again warned that a failure to adequately respond would result in the imposition of further sanctions from among those set forth at 28 C.F.R. § 68.23(c).

On September 28, 1995, respondent filed two (2) handwritten pleadings, the first of which requested an extension of time in order to

comply with the September 13, 1995 Order regarding complainant's discovery requests until the undersigned had an opportunity to rule on respondent's second pleading on that date, which was captioned A. Motion for Summary Judgement in Favor of Respondent B. Motion for Reconsideration on Court Order Granting Admissions of the Goveverments [sic] Statements of Admissions.

Respondent's request for an extension of time and motion for reconsideration of the undersigned's September 13, 1995 Order deeming complainant's requests for admissions to be admitted will be considered first, in conjunction with complainant's June 26, 1995 Motion for Sanctions, previously stayed by the undersigned's June 28, 1995 Order. Finally, the parties' Cross-Motions for Summary Decision will be ruled upon.

Respondent's Request for an Extension of Time to Respond to Complainant's Discovery Request and Motion for Reconsideration of September 13, 1995 Order

On June 28, 1995, as previously noted, an Order Staying Complainant's Motion for Sanctions and Motion for Summary Decision was issued, in which respondent was ordered to respond to complainant's individual discovery requests and to "specifically set forth the reasons why a responsive answer to each request would have a tendency to incriminate him." June 28, 1995 Order, at 4. Respondent was cautioned that a failure to do so would result in sanctions being imposed from among those listed at 28 C.F.R. § 68.23(c).

On July 18, 1995, respondent filed a document which in part purported to set forth his Fifth Amendment objections, as well as his answers to complainant's interrogatories.

On July 21, 1995, complainant requested that respondent be sanctioned for his inadequate pleading of July 18, 1995, specifically his failure to respond to complainant's request for admissions and his unresponsive replies to the interrogatories which had been properly propounded.

On September 13, 1995, as noted earlier, the undersigned granted complainant's request for sanctions concerning its requests for admissions, all of which were deemed to have been admitted. In that Order, also, respondent was again ordered to specifically set forth his reasons why a responsive answer to each of complainant's remaining

discovery requests would tend to incriminate him, and to have done so on or before September 29, 1995.

On September 28, 1995, respondent filed a request for an Extension of Time to comply with the provisions of the September 13, 1995 Order.

While it is well established, as respondent alleges in his Motion for Summary Judgment and Motion for Reconsideration, that pro se parties are held "to less stringent standards than formal pleadings drafted by lawyers," Haines v. Kerner, 404 U.S. 519, 520 (1972), it is nonetheless imperative that a party's continuing failure, as here, to comply with specific and repeated orders regarding discovery requests ultimately incurs those penalties provided for under the pertinent procedural rules of the forum.

These pleadings clearly disclose that respondent has been granted every opportunity since receiving complainant's initial discovery requests of April 7, 1995, to either have formulated specific objections to complainant's interrogatories and requests to produce or to have furnished to complainant his fully responsive replies, as required under the procedural rules.

Every courtesy has been extended to the pro se respondent in order to have granted him every opportunity to have complied with the Orders of June 28 and September 13, 1995, but respondent has repeatedly failed to do so. His unsubstantiated requests for extensions of time, totally devoid of any attempt to illustrate good cause for those delays, cannot and will not be permitted. Accordingly, respondent's request for an extension of time is hereby denied.

Concerning respondent's September 28, 1995 Motion for Reconsideration of the September 13, 1995 Order Granting Complainant's Motion for Sanctions, he argues that "his pro-se pleadings of his 5th defense [sic] was his denial and answer to this [sic] admissions as specified under . . . [the less stringent pro se standard espoused in]... Hanes [sic] versus Kerner." That contention is simply not supported by the record.

Specifically, respondent in his pleading captioned "Motions A. to Dismiss Order Compeling [sic] Discovery B. the Answer to the Goverment [sic] Request for Discovery" initially asserted that "the . . . answer to each and everyone [sic] of the Goverment [sic] interlagatories [sic] and request to produce is the exercising [sic] of my 5th Amendment right against self incrimination [sic]."

In the June 28, 1995, Order Staying Complainant's Motion for Sanctions and Motion for Summary Decision, the undersigned expressly found this response to be clearly inadequate and ordered respondent to file specific responses to each discovery request detailing why a responsive answer would tend to incriminate him. In the opening paragraph of that Order, the phrase "discovery requests" is defined as "consisting of a Request for Admissions, Complainant's First Set of Interrogatories and Request to Produce." June 28, 1995 Order, at 1.

Respondent next indicates in his July 18, 1995 pleading that he is furnishing discovery replies to complainant's interrogatories and its request to produce, but he failed to deal with, or even to mention, complainant's requests for admissions, which address the ultimate alleged facts of violation at issue.

Absent additional evidence to the contrary, which respondent has failed to furnish, an oversight of that magnitude simply cannot be attributed to pleadings which were inartfully drafted. Instead, one must reasonably view that conduct as a deliberate failure to comply with the clearly delineated provisions of the June 28, 1995 Order, especially in view of the fact that respondent very early on had been furnished a copy of this Office's procedural rules, which accompanied the Notice of Hearing, which was dated and mailed to him by certified mail on January 24, 1995.

For the foregoing reasons, respondent's Motion for Reconsideration is hereby denied.

Complainant's Motion for Sanctions

Since respondent's motion for an extension of time to respond to complainant's discovery requests has been denied, we now consider Complainant's Motion for Sanctions, which was granted partially in the undersigned's Order of June 28, 1995, by reason of the fact that its Request for Admissions were deemed therein to have been admitted.

With respect to complainant's remaining discovery requests, those consisting of interrogatories and its request to produce, the provisions of that Order stayed a ruling on those discovery requests for the purpose of enabling respondent to demonstrate how his furnishing the required replies to complainant would violate his Fifth Amendment privilege against self-incrimination. For the following reasons, that portion of complainant's Motion for Sanctions which addressed

respondent's failure to reply to Complainant's First Set of Interrogatories and its Request to Produce, is being granted, also.

Administrative law judges are specifically empowered "for the purposes of permitting resolution of the relevant issues and disposition of the proceeding and to avoid unnecessary delay, [to] take the following actions:

> (1) Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party; [and]
>
> (2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party.

28 C.F.R. § 68.23(c)(1)-(2).

Owing to respondent's ongoing failure to comply with the previously-discussed Orders, despite clearly enunciated and repeated warnings as to the specific consequences of such a course of action, it is hereby ordered that each interrogatory and request for production in Complainant's First Set of Interrogatories and Request to Produce be taken as having been established adversely to the respondent.

Ruling on Complainant's Motion and Respondent's Cross-Motion for Summary Decision

In his remaining motion, respondent has moved that he be granted summary judgment against the complainant because of the complainant's "shocking conduct" and its obstruction of respondent's defense by its failure to have answered his discovery requests. Respondent's motion for summary judgment will be treated as a Motion for Summary Decision, as provided for under the provisions of 28 C.F.R. § 68.38.

Concurrent with respondent's cross-motion, the undersigned will consider complainant's counterarguments presented in its Motion for Summary Decision, filed May 30, 1995, and previously stayed by the Order of June 28, 1995.

The pertinent procedural rule governing motions for summary decision in document fraud cases provides that "[t]he Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, and 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 C.F.R. § 68.38(c).

That section of the rules is similar to and based upon Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in federal court cases. For this reason, federal case law interpreting Rule 56(c) is instructive in determining whether summary decision under Section 68.38 is appropriate in proceedings before this Office. Mackentire v. Ricoh Corp., 5 OCAHO 746, at 3 (1995); Alvarez v. Interstate Highway Constr., 3 OCAHO 430, at 7 (1992).

The purpose of summary adjudication is to avoid an unnecessary hearing when there is no genuine issue as to any material fact, as shown by the pleadings, affidavits, discovery, and any other judicially noticed matters. United States v. Anchor Seafood Distribs., Inc., 5 OCAHO 742, at 4 (1995); United States v. Goldenfield Corp., 2 OCAHO 321, at 3 (1991). "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (quoting Schwarzer, Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact, 99 F.R.D. 465, 467 (1984)).

An issue of material fact is genuine only if it has a real basis in the record. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586-87 (1986). A genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); United States v. Primera Enters., Inc., 4 OCAHO 615, at 2 (1994). In determining whether there is a genuine issue as to a material fact, all facts and reasonable inferences to be derived therefrom are to be viewed in the light most favorable to the non-moving party. Matsushita, 475 U.S. at 587; Primera, 4 OCAHO 615, at 2.

The procedural rule governing motions for summary decision in OCAHO proceedings explicitly provides that "a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing." 28 C.F.R. § 68.38(b).

Rule 56(c) of the Federal Rules of Civil Procedure permits, as the basis for summary judgment, the consideration of any admissions on file. Similarly, summary decisions issued pursuant to 28 C.F.R. Section

68.38 may be based on matters deemed admitted. Primera, 4 OCAHO 615, at 3; United States v. Goldenfield Corp., 2 OCAHO 321, at 3-4 (1991).

In Count I, complainant alleged that subsequent to November 30, 1990, respondent knowingly forged, counterfeited, altered and falsely made eight (8) temporary immigration documents for the purpose of satisfying a requirement of the INA, in violation of the provisions of Section 274C(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1324c(a)(1). Complainant assessed civil money penalties in the amount of $2,000 for each of those eight (8) alleged violations, or levies totaling $16,000 therein.

In Count II, complainant charged that respondent was in violation of §274C(a)(2) of the INA, 8 U.S.C. § 1324c(a)(2), by having knowingly possessed forged, counterfeit, altered and falsely made documents described therein, including 298 Immigration and Naturalization Forms I-94, 21 Social Security cards and one (1) Form I-151. Complainant further alleged that respondent was in possession of these documents after November 29, 1990, for the purpose of satisfying a provision of the INA. Complainant requested civil money penalties totaling $80,000 for those alleged violations, or $250 for each of those 320 infractions.

Count I

In order to prove the violation alleged in Count I, complainant must establish that:

1. respondent knowingly forged, counterfeited, altered, or falsely made the eight (8) temporary immigration documents described therein;

2. after November 29, 1990; and

3. for the purpose of satisfying a requirement of the INA.

Respondent, by his repeated failure to respond to complainant's discovery requests, has been deemed to have admitted all facts alleged in complainant's Request for Admissions. Similarly, the replies to complainant's First Set of Interrogatories and Request to Produce, as noted within the subsection of this Order entitled "Complainant's Motion for Sanctions," have further been established adversely to respondent.

Concerning complainant's initial element of proof, respondent has expressly admitted that he knowingly forged/counterfeited the eight (8) temporary immigration documents listed in Count I.[1] Complainant's Request for Admissions 6A(1)-(8), 6C. As to elements two (2) and three (3), the next admissions establish that those actions occurred after November 29, 1990, and for the purpose of satisfying a requirement of the Immigration and Naturalization Act. Id. at 6B, 6D.

Complainant, through its Request for Admissions, has established all of the required elements of proof on allegations contained in Count I.

It is well established that the party seeking summary decision assumes the burden of demonstrating to the trier of fact the absence of a genuine issue of material fact. See Celotex Corp., 477 U.S. at 323. Once the movant has carried this burden, the opposing party must then come forward with "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 587.

In order to avoid summary decision in favor of complainant, respondent must therefore allege the existence of a genuine issue of material fact. Towards that end, respondent filed a Cross-Motion for Summary Decision, generally reciting the following: (1) that he is a senior immigrant who is the victim of "skilled and crafty goverment [sic] attorney's [sic]"; (2) that he has previously generally invoked his 5th Amendment rights in response to the government's discovery requests; (3) that the government's conduct in this case is "shocking" in its attempts to obtain "unfair advantage [over] respondent thru [sic] the use of legal technecalities [sic] . . . in order to have unchallenge [sic] statements of admissions admited [sic] as truth"; and finally (4) that the government's failure to answer his propounded discovery constitutes wilfull obstruction of his abilities to prepare his case, violating his due process and equal protection rights.

Nonetheless, respondent has failed to allege any "specific facts" indicating a "genuine issue for trial." Nor does respondent deny any of the government's allegations. In addition, he has failed to allege any

[1] There is a slight discrepancy between the Complaint and the Request for Admissions in the spelling of the name listed as corresponding to temporary immigration document number A98182759, in that the Complaint lists the individual's name as "Mario Reynaga-Pelayo", whereas the request number 6A(5) lists it as "Mario Reyna-Pelayo." Nonetheless, given that the document numbers correspond, this will be treated as a typographical error, and will not affect the determination of summary decision.

specific facts which would create a genuine issue of material fact for consideration at hearing.

In view of those admitted facts, it is hereby determined, even considering respondent's motion in the light most favorable to him, that no genuine issue of material facts exists as to the complainant's allegations contained in Count I, and that therefore summary decision must be rendered in favor of complainant as to the eight (8) violations alleged therein.

Count II

In order to substantiate the violation alleged in Count II, complainant must demonstrate that:

1. respondent knowingly used, attempted to use, possessed, obtained, accepted, or received or provided forged, counterfeit, altered or falsely made documents described therein, specifically 298 Immigration and Naturalization Forms I-94, 21 Social Security cards and one (1) Form I-151;

2. after November 29, 1990; and did so

3. for the purpose of satisfying a requirement of the INA.

Complainant, in its Request for Admissions, which have been deemed admitted due to respondent's continued refusal to respond to the undersigned's orders, has also clearly, concisely, and convincingly established each required element to support a finding in its favor on all 320 violations contained in Count II.

Respondent has admitted that he possessed (a) 298 forged/counterfeited United States Immigration and Naturalization Forms I-94; (b) 21 forged/counterfeited United Sates Social Security cards; and (c) one (1) Form I-151, numbered A35 742 648 in the name of "Bello-Teofilo." Complainant's Request for Admissions 7A-C. Those were shown to have been in his possession after November 29, 1990, by respondent "knowing that such documents were forged/counterfeited." Id. at 7A-D. Finally, respondent admitted that he possessed these "for the purpose of satisfying a requirement of the Immigration and Nationality Act." Id. at 7E.

Accordingly, because complainant has established each element of the violations set forth in Count II, such that no genuine issue of material facts exists as to those charges, summary decision is properly granted to complainant as to the 320 violations in Count II, also.

Complainant's Motion for Summary Decision is hereby granted and consequently, respondent's Cross-Motion for Summary Decision is hereby denied.

Concerning the appropriate civil money penalties to be assessed for the 328 violations involved, no evidentiary hearing will be necessary. Instead, the parties are hereby ordered to submit concurrent written briefs, and to have filed those briefs no later than November 15, 1995, containing recommended civil money penalty amounts for those 328 violations.

Specifically, the INA provides for civil money penalties for individuals who violate the document fraud provision of 8 U.S.C. § 1324c, and for first-time offenders. Those fines range from a statutorily mandated minimum of $250 to a maximum of $2,000 for each instance of use, acceptance or creation. 8 U.S.C. § 1324c(d)(3)(A).

While the statute specifically designates these penalties to be civil, in light of respondent's contention that the imposition of $96,000 called for by the complainant constitutes a "punitive" or criminal penalty within the contemplation of the ruling of the Supreme Court in United States v. Halper, 490 U.S. 435 (1989), thus raising the issue of double jeopardy given his alleged previous payment of a $20,000 criminal fine, the undersigned further orders that the parties address the issue of whether the requested fines sought are civil or criminal in nature.

Finally, respondent is further ordered to cease and desist from future violations of 8 U.S.C. § 1324c(a)(1)-(a)(2).

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

This 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 shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324c(d)(4); 1324c(d)(5), and 28 C.F.R. § 68.53.